

TOWN OF WINDHAM SETBACK LAW

PROPOSED AMENDMENTS

Local Law #3 of 2023

SETBACK LAW FOR THE TOWN OF WINDHAM

Supersedes Local Law #5 of 2003

ARTICLE I SHORT TITLE

This local law shall be known and may be cited as the "Setback Law for the Town of Windham".

ARTICLE II DEFINITIONS

For the purpose of this Local Law certain terms or words used herein shall be interpreted or defined as follows:

Words used in the present tense include the future tense; the singular number includes the plural, and the plural the singular; "Building" includes "structure" unless the context indicates otherwise, and shall include steps, stoops, porches, decks, and attached carports; "To erect", "to construct" and "to build" a building each has the same meaning and includes to "to excavate" for a building or "to relocate" a building by moving it from one location to another.

ARTICLE III GENERAL PROVISIONS

- A. No new building or addition to an existing building shall be built closer than sixty-five (65) feet from the centerline of the front-facing roadway, or forty (40) feet from all other boundary lines.
 - B. Where attached or semi-attached structures are proposed (e.g., duplex, townhouses), the forty (40) foot setback shall be waived, but only with respect to the common wall between the attached units.
 - C. Setbacks, as set forth in this paragraph, shall apply to the principal structure and any accessory structures, including but not limited to sheds, garages, greenhouses and pool houses.
 - D. Exceptions.
 - 1) Setbacks shall not apply to driveways, walking paths, gardens, or recreational facilities designed solely for the personal use and enjoyment of the occupants of the principal structure.
 - 2) The provisions of this local law shall not prohibit the rebuilding of a structure destroyed by fire or natural disaster, at a setback distance equal to, or greater than, the setback distance of the structure being replaced, provided that a building permit application is submitted within twelve (12) months from the date of the event. Up to two (2) six-month extensions may be granted with good cause.
-

TOWN OF WINDHAM SETBACK LAW

PROPOSED AMENDMENTS

- 3) The following exceptions shall apply to new buildings or additions on existing parcels less than two-acres in size:
- a) No new building shall be built closer than thirty-five (35) feet from the centerline of the front-facing roadway, or ten (10) feet from all other boundary lines.
 - b) No new building shall be built closer to the center of the roadway than any existing building on an adjacent lot;
 - c) No additions or expansions of pre-existing non-conforming structures shall be permitted closer to the front-facing roadway than the existing building, and must be at least ten (10) feet from all other boundary lines.
 - d) Setbacks shall not apply to any parcels located on private roads with pre-existing deed restrictions on setbacks that are enforced by a Homeowners or Property Owners Association.

ARTICLE IV

ADMINISTRATION

Section 1. Interpretation and Application:

In interpretation and application, the provisions of this local law shall be held to be minimum requirement adopted for the promotion of the public health, safety, morals, general welfare and other purposes enumerated in the enactment clause of this local law. It is not intended by this local law to repeal, abrogate, annul, or in any way to impair or interfere with any easements, covenants, or other agreements between parties, or any existing provisions of law, provided, however, that where the provisions of this local law require a greater set-back than is required in any such statute or local ordinance or regulation, or easement, covenant, or agreement, the provisions of this local law shall govern, but whenever the provisions of any other statute or local ordinance or regulation require a greater set-back than is required by the provisions of this local law, then the provisions of such other statute or local ordinance or regulation shall govern.

Section 2. Enforcement:

A. Code Enforcement Officer

This local law shall be enforced by a Code Enforcement Officer (CEO) to be appointed by the Town Board. It shall be their duty to:

1. Issue building permits and certificates of occupancy where compliance is made with the provisions of this local law, and refuse to issue the same in the event of non-compliance, giving prompt written notice of such refusal and the reason therefore to the owner and occupant of the premises.
 2. Keep the Board of Appeals advised of all matters other than routine duties, pertaining
-

TOWN OF WINDHAM SETBACK LAW

PROPOSED AMENDMENTS

to the enforcement of this local law, and keep all records necessary and appropriate to their office and to file them in the office of the Town Clerk, including records of all permits and certificates of occupancy issued or withheld; and

3. Submit a written report each month to the Town Board enumerating the applications received, inspections made and stating action taken.

