

**Local Law # 2 of 2023**

**SITE PLAN LAW FOR THE TOWN OF WINDHAM**

**Supersedes Local Law #4 of 2006, Local Law # 3 of 2002, and Local Law # 2 of 1989**

**ARTICLE I**

**Introductory Provisions**

**Section 1.010 - Enactment:** The Town Board of the Town of Windham, New York does hereby ordain and enact the Town of Windham Site Plan Review Law pursuant to the authority and provisions of Section 10 of the Municipal Home Rule Law and Section 274-a of the Town Law.

**Section 1.020 - Short Title:** This local law shall be known as the "Site Plan Review Law." The Town of Windham is hereinafter referred to as the "Town."

**Section 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, 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.

It is further the intent of this local law to ensure the optimum overall conservation, protection, preservation, development and use of the natural and human-related resources of the Town, by regulating the alteration of land 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 alterations but to allow all land alterations which will meet the standards set forth in this local law.

**SECTION 1.040 - Authorization of Planning Board to Review Site Plan:**

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

**ARTICLE II**

**Application and Definitions**

**SECTION 2.010 - Applicability of Review Requirements:**

**A. Applicability.** All land alterations occurring after the adopted date of this local law within the Town shall require site plan review and approval before being undertaken, including but not limited to the following:

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- 1) Construction, significant alteration, or replacement of any single-family residential dwellings, accessory structures and related land use activities on any parcel two (2) acres or less in size.
- 2) Construction, significant alteration, or replacement of any single-family residential dwelling in excess of 3,500 square feet of gross floor area, regardless of parcel size.
- 3) Construction, significant alteration, or replacement of any multi-family residential structure, condominium or townhouse development containing more than two units, regardless of parcel size.
- 4) Construction, significant alteration, or replacement of any structure for commercial use, regardless of parcel size.
- 5) Any material change in the use, or the frequency and intensity of a use, of a structure used for commercial purposes.
- 6) Any accessory structures or uses which exceed the gross floor area of the principal structure.
- 7) Any existing use which would otherwise be subject to this section that has been discontinued for a period of two years or more shall be subject to site plan review before such use is resumed.

**B. Exceptions.** The following improvements shall not be subject to site plan review:

- 1) Ordinary repair or maintenance or interior alterations to existing structures of any type.
- 2) One-time only expansions of existing residential structures which would increase the square footage by less than fifty (50%) percent.
- 3) Clearcutting any area less than one-half (1/2) acre.
- 4) Garage, lawn and porch sales not exceeding two (2) days in any calendar year.

**C. Effect of site plan approval.**

- 1) Any persons uncertain of the applicability of this local law to a given land development activity may apply in writing to the Town board for a written jurisdictional determination.
  - 2) No lot or parcel of land shall be used except in conformity with an approved site plan, when required. In all cases where this Article requires approval of site plans by the Planning Board, no building permit shall be issued by the Code Enforcement Officer except upon authorization of and in conformity with the plans approved by the Planning Board.
  - 3) No building permit shall be issued for any use or structure covered by this section until an approved site plan or approved amendment of any such plan has been secured by the applicant from the Planning Board and filed with the Code Enforcement Officer.
  - 4) No certificate of occupancy will be issued for any structure or use of land covered by this section unless the structure is completed or the land is developed or used in accordance with an approved site plan or approved amendment of any such plan.
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### **SECTION 2.020 - Relationship of this Law to other Laws and Regulations:**

This local law in no way effects the provisions or requirements of other federal, state, local laws, or application regulations. This local law shall be considered the initial review procedure relative to other laws and/or regulations, however, where it is determined to be in conflict with any other such laws or regulations, the more restrictive shall apply. This includes, but is not limited to subdivision regulations, sanitary codes, refuse disposal, and junkyard ordinances.

### **SECTION 2.030 - Definitions:**

**Alteration** - any construction or other activity which changes the appearance or occupancy (as defined in the New York State Building Code) of land or a structure or the intensity of use of land or structure. Alteration shall explicitly include, but not be limited to, the following: new structures, expansions to existing structures, changes in or expansions of existing roads or driveways, clearcutting, or excavations for the purpose of extracting soil or mineral deposits.

**Clearcutting** —The large-scale, indiscriminate removal of trees, shrubs, and undergrowth with the intention of preparing real property for development.

**Commercial Use** – Any non-residential activity including but not limited to the sale of goods or services carried out for profit.

**Environmental Assessment Form (EAF)** - a form used by the Planning Board for the State Environmental Quality Review process, to assist in determining the environmental significance or non-significance of an action or project.

**Garage, Lawn and Porch Sale** - the display for sale of wares outside of a structure having fixed walls.

**One Family Dwelling** - a complete self-contained residential unit with a footprint of no less than 400 square feet, for permanent habitation by one family only and containing one or more rooms and facilities for living including cooking, sleeping, and sanitary needs.

**Significant Alteration** - the reconstruction, remodeling or rehabilitation of, or other physical changes to, a structure or building, or a portion thereof, which involves expenditures amounting to 33 1/3 percent or more of the market value of the structure or building, or portion thereof, at the time of the application.

**Site** - any defined area for which an approval is being sought.

**State Environmental Quality Review Act (SEQRA)** - a process to help government and the public protect and improve the environment. SEQRA requires that environmental factors be considered along with social and economic considerations in government decision making.

**Structure** - any object constructed, installed or placed on land to facilitate land use and development or subdivision of land, such as buildings, sheds, signs, tanks and any fixtures, additions and alterations thereto.

**Structure, Accessory** - any structure designed to accommodate an accessory use but detached from the principal structure, such as a free standing garage for vehicles accessory to the principal use, a storage shed, garden house or similar facility, but excluding uninhabitable manufactured

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housing, or mobile homes, unregistered tractor trailers, or freight containers, maintained for any purpose.

**Type I Action** - an action that is likely to have a significant effect on the environment as listed in Part 617.4 of the SEQRA Law.

**Type II Action** - an action or classes of actions, which have been determined not to have a significant effect on the environment as listed in Part 617 .5 of the SEORA Law.

**Unlisