

## **ARTICLE IX SITE PLAN REVIEW**

### **Section 9.01 Purpose**

The purpose of this Article is to ensure that any new development, substantial redevelopment, special permitted use, or change in use in the Town will be in harmony with the character of the neighborhood in which it is proposed to be located. Another purpose is to minimize conflicts between proposed development and neighboring existing uses and natural features of the site, in order to ensure the optimum overall conservation, protection, preservation, development, design and use of natural and man-related resources in the Town. To accomplish these goals, this Article sets forth the applicability, process and standards for the review of Site Plans.

### **Section 9.02 Applicability and Exceptions**

- (A) All new development; all redevelopment; all land use activities; all changes in use, regardless of whether or not construction activities are involved; and all special use permit applications shall require Site Plan review and approval prior to the issuance of a building permit and/or zoning permit, except the following:
- (1) Construction of single family or two-family dwelling units and ordinary accessory structures, and related land use activities. Additions of any size to existing single family and two family dwelling units are also exempt from site plan review.
  - (2) Landscaping or grading which is not intended to be used in connection with a land use reviewable under the provisions of this Zoning Ordinance.
  - (3) Ordinary repair or maintenance to existing structures, in cases where the use remains the same.
  - (4) Interior structural alterations within any existing building, in cases where the use remains the same.
  - (5) Exterior alterations or additions to existing structures which would not increase the square footage of the existing structure by more than 25%, or additions of less than 5,000 square feet, whichever is the lesser, in cases where the use remains the same.
  - (6) Agricultural uses as defined in Article II of this Ordinance, including the construction of buildings and structures that are normally accessory to agricultural uses. Gardening uses not involving commercial use.
  - (7) The sale of agricultural produce and temporary structures related to sale of agricultural produce.

- (8) Logging and timber cutting.
  - (9) Home Occupations.
  - (10) Accessory structures, including fences, unless the fence or other accessory structure is part of a project that is subject to site plan review.
  - (11) Signs, except for signs that are included in projects that would otherwise require site plan review. Billboards and Outdoor Advertising Signs are exempt from site plan review.
- (B) Notwithstanding the foregoing sub-section, any exterior alterations to commercial and/or industrial buildings, which are located within the CO-1 Route 417 East Corridor Overlay District and the CO-2 Route 417 West Corridor Overlay District, that will significantly change the architectural appearance of those structures, regardless of whether there will be an increase in building size, shall require Site Plan review and approval prior to the issuance of a building permit and/or zoning permit.
- (C) Any person uncertain of the applicability of Site Plan Review to a given land use activity may apply in writing to the Planning Board through the Code Enforcement Officer for a written jurisdictional determination.

### **Section 9.03 Authority**

- (A) The power to approve, approve with conditions, or disapprove site plans is hereby vested in the Planning Board of the Town of Allegany.
- (B) **Area Variances.** Where a proposed site plan contains one or more features which do not comply with the zoning regulations, an application may be made to the Zoning Board of Appeals for an area variance without the necessity for an application to and permit denial by the Code Enforcement Officer, provided that the application for site plan review is made simultaneous with or prior to the application to the Zoning Board of Appeals. The Zoning Board of Appeals shall act on the application for a variance prior to final Planning Board action on the application for Site Plan review.
- (C) **Integration of Procedures.** Whenever a proposed development requires either a Special Use Permit or other permits issued by the Town, in addition to Site Plan review, the Planning Board shall attempt to integrate, as appropriate, the Site Plan review process with the procedural and submission requirements for such other permits and procedures.

### **Section 9.04 Application Content**

- (A) The application for Site Plan review shall be made in writing to the Planning Board by filing it with the Code Enforcement Officer. Where a pre-application conference was held with the Planning Board (See Section 9.06(A)), the application shall contain the material requested by the Planning Board at that time. The Site Plan that is submitted for approval

shall be prepared by and show the signature and/or seal of a licensed engineer, architect, landscape architect, or surveyor. All maps shall contain a scale, north arrow, date, title, and the name and address of the preparer.

