

Town of Berkshire
Site Plan Review Local Law

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Section I: Purpose and Intent:

Be it enacted by the Town Board of The Town of Berkshire to declare its intent to protect the health, safety and general welfare of the citizens, as recognized in the Town's Comprehensive Plan, through review and approval of site plans. Rules and regulations are established by the Town Board of Berkshire, New York, and will be revised as necessary to protect property and individuals as appropriate and described within this Site Plan Review Local Law.

Section II: Definitions:

As used in this local law the following terms and phrases shall have the following meanings:

“EAF” – an Environmental Assessment Form prepared to identify impacts of a proposed project.

“EIS” – an Environmental Impact Statement prepared in accordance with SEQRA.

“Family” – persons living together as a single housekeeping unit.

“Floodplain” – any land located within a regulatory floodway as defined in the FEMA Flood Map.

“Land Use Activity” – any development or other activity which changes the use or appearance of land or a structure or the intensity of use of land or structure. “Land use activity” shall include, but not limited to, the following: new structures, expansions to existing structures, new uses, changes in or expansion of existing uses, driveways, and excavations for the purpose of extracting soil, gravel or mineral deposits.

“One family dwelling” – a complete self-contained residence for permanent habitation by one family unit, and containing one or more rooms and facilities for living including cooking, sleeping, and sanitary needs.

“Parking Space” – a space equal to 200 square feet with the approximate dimensions of 10' x 20'.

“Site Plan” – an outline of a proposed development or activity for use of land showing the layout and design that will be used by the Town Board to determine if use is in the best interest of the community.

“Sketch Plan” – a statement and rough draft prepared for a review conference showing the location and dimensions of a planned land use activity.

“SEQRA” – the State Environmental Quality Review Act constituting Environmental Law Article 8 and the implementation regulations found in 6 NYCRR part 617.

“SPDES” – the New York State Pollutant Discharge Elimination System to ensure appropriate pollution prevention and is administered by the Environmental Conservation Law and the Public Health Law.

“Structure” – any object constructed, installed or placed on land to facilitate land use and development or subdivision of land including, but not limited to, the following: buildings, sheds, signs, paving, decks, additions and alterations.

“Structure Accessory” – any structure designed to accommodate any accessory use but detached from the principal structure (i.e., garage, etc.).

“SWPPP” – Storm Water Pollution Prevention Plan addresses a facility’s pollutants and identifies the Best Management Practices (BMPs) the facility is using to reduce those pollutants in stormwater.

Section III: Provisions and Requirements:

- A. Overview: All changes in land usage require a site plan approval by the Town Board with the exception of those items listed in Section IV, Exclusions. The Town Board relies on support from the Planning Board and Code Enforcement Officer (CEO) when reviewing the application and other documentation and when meeting with the applicant. Site Plan Review offers the town the opportunity to examine design elements, during which time, an assessment will be made to ensure that requests coincide with the Town’s Comprehensive Plan and the community’s need for a safe and healthy environment.
1. Materials must be provided that outline the site plans for requested activities. A sketch plan conference will be held to allow the applicant to discuss the proposed actions and for the town representatives to advise the applicant of any potential issues or concerns.
 2. Applicants for site plan approval should follow the recommended procedures related to the sketch plan conference as hereinafter set forth. Applicants must comply with all other procedures and requirements of this local law.
 3. Activities requiring site plan review must have an application submitted to the Town Board to initiate the review process. An application for site plan review shall be accompanied by a fee (see Town of Berkshire Fee Schedule).
 4. If the Town determines that the review requires professional assistance during the review process, such professional consultation expenses shall be paid by the applicant.
 5. A 239 County review is required in all instances where the property is within five hundred feet (500’) of the boundaries of another municipality, or county or state roads or lands, or a farm operation within an agricultural district.
- B. Sketch Plan: The intent of such a conference is to enable the applicant to inform the Town Board of their proposal prior to the preparation of a detailed site plan, and for the Town Board, Planning Board and CEO to review the basic design concept, advise the applicant as to potential problems and concerns and to identify specific requirements needed in a final submission. In order to accomplish these objectives, the applicant shall provide the following:

1. Name and address of applicant and the name of the owner if different than applicant. If appropriate, confirmation from the owner will be needed.
2. A completed sketch Plan Review should include the following:
 - Brief project narrative;
 - An area map showing the parcel under consideration for site plan review and all properties, subdivisions, streets, rights of way, easements and other pertinent features within 200 feet of the boundaries;
 - A topographic or contour map of adequate scale and detail to show site topography;
 - Rough sketch showing the locations and dimensions of the principal and accessory structures;
 - Anticipated changes in the existing topography and natural features;
 - Existing and proposed vegetation and any other planned feature(s);
 - Parking areas;
 - Access signs (with descriptions);
 - If applicable, measures and features to comply with flood hazard and flood insurance regulations;
 - Other information deemed necessary by the Code Enforcement Officer.

