

Site Plan Review

Town of Berkshire

Site Plan Review Local Law Local Law No. 2 of the year 2004

◆SECTION I – INTRODUCTORY PROVISIONS:

1.010 Enactment:

The Town Board of the Town of Berkshire, Tioga county, New York, does hereby enact the Town of Berkshire Site Plan Review Local Law pursuant the authority and provisions of the Section 10 of the Municipal Home rule Law and Article 16 of the Town Law.

1.020 Short Title:

This local law shall be known as the “Town of Berkshire Site Plan Review Local Law”. The Town of Berkshire is hereinafter referred to as the “Town”.

1.030 Intent and Purpose:

Through site plan review, it is the intent of this local law to promote the health, safety and general welfare of the Town. A clean, wholesome, and attractive environment is declared to be of importance to the health and safety of the inhabitants of the Town and, in addition, such an environment is deemed essential to the maintenance and continued development of the economy of the Town and the general welfare of its inhabitants.

Additionally, the intent of this local law is to ensure the optimum overall conservation, protection, preservation, development and use of the natural and people-related resources of the Town, by regulating land use activity within the Town through review and approval of site plans. It is not the intent of this local law to prohibit per se, any land use activity but to allow all land use activities which will meet the standards set forth in this local law.

1.040 Authority of the Town Board to Review Site Plans:

The Town Board is hereby authorized to review and approve or disapprove site plans for land uses within the Town pursuant to and in accordance with the standards and procedures set for in this local law.

◆SECTION II – APPLICABILITY AND DEFINITIONS:

2.010 Applicability of Review Requirements:

All new land and expanded use activities within the Town shall require site plan review and approval before being undertaken except the following:

- 1. General farming used in State approved agricultural districts.**
- 2. Landscaping or grading which is not intended to be used in connection with a land use reviewable under the provisions of this local law.**
- 3. Ordinary repair or maintenance to existing structures or uses.**
- 4. Construction of one family dwellings and ordinary accessory structures, and related land use activities on an otherwise undeveloped parcel.**
- 5. Signs under 12 square feet.**
- 6. One-time building addition under 500 square feet to any existing establishment.**

Any person uncertain of the applicability of this local law to be given land use activity may apply in writing to the Town Board for a written jurisdictional determination!

2.020 Effect on Existing Uses:

This local law does not apply to land use activity and structures which are lawfully in existence as of the date this local law becomes effective. Any use, which would otherwise be subject to this local law that has been discontinued for a period of one year or more, shall be subject to review pursuant to the terms of this local law before such use is resumed. Any use or structure shall be considered to be in existence provided the same has been lawfully and substantially commenced as of the effective date of this local law and fully constructed and completed within one year from the effective date of this local law.

2.030 Relationship of this Local law to other Laws and Regulations:

This local law in no way affects the provisions or requirements of any other federal, state, or local law or regulations. Where this local law is in conflict with any other such law or regulations, the more restrictive shall apply.

2.040 Definitions:

“Family” means a person or persons related to each other by blood, marriage or adoption, (and/or not more than three individuals not related), living together as a single housekeeping unit.

“Land Use Activity” means any construction 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 explicitly include, but not limited to, the following: new structures, expansions to existing structures, new uses, changes in or expansion of existing uses, roads, driveways, and excavations for the purpose of extracting soil, gravel or mineral deposits.

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

“Structure” means any object constructed, installed or place on land to facilitate land use and development or subdivision of land, such as buildings, sheds, signs, tanks, paving, decks, docks, and any fixture, additions and alterations thereto.

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

“Parking Space” is equal to 200 square feet with the approximate dimensions of 10’ x 20’.

Any term used in this local law which is not defined above shall carry its customary meaning unless the text otherwise dictates.

◆ SECTION III – SITE PLAN REVIEW:

3.010 Procedures – General;

Any new land use activity, except those listed in section 2.010 of this local law, require a site plan approval by the Town Board. Any proposed subdivision or mobile home park will require a Site Plan Review in addition to compliance with other existing local laws or ordinances. 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.