**(B)** The application shall contain the following information and materials:

- (1) Name, address and contact information for the applicant and the applicant's representative(s), if any. In the event that the property owner is not the applicant, a letter from the property owner giving the applicant permission to make the application shall be required.
- (2) A map, with north arrow and scale, identifying the site in relation to adjoining public roads and the neighborhood in which it is located. The address and tax map number of the project site shall be provided.
- (3) A scaled map (or maps) of the site, with a north arrow and date, showing existing site conditions, prior to demolition of any existing structures and any grading. The map(s) shall be at a size and scale adequate to show site conditions. The map(s) shall show:
  - (a) The boundaries of the site and the lot size (area).
  - (b) Any easements of record or known prescriptive easements
  - (c) Topography with contours shown at intervals of not more than five feet
  - (d) Type and location of major trees or significant areas of vegetation
  - (e) One hundred year floodplain, known springs and seep areas, ponds, wetlands, and streams
  - (f) Existing roads, fences, and drainage facilities
  - (g) Location of public utility facilities and associated easements.
- (4) Proposed Site Plan, on one or more scaled maps, with a north arrow and date. The map(s) shall be at a size and scale adequate to show proposed site features and structures. The site plan shall show:
  - a. Required yard setbacks, from the Zoning Ordinance.
  - b. Location and proposed use of all buildings and structures
  - c. Location of all proposed site improvements, such as plazas, tennis courts, pools, and similar facilities
  - d. Driveways, parking areas, new and existing roads and any other circulation features, including access to existing public roads
  - e. Pedestrian circulation system, including proposed sidewalks and crosswalks.
  - f. Proposed location of new (or existing) utility services or relocated utility services, including easements, if necessary.
  - g. Location of outdoor storage, if any.
  - h. Location of garbage dumpsters, loading docks, stacking lanes, and similar features.
  - i. Location and proposed use of open space and/or recreation areas, if any. The proposed ownership and the parties responsible for long-term maintenance of these areas shall be identified.

- (5) Drainage and Grading Plan showing existing and finished contours and grades, the location of any slopes of five (5) percent or greater, stormwater runoff management plan, and proposed erosion control measures (a Stormwater Pollution Prevention Plan prepared in accordance with NYSDEC regulations shall be adequate to meet this requirement).
- (6) Proposed water supply plan, including location of new waterlines, if proposed; location of tie-in to existing water system; design and construction materials of public facilities; and location of fire lanes and hydrants. A description and explanation of the system should be included, if necessary.
- (7) Proposed sanitary sewerage disposal system including location of new lines, if proposed; location of tie-in to existing system; and design and construction materials of public facilities. A description and explanation of the system should be included, if necessary.
- (8) To-scale floor plans and elevations of proposed buildings and structures, showing all architectural features, including design, colors, materials, and height. For large-scale projects the Planning Board may require renderings showing the proposed project in relationship to adjacent properties.
- (9) Landscaping Plan, including planting schedule. The Landscaping Plan shall show all proposed fences and/or retaining walls, including height and construction materials. The Landscaping Plan shall include proposals for buffer areas, if any.
- (10) Lighting Plan, including the location, height and design of outdoor lighting features. The lighting plan shall include a description of the lighting level, (measured in footcandles or other standard approved by the Planning Board) at all locations on the site, through photometric drawings or similar mapping techniques.
- (11) Signage Plan, including the location, design, color, materials and size of all proposed signs.
- (12) Location, design and construction materials of all energy distribution facilities, including electrical, gas, oil, solar and wind energy, if any.
- (13) General description of proposed project, including the nature of the use, number of shifts, potential number of employees, hours of operation, etc.
- (14) A development schedule for the project, indicating phased development, if any, and the estimated start and completion dates for the project.
- (15) Part 1 of NYSEQRA Environmental Assessment Form.
- (16) All Application Fees.

- (17) Any additional information that may be required by the Planning Board as it deems necessary and pertinent to carry out its responsibility for a meaningful review of the Site Plan application, based on the nature of the project and/or site. The Planning Board may waive any of the above submission requirement(s) that the Board deems unnecessary for a meaningful review of a particular project.