C. Written Site Plan: Following the Sketch Plan Review Meeting, an applicant should submit in writing 6 copies of their purposed Site Plan to the Town Board. That submission shall contain the following information:

1. Map/Drawing with title, including name and address of applicant and person responsible for preparation of such drawing;
2. North arrow, scale and date;
3. Proof of ownership;
4. An estimated project construction schedule;
5. Boundaries of the property plotted to scale;
6. Existing buildings and structures;
7. Total square footage that will be disturbed;
8. Grading and drainage plan showing existing and proposed contours, rock outcrops, depth to bedrock, soil characteristics, watercourses, and wetlands;
9. Location, design, type of construction, proposed use and exterior dimensions of all buildings and structures;
10. Location, design and type of construction of all parking and truck loading areas showing access and egress including all driveways;
11. Provision for pedestrian access, sidewalks, and bike paths, if any;
12. Location of outdoor storage, if any;
13. Location, design and construction materials of all existing or proposed site improvements including drains, culverts, retaining walls and fences;
14. Description of the method of sewage disposal and location, design and construction materials;
15. Description of the method of securing potable water and location, design and construction materials;

16. Location of fire and other emergency zones, including the location of water sources, if any;
17. Location, design and construction materials of all energy distribution and storage facilities, including electrical, gas and solar energy;
18. Location, size, design and type of construction of all proposed signs;
19. Description of adjacent land uses and location and proposed development of all buffer areas to protect adjacent land use, including existing vegetation covers;
20. Owners of adjacent parcels;
21. Location, width, and purpose of all existing and proposed easements, right-of-ways, and setbacks;
22. Proposed location and design of outdoor lighting;
23. Identification of the location and amount of building area proposed for retail sales or similar commercial activity;
24. General landscaping plan and planting schedule;
25. If appropriate, number of employees anticipated and hours of operation;
26. Identification of any permits from other government bodies required for the project's execution;
27. Record of application for and status of all necessary permits from other government bodies, and;
28. Other elements integral to the proposed development as may be considered necessary in the particular case by the Town Board.

D. Review Process: During the Sketch Plan Review, the Town Board will ascertain the need to involve other agencies in the project review. Many of these agencies may have purview over processes involved in the project such as the Tioga County Planning Board (239 review as described in Section III, A,5.), the Tioga County Health Department, and the New York State Departments of Transportation or Environmental Conservation.

The Town Board review of the site plan shall include, as appropriate, but is not limited to the following general considerations:

1. A suitable location, arrangement, size, design and general site compatibility of building, structures, lighting and signs with neighboring parcels;
2. Environmental review as required by SEQRA either as short-form or long-form EAF or a draft EIS;
3. Arrangement of vehicular traffic patterns, including intersections, road widths, pavement surfaces (density), dividers and traffic control (may vary depending on the designation of a road location as a town, county or state road);
4. Location, arrangement, appearance and sufficiency of off-street parking and loading;
5. Arrangement of pedestrian access and circulation, walkway structures, control of intersections with vehicular traffic, overall pedestrian convenience, and sidewalks and bicycle paths, if any;
6. Stormwater and drainage provisions; impacts upon wetlands and watercourses located on, near or within sight of the applicant's lands, including water quality, visual, aesthetic; and identification of all environmental impacts and compliance with floodplain hazard regulations and SPDES. If the area to be disturbed exceeds one acre, then a SWPPP is required;
7. Potable water supply and sewage disposal; (The Tioga County Health Department has purview over all sewage disposal plans).
8. Type and arrangement of fencing, trees, shrubs and other landscaping constituting a visual and/or noise buffer between the applicant's and neighboring parcels, including the maximum retention of existing vegetation;
9. Access for fire and emergency services as well as the provision for a water supply.

10. Overall impact on the neighborhood and protection of the peaceful rural aspect of the town including compatibility with the scenic, aesthetic, recreational, wildlife, historic, ecological and natural resources of the Town as stated in the Comprehensive Plan of the Town of Berkshire;
11. Appropriate use of and minimal impact on land designated as Agricultural and Farmland Preservation Priority, as stated in the Tioga County Agricultural and Farmland Protection Plan.

E. Public Hearing & Decision: The Town Board shall conduct a public hearing on the site plan within 62 days of the acceptance by the Town Board of a completed application for site plan review.