3.020 Sketch Plan:

A sketch plan conference shall be held with the Town Board Planning Board, Town Code Enforcement Officer, and applicant prior to the preparation and submission of a formal site plan. The intent of such a conference is to enable the applicant to inform the Town Board of his or her proposal prior to the preparation of a detailed site plan and for the Town Board to review the basic site design concept, advise the applicant as to potential problems and concerns, and to generally determine the information to be required on the site plan. In order to accomplish these objectives, the applicant shall provide the following:

- 1. A statement and rough sketch showing the locations and dimensions of the principal and accessory structures, parking areas, access signs (with descriptions), existing and proposed vegetation, and other planned feature, anticipated changes in the existing topography and natural features; and, where applicable, measures and features to comply with flood hazard and flood insurance regulations; and such other information deemed necessary by the Code Enforcement Officer.**
- 2. 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 of the par: and,**
- 3. A topographic or contour map of adequate scale and detail to show site topography.**

3.030 Applicant Requirements:

An application for a site plan approval shall be made in writing to the Town Board and shall be accompanied by information contained on the following checklist. If a sketch plan conference was held, the accompanying information shall be drawn from the following checklist as determined necessary by the Town Board at said sketch plan conference.

Site Plan checklist:

- 1. Title of drawing, including name and address of applicant and person responsible for preparation of such drawing;**
- 2. North arrow, scale and date;**
- 3. Boundaries of the property plotted to scale;**
- 4. Existing buildings and structures;**
- 5. Grading and drainage plan showing existing and proposed contours, rock outcrops, depth to bedrock, soil characteristics, and watercourses;**
- 6. Location, design, type of construction, proposed use and exterior dimensions of all buildings and structures;**
- 7. Location, design and type of construction of all parking and truck loading areas showing access and egress including all driveways;**
- 8. Provision for pedestrian access, sidewalks, and bike paths, if any;**
- 9. Location of outdoor storage, if any;**
- 10. Location, design and construction materials of all existing or proposed site improvements including drains, culverts, retaining walls and fences;**
- 11. Description of the method of sewage disposal and location, design and construction materials of such facilities;**
- 12. Description of the method of securing water and location, design and construction materials of such facilities;**
- 13. Location of fire and other emergency zones, including the location of fire hydrants, if any;**
- 14. Location, design and construction materials of all energy distribution and storage facilities, including electrical, gas and solar energy;**
- 15. Location, size, design and type of construction of all proposed signs;**
- 16. Description of adjacent land uses and location and proposed development of all buffer areas to protect adjacent land use, including existing vegetation covers;**
- 17. Location and design of outdoor lighting facilities;**
- 18. Identification of the location and amount of building area proposed for retail sales or similar commercial activity;**
- 19. General landscaping plan and planning schedule;**
- 20. An estimated project construction schedule;**
- 21. Record of application for and status of all necessary permits from other government bodies;**
- 22. Identification of any permits from other government bodies required for the project's execution, and;**
- 23. Other elements integral to the proposed development as may be considered necessary in the particular case by the Town Board.**

3.040 Required Fee:

An application fee for site plan review shall be accompanied by a fee (see Town of Berkshire Fee Schedule).

3.050 Reimbursable Costs:

Actual and reasonable costs incurred by the Town Board for consultation fees or other extraordinary expenses in connection with the review of a proposed site plan shall be charged to the applicant. The Town Board may require a letter of credit, bond or cash deposit to secure payment of such costs.

◆SECTION IV – REVIEW STANDARDS:

4.010 General Standards and Considerations:

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

- 1. Location, arrangement, size, design and general site compatibility of building, structures, lighting and signs.**
- 2. Adequacy and arrangement of vehicular traffic access and circulation, including intersections, road widths, pavement surfaces (density), dividers and traffic control.**
- 3. Location, arrangement, appearance and sufficiency of off-street parking and loading.**
- 4. Adequacy and arrangement of pedestrian traffic access and circulation, walkway structures, control of intersections with vehicular traffic and overall pedestrian convenience, and sidewalks and bicycle paths, if any.**
- 5. Adequacy of storm water and drainage facilities.**
- 6. Adequacy of water supply and sewage disposal facilities.**
- 7. Adequacy, type and arrangement of tree, shrubs and other landscaping constituting a visual and/or noise buffer between the applicant's and adjoining lands, including the maximum retention of existing vegetation, and fencing.**
- 8. Adequacy of fire lanes and other emergency zones and the provision of fire hydrants.**
- 9. Special attention to the adequacy of impact of structures, roadways and landscaping in areas susceptible to ponding, flooding or erosion.**
- 10. Impact upon wetlands and watercourses located on, near or within sight of the applicant's lands, including water quality, visual, aesthetic and environmental impacts.**
- 11. Overall impact on the neighborhood including compatibility of design considerations.**
- 12. Overall impact on scenic, aesthetic, recreational, wildlife, historic, ecological and natural resources of the Town.**