## **Section 9.05 Criteria for Review of Site Plan**

**(A) General Standards.** The Planning Board's review of the Site Plan shall include the following considerations:

- (1) Site Layout
  - (a) The location and size of the site is adequate to accommodate the proposed site layout.
  - (b) The site plan is compatible with the natural features of the site, such as topography and wetlands. In areas with susceptibility to ponding, flooding and/or erosion, the proposed structures, roadways and landscaping are designed to minimize impacts from those conditions.
  - (c) The location, arrangement, size, and design of buildings, lighting and signs provides a coherent, unified and consistent appearance.
  - (d) The location, nature, architectural characteristics and height of buildings, walls and fences will not discourage either future development of or current use of adjacent land and buildings, or impair their value.
  - (e) Adequate on-site parking is provided, both in terms of number of spaces and their arrangement on the lot in relationship to the buildings and/or uses that they are intended to serve.
  
- (2) Circulation
  - (a) The internal vehicular traffic circulation system is adequate for the activities and uses proposed, and provides adequate access to parking areas and to abutting streets, taking into consideration intersections, road widths, pavement surfaces, and traffic controls mechanisms.
  - (b) An internal pedestrian circulation system is provided
  - (c) Access to and egress from the site for both pedestrians and vehicles is adequately provided.
  - (d) Loading and unloading zones are adequate for the anticipated delivery and service vehicles, and their location does not affect other vehicular or pedestrian traffic.
  - (e) Adequate access is provided for emergency service vehicles, including adequate pavement, turning radii and fire lanes.
  
- (3) Utilities
  - (a) Storm water drainage facilities are adequate to mitigate anticipated runoff.
  - (b) The proposed water supply and sanitary sewage disposal systems meet the standards of the Town, NYS Department of Environmental Conservation and Cattaraugus County Health Department.

- (c) The water supply system is adequate to provide fire flow and fire hydrants are provided, if needed.
- (4) Landscaping and buffering
  - (a) The proposed Landscaping Plan complies with the standards contained in Article V of this Zoning Ordinance.
  - (b) Where a visual and/or noise buffer is required between the applicant's and adjoining lands, the type and arrangement of trees, shrubs and other landscaping features forms an adequate buffer to protect adjacent or neighboring properties against noise, glare, unsightliness or nuisances. The retention of existing vegetation to the maximum amount feasible is encouraged.
  - (c) Loading zones, trash receptacles and mechanical equipment areas are adequately screened from adjacent properties and from within the site.
  - (d) If adjacent or neighboring properties contain existing solar facilities, the proposed site plan will not adversely affect the solar access of those facilities.
  - (e) Where proposed in an apartment complex or other multiple dwelling, the open space for play areas and informal recreation is adequate.
- (5) Lighting
  - (a) The location and design of the proposed site lighting is adequate for safety and has minimal impact to adjacent properties in terms of light spillage. Site lighting shall use the minimum amount of lighting needed for safety and convenience, without being excessively bright.
  - (b) The use of cut-off or dark sky compliant light fixtures is encouraged.
  - (c) The style of light poles and fixtures is consistent with the architectural design of the development.
- (6) Signage
  - (a) The size, design, number, placement and arrangement of signs is the minimum necessary to convey the required information.
  - (b) The signage plan is consistent with the overall architectural character of the development.
  - (c) Signage meets the requirements of Article V in terms of numbers, size and location of signs.

**(B) Specific Standards for Shoreline Protection**

- (1) All construction on any shoreline lot shall be carried out in such a manner as to minimize interference with the natural course of such waterway, to avoid erosion of the shoreline, to minimize increased runoff of ground and surface water into the waterway, to remove only that vegetation which is necessary to the accomplishment of the project, and to generally maintain the existing aesthetic and ecological character of the shoreline.
- (2) Any marina, boat service facility or any storage of petroleum products within two hundred (200) feet or reasonable setback as determined necessary by the Planning

Board, of the shoreline shall include adequate provisions for insuring that any leak, rupture or spill will be contained and not be introduced into or affect the adjacent waterway. In particular, a raised earthen or paved berm or dike shall be constructed in such a manner so as to afford adequate protection.