B. Building Permits:

1. No new building shall be erected or relocated until a permit heretofore had been issued, and no additions to or alterations of a building shall be undertaken until a permit therefore has been issued.
2. There shall be submitted with each application for a building permit, duplicate written copies of all the information, building plans and plot plans necessary to enable the Code Enforcement Officer to determine whether the proposed building or addition complies with the provisions of this Local Law.
3. One copy of such submitted information or plans shall be returned to the applicant when approved by the Code Enforcement Officer, or by the Board of Appeals, when its approval is necessary, together with such permit.

C. Certificate of Occupancy:

1. Where a building permit therefore is required, no building hereafter erected or relocated, and no addition to or structural alteration of any building shall be used or occupied for any purpose until a certificate of occupancy shall have been issued stating that the building or addition to the building complies with the provisions of this local law.
2. A certificate of occupancy shall be issued within ten (10) days after any building erected, added to, altered or relocated, shall have been approved as complying with the provisions of this ordinance. A new certificate of occupancy voids any certificate of prior date for the same premises.
3. Under such rules and regulations as may be established by the Board of Appeals and filed with the Town Clerk, a temporary certificate of occupancy for not more than thirty (30) days for part of any building or land may be issued by the Code Enforcement Officer.

Section 3. Board of Appeals:

- A. Organization: Pursuant to the provision of the Town Law applicable thereto there is hereby established a Board of Appeals of five (5) members to be appointed by the Town Board.
 - B. Procedure: The Board of Appeals, consistent with the provisions of the Town Law Sections 267, 267-A, 267-B, 267-C and 368 applicable thereto, shall determine its own rules of conduct and procedures.
-

PROPOSED AMENDMENTS

C. Powers:

1. Review. The Board of Appeals shall hear and decide appeals from and review any order, requirement, decision or determination made by the Code Enforcement Officer.
2. Variances on Appeal. Where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of this local law, the Board of Appeals shall have the power in passing upon appeals, to vary or modify the application of any of the regulations or provisions of this local law relating to the construction, or alteration of buildings or structure, so that the spirit of the local law shall be observed, public safety and welfare secured and substantial justice done, particularly in those cases involving parcels vacant as a result of fires or demolition.
3. Special Permits and Variances. When, in the judgement of the Board of Appeals, the public convenience and welfare will be substantially served and the appropriate use of neighboring property will not be injured thereby, the Board of Appeals, may in appropriate and specific cases, after public notices and hearing, and subject to appropriate conditions and safeguards, determine and vary the application of the regulations of this local law in harmony with their general purposes and intent, as follows:
4. Grant a permit whenever it is provided in this local law that approval of the Board of Appeals is required, or refuse to grant the same where such action is justified, giving prompt written notice of such refusal and the reason therefore to the owner and occupant of the property concerned.

Section 4. Violation and Penalties:

The owner or general agent of a building or premises where a violation of any provision of this local law has been committed or shall exist, or the owner, general agent, lessee or ¹ tenant of any part of the building or premises in which such violation has been committed or shall exist, or the general agent, architect, builder, contractor or any other person who commits, takes part or assists in any such violation or who maintains any building or premises or any part thereof in which any violation shall exist, shall be guilty of a misdemeanor, punishable by a fine not exceeding fifty (\$50.00) dollars or imprisonment for a period not to exceed six (6) months, or both.

Each day's continued violation after notice thereof shall have been given as herein provided shall constitute a separate violation. Such notice shall be in writing, signed by the Code Enforcement Officer, and shall be served upon the person or persons committing such violations either personally or registered mail addressed to such person or persons at his or their last known address.

In addition, the Town Authorities shall have such other remedies as are provided by law to

TOWN OF WINDHAM SETBACK LAW

PROPOSED AMENDMENTS

restrain, correct or abate any violation of this local law.

ARTICLE V

AMENDMENTS

The Town board may, from time to time, its own motion or on petition or on recommendation of the Board of Appeals, after public notice and hearing, amend, supplement, change, modify or repeal this ordinance pursuant to provisions of the Town Law applicable thereto. Every such proposed amendment shall be referred to the Board of Appeals for report prior to public hearing thereon.

ARTICLE VI VALIDITY

The invalidity of any provision of this local law shall not invalidate any other part thereto.

ARTICLE VII EFFECTIVE

DATE

This local law shall take effect on upon its filing in the office of the Secretary of State of the State of New York.