1. When required by General Municipal Laws 239L & M, the Town Board shall first refer the site plan package to the Tioga County Planning Board for review. A County review is required in all instances where the property is within five hundred feet (500') of the boundaries of another municipality, or county or state roads or lands, or a farm operation within an agricultural district.
2. The public hearing shall be advertised in the Town's official newspaper at least seven days before the public hearing.
3. The Town Board shall render a decision within 62 days of the public hearing. In its decision the Town Board may approve, approve with modifications, approve with conditions, or disapprove the site plan. The time period in which the Town Board must render its decision can be extended by mutual consent of the applicant and the Town Board.
 - a. Approval. Upon approval of the site plan and payment by the applicant of all fees and reimbursable costs due the Town, the Town Board shall endorse its approval on a copy of the site plan and shall immediately file it and a written statement of approval with the Town Clerk. A copy of the written statement of approval shall be mailed to the applicant by certified mail, return receipt requested.
 - b. Approval with modifications or conditions. The Town Board may conditionally approve the final site plan. A copy of the written statement containing the modifications required by the conditional approval will be mailed to the applicant by certified mail, return receipt required. After adequate demonstration to the Town Board that all conditions have been met and payment by the applicant of all fees and reimbursable costs due the Town, the Town Board shall endorse its approval on a copy of the site plan and shall immediately file it and a written statement of approval with the Town Clerk. A copy of the written statement of approval shall be mailed to the applicant by certified mail, return receipt requested.
 - c. Disapproval. Upon disapproval of the site plan, the decision of the Town Board shall immediately be filed with the Town Clerk and a copy thereof mailed to the applicant by certified mail, return receipt requested, along with the Town Board's reasons for disapproval.
 - d. Expirations and Extensions:
 - i. Site plan approval shall expire one year after the date of the final approval if actual construction has not begun. Actual construction is defined as the placing of construction materials in their permanent position fastened in a permanent manner, except that where a basement or cellar is being excavated such whereas such excavation shall be deemed to be actual construction.

- ii. The Town board may, upon the applicant's written request made at least 30 days prior to the expiration of the initial one-year approval, grant an extension of time within which to implement the site plan provided the applicant has made reasonable efforts to implement the site plan within the original one-year period, and further provide that no such extension shall exceed one year. No further extensions shall be permitted.
- iii. An applicant whose site plan has expired may reapply and submit payment of all fees and reimbursable costs due the Town.

Section IV: Exclusions

Any new land use activity requires a site plan approval by the Town Board with the exception of the following:

- A. General farming used in State approved agricultural districts.
- B. Construction of one family dwellings and ordinary accessory structures, and related land use activities on an otherwise undeveloped parcel.
- C. One-time building addition under 500 square feet to any existing establishment.
- D. Ordinary repair or maintenance to existing structures or uses.
- E. Landscaping or grading which is not intended to be used in connection with a land use reviewable under the provisions of this local law.

Section V: Administration and Enforcement

- A. The Town Board, Planning Board, and Town Code Enforcement Officer (CEO) will review applications and coordinate meetings to discuss and review submittals for site plan review requirements.
- B. The Town Board is the lead agency and will conduct a review of the plans and work with the applicant to resolve any difference and will hold a public hearing to allow the community to provide input on site plan land use. They will make a decision to either approve, approve with modification or condition, or disapprove.
- C. The enforcement officer shall be the CEO and is responsible for the overall inspection of site improvements including coordination with the Town Board and other officials and agencies, as appropriate.

Section VI: Enforcement Procedure

- A. Site development or disturbance cannot proceed until a site plan review is approved and a building permit is issued.
- B. In case of any violation or threatened violation of any of the provisions of this local law, the Town may institute any appropriate action or proceedings to prevent such unlawful erection, structural alteration, reconstruction, occupancy of such building, structure or land, or to prevent any illegal act, conduct, business or use in or about such premises.
- C. The Code Enforcement Officer is hereby granted administrative authority and responsibility to terminate any violation of this local law by posting a Stop Work Order on the premises wherein the violation has occurred. The Stop Work Order shall serve notice to the owner, builder, developer, agent and/or any other individual or business on the premises that all such action specified on the Stop Work Order must be terminated immediately. In the absence of the CEO, the Town Supervisor may issue this order. If all provisions of this local law together with other conditions specified by the Code Enforcement Officer are met, the Town Board or Code Enforcement Officer may authorize the termination of the Stop Work Order.

Section VII: Reference

- A. NYS Town Law 274 – Site Plan Review
- B. NYS General Municipal Law 239 (<https://www.nysenate.gov/legislation/laws/GMU/239-M>) (<https://www.nysenate.gov/legislation/laws/GMU/239-L>)
- C. NYS DEC SEQR (<https://www.dec.ny.gov/permits/357.html>)
- D. NYS DEC SWPPP
- E. Town of Berkshire Building Construction and Enforcement Law
- F. Town of Berkshire Comprehensive Plan
- G. Tioga County Ag and Farmland Protection Plan (<https://www.tiogacountyny.com/media/5557/tioga-county-ag-farmland-protection-plan.pdf>)

Section VIII: Severability/Invalid Segments

Should any section or provision of this local law be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of this local law as a whole or any part thereof other than the part declared to be invalid.

Section IX: Penalties

Penalties: A violation of this local law shall constitute an offense punishable by a fine not to exceed \$1,000.

Section X: Effective Date

This Local Law shall take effect immediately upon filing by the Secretary of State.....2021