- (3) Any paved or otherwise improved parking, loading or service area within two hundred (200) feet of any shoreline shall be designed and constructed so as to minimize surface runoff and the entrance of any chemical pollutants or earthen silt into the waterway.

## **Section 9.06 Application Procedure**

### **(A) Pre-Application Conference**

A pre-application conference may be held between the Planning Board and the applicant prior to the preparation and submission of a formal Site Plan application. The purpose of the pre-application conference is to enable the applicant to inform the Planning Board of the proposal prior to the preparation of a detailed Site Plan. The Planning Board shall review the basic site design concept, advise the applicant as to potential problems and concerns, and generally determine the information to be required for the Site Plan application. In order to accomplish these objectives, the applicant should provide the following information:

- (1) A sketch showing the locations of principal and accessory structures, parking areas, and other existing and planned features. Anticipated changes in the existing topography and natural features should be identified.
- (2) A site location map that shows the location of the site with respect to nearby streets, major waterbodies, and abutting property.

### **(B) Optional Public Hearing**

- (1) The Planning Board may conduct a public hearing on the Site Plan application. In determining whether a public hearing is warranted, the Planning Board shall consider issues such as: the size and scale of the project; the amount of traffic likely to be generated by the project; the possible impact on the surrounding area in terms of noise, light, and other nuisance and/or health factors; and whether or not the project would represent a significant change in the land use in the surrounding area. The Planning Board, by motion, shall make a formal determination of whether or not a public hearing is warranted.
- (2) If a public hearing is held, the Planning Board shall conduct such public hearing within sixty-two (62) days from the day the complete application is received.
- (3) **Public Notice.** Notice of the public hearing shall be provided in the following manner:



- (a) The Town shall publish a notice of the public hearing in the official newspaper of the Town, at least five (5) days before the public hearing, and
- (b) The Town shall mail notice of the public hearing to the applicant, at least 10 days before the hearing, and
- (c) The Town shall mail notice of the public hearing to owners of all properties within a radius of five hundred (500) feet of the perimeter of the property that is the subject of the site plan application. Such notices shall be mailed to the property owner of record at the address shown on the current tax assessment roll and shall be postmarked at least 10 days prior to the date scheduled for the public hearing, and
- (d) If the application is subject to the referral requirements of Section 239-m of General Municipal Law, notice of the public hearing shall be sent to the Cattaraugus County Planning Board at least 10 days before the hearing.

**(C) Decision**

- (1) If no public hearing is held, within sixty-two (62) days of receipt of a complete application the Planning Board shall render a decision to approve, approve with conditions or modifications, or disapprove the site plan application.
- (2) If a public hearing is held, the Planning Board shall render its decision within sixty-two (62) days after the close of the public hearing.
- (3) The time limit within which the Planning Board must render its decision may be extended by mutual consent of the Planning Board and the applicant.
- (4) When approving a site plan, the Planning Board shall have the authority to impose such reasonable conditions and restrictions as are directly related to the proposed site plan. The approval shall be conditional upon the satisfactory compliance with these conditions or modifications by the property owner and his/her agents. Any such conditions must be met in connection with the issuance of permits pertaining to the approval by the Code Enforcement Officer.
- (5) ***Findings of Approval.*** In making a determination to approve the Site Plan, the Planning Board shall find that the following standards are met:
  - (a) The Site Plan is consistent with the intent, objectives and specific requirements of this Article, including the standards contained in Section 9.05, and with all other applicable provisions of this Zoning Ordinance.
  - (b) The Site Plan is consistent with the intent and objectives of the Town of Allegany Comprehensive Plan.



- (c) Adequate services and utilities will be available prior to occupancy.
- (d) The Site Plan will not be detrimental to the public health, safety, or welfare of the community.
- (e) If the site is located within a Planned Development (P-D) District, the Site Plan is consistent with the Development Plan.

**(D) Filing of Decision and Notice to the Applicant**

- (1) Within five (5) business days after the Planning Board renders its decision, the decision shall be filed in the office of the Town Clerk.
- (2) Within five (5) business days after the Planning Board renders its decision, a copy of the decision shall be mailed to the applicant. If the application is denied, the notice of the decision shall include the reasons for the denial.
- (3) Within five (5) business days after the Planning Board renders its decision, a copy of the decision shall be provided to the Code Enforcement Officer.

**(E) Expiration of Approval**

- (1) Except for site plans approved for parcels in a Planned Development (P-D) District, if construction of the approved development has not commenced within one (1) year from the date of Site Plan approval, that approval shall expire and shall be deemed revoked. Extensions of time to begin work may be granted by the Planning Board, upon written application to the Planning Board prior to the expiration of the site plan approval, for up to one additional year. The applicant shall provide an explanation why the extension is necessary. For projects for which no construction activity is needed, the approval shall expire one year from the date of the approval, if the use of the site in accordance with the approved site plan has not commenced.
- (2) Site plans approved for parcels in a Planned Development (P-D) District (See Section 4.11 of this Zoning Ordinance) shall expire and shall be deemed revoked two (2) years from the date of the approval, if construction of the approved development has not commenced. Extensions may be granted by the Planning Board, upon written application to the Planning Board prior to the expiration of the site plan approval, for up to one additional year. The applicant shall provide an explanation why the extension is necessary. For projects for which no construction activity is needed, the approval shall expire two years from the date of the approval, if the use of the site in accordance with the approved site plan has not commenced.

**(F) Abandoned Application**

- (1) If there is no activity by the applicant on the application within six (6) months of the initial application date or from the date that additional material is requested by the

Planning Board, whichever is later, the Board shall deem the application to be abandoned and shall deny the application.

- (2) "No activity" means that the applicant is not diligently providing the Town with information necessary to proceed with review of the application, including materials and/or information that are required by this Zoning Ordinance or by the requirements of the State Environmental Quality Review Act (SEQRA).

### **Section 9.07 Consultant Review**

- (A) In reviewing any Site Plan, the Planning Board may consult with other officials, including but not limited to, the Code Enforcement Officer, Fire Chief, Town Engineer, Cattaraugus County Department of Public Works, Cattaraugus County Planning Department, and other local or county officials, the Soil Conservation Service, NYS Department of Transportation and/or NYS Department of Environmental Conservation.
- (B) For applications that are unusually complex, that encompass a large area of land, and/or that may have unique or unusual features, the Town Board, on the advice of the Planning Board, may retain professional consultants and experts to assist the Planning Board in its review of the application. Such consultant(s)'s fees shall be paid by the applicant, in accordance with the following procedure:
  - (1) If the Town Board determines that a professional consultant's advice is warranted for a project, the applicant shall establish and fund an escrow account to cover a portion of the anticipated costs. The escrow agreement shall provide that, if the applicant falls behind on funding of the escrow account in the amount mutually agreed upon, all work on the review of the application by Town boards and staff shall be suspended until the funds are received.
  - (2) The escrow agreement shall provide that any funds remaining at the end of the project review shall be returned to the applicant.
  - (3) This requirement for the payment of consultant fees shall be in addition to any charge that is made to the applicant for SEQR fees pursuant to Section 617.13 of NYS SEQRA regulations.

### **Section 9.08 Project Completion**

- (A) The Code Enforcement Officer shall be responsible for the overall post-construction inspection of site improvements, including coordination with the Planning Board and other officials and agencies, as appropriate.
- (B) No Certificate of Occupancy or Certificate of Compliance shall be issued by the Code Enforcement Officer until all improvements shown on the Site Plan are installed or a sufficient performance bond has been posted to guarantee completion of improvements not yet made. The sufficiency of such performance guarantee shall be determined by the Town Board after consultation with the Planning Board, Town Engineer, Town Attorney and other appropriate parties. However, the CEO may issue a temporary Certificate of Occupancy or Certificate of Compliance for projects that were not required to provide a

performance bond in cases where some project features cannot be completed due to the onset of winter weather or similar issues outside of the control of the project proponent.

**(C) Letter of Certification**

- (1) In order to ensure that all site features of a large-scale, commercial or industrial project are completed as shown on the approved plans, at the time of such approval the Planning Board may, as a condition of approval, require the project sponsor to provide a Letter of Certification. The Letter of Certification shall be provided after completion of the project and shall meet all the requirements of this section. When required, the Code Enforcement Officer shall not issue a Certificate of Occupancy or Certificate of Compliance until the Letter of Certification has been received.

For purposes of this sub-section a large-scale project contains one or more of the following features or features that are similar in scale to those listed below:

- (a) new, privately-owned road.
  - (b) Landscaping, fencing or other buffering elements that are required as a mitigation to abutting properties.
  - (c) features intended for public use, such as sidewalk connections to off-site locations, even though they are located on private property and will be privately maintained.
  - (d) new, substantial stormwater control features that are not subject to NYSDEC's SPEDES Permit Requirements (SWPPP).
  - (e) New or substantially enlarged parking facilities
  - (f) site lighting where the Planning Board has approved a photometric plan to minimize light spillage onto abutting properties.
- (2) The Letter of Certification shall be prepared by a professional engineer, surveyor or architect, licensed in the State of New York and shall contain that professional's signature and seal/stamp.
  - (3) The Letter of Certification shall state that the project, as built, complies with the approved plans for the project. The Letter of Certification shall be accompanied by as-built plans of the site. The site features discussed in the Letter of Certification shall include non-public features such as landscaping, lighting, storm sewers and basins, sidewalks, parking lots, private roads, screening features, fencing and any other site feature approved by the Board. Features of the site covered by the Building Code shall be exempt from this provision.
  - (4) The Letter of Certification shall be provided prior to the issuance of a Certificate of Occupancy or Certificate of Compliance. However, the Planning Board may authorize the Code Enforcement Officer to issue temporary Certificates, allowing the premises to be occupied, for projects that were not required to provide a performance bond. The issuance of temporary Certificates may be warranted, for example, in cases where the timing of the completion of construction does not allow adequate time to complete all required landscaping prior to the onset of winter weather.

## **Section 9.09 Amendments to Approved Site Plan**

- (A) Any change to an approved Site Plan shall require the approval of an amendment to the Site Plan by the Planning Board. An application for an amendment to the approved site plan shall include, at a minimum, a revised site plan and a letter discussing the proposed change and the necessity for that change.
- (B) Upon receipt of an application for an amendment to an approved Site Plan, the Planning Board shall determine if the amendment is a minor or major amendment. A minor amendment shall include the following and similar insignificant changes:
- (1) minor changes to the Landscaping Plan, such as a change in the types of plantings, provided the amount of buffering or landscaping is essentially the same as the approved plan
  - (2) reconfiguration of the parking lot, where the number of parking spaces does not fall below the minimum requirement
  - (3) change in location of garbage dumpsters, light poles, or similar site features, where the overall level of service will not change
  - (4) change in location of access driveway, provided that such driveway meets all the standards in the Zoning Ordinance and/or SEQR determination
  - (5) minor realignments of water supply lines, sanitary sewer lines, and storm drainage facilities that may be necessary during construction, as approved by the Town Highway Water and Sewer Superintendent and Town Engineer.
  - (6) minor changes in the locations of buildings or other site features, provided all required setbacks are maintained and there is not the potential for a greater impact to an existing neighborhood or abutters.
- Any other change to the site plan, including new buildings or the expansion of existing buildings, shall be considered a major site plan amendment.
- (C) If the Planning Board determines that the requested change is minor (a *de minimus* action), the Board may approve the amendment administratively, without a public hearing or referral to the Cattaraugus County Planning Board. If the Planning Board determines that the requested change is major, the Board shall follow the review and approval process contained in this Article, as if it were a new application.

## **Section 9.10 Revocation of Site Plan Approval**

The Planning Board shall have the authority to revoke the site plan approval, after a public hearing, if the current owner or operator fails to comply with any condition(s) of approval of the application or conducts the land use in a manner contrary to the description in the application, and/or conducts the land use in a manner contrary to the regulations of this Zoning Ordinance. Prior to a public hearing on this issue, the Code Enforcement Officer shall pursue abatement of the violation in accordance with Article X of this Zoning Ordinance.