◆SECTION V – PUBLIC HEARING AND TOWN BOARD DECISION:

5.010 Public Hearing:

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 and the hearing shall be advertised in the Town's official newspaper at least five days before the public hearing. When required by General Municipal Laws 239L & M, the Town Board shall submit notice of public

hearing along with a complete description of the application to the Tioga County Planning Board for review.

5.020 Town Board Decision:

Within 62 days of the public hearing, the Town Board shall render a decision. 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.

1. **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.
2. **Approval with modifications or conditions.** The Town Board may conditionally approve the final site plan. A copy of 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.
3. **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.
4. **Expirations and Extensions:**
 - a. 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.
 - b. 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.
 - c. An applicant whose site plan has expired may reapply.

◆ SECTION VI – APPEAL OF TOWN BOARD DECISION:

6.010 Appeal:

In the event of disapproval, the applicant may appeal the decision to the Town Board prior to commencing a judicial proceeding. Such request for appeal shall be filed in writing within thirty days from the date of the decision of the Town Board disapproving the application. The Town Board, upon receipt of such a request, shall schedule a special Town Board meeting within thirty days of receipt of such request. At that special Town Board meeting, both parties (applicant and The Town Board) shall have the right to present their case including relevant documentation, witnesses and the testimony of experts. Any party shall have the right to be represented by counsel.

◆SECTION VII- MISCELLANEOUS PROVISIONS:

7.010 Enforcement Officer:

The enforcement officer shall be the Town Code Enforcement Officer and is responsible for the overall inspection of site improvements including coordination with the Town Board and other officials and agencies, as appropriate.

7.020 Further Regulations by Town Board:

The Town Board may, after a public hearing, adopt such further rules and regulations as it deems reasonably necessary to carry out the provisions of this local law.

7.030 Amendments:

The Town Board may, on its own motion, petition or on recommendation of the Planning Board and after public notice and hearing, amend this local law pursuant to all applicable requirements of the law.

All proposed amendments, originating by petition or by motion of the Town Board, shall be referred to the Planning Board for a report and recommendation thereon. The Planning Board shall submit its report within thirty days after receiving such referral. Failure of the Planning Board to report within the required time shall be deemed to constitute a recommendation for an approval of the proposed amendment.

7.040 Integration of Procedures:

Whenever the circumstances of proposed development require compliance with this Site Plan Review Law and with any other state and local law, ordinance or requirement of the Town, the Town Board shall attempt to integrate, as appropriate, site plan review as required by this local law with the procedural and submission requirements for such other compliance.

7.050 Enforcement:

- 1. In case of any violation or threatened violation of any of the provisions of this local law, in addition to other remedies herein provided, 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.

2. **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. 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.**
3. **Whenever a violation of this local law occurs, any person may file a complaint in regard thereto. Also such complaints shall be filed with the Code Enforcement Officer who may require such complaint to be in writing. The Code Enforcement Officer shall have the complaint properly investigated and report thereon to the Town Board.**
4. **A violation of this local law is declared to be an offense, punishable by a fine not to exceed \$1,000.00.**

7.060 Severability:

The provisions of this local law are severable. If any section, subsection, paragraph or provisions of this local law shall be invalid, such invalidity shall apply only to the section, subsection, paragraph or provision(s) adjudged invalid, and the rest of this local law shall remain valid and effective.

◆SECTION VIII - Approval:

The Town Board of Berkshire does, by reason of authorized signatures, hereby approve this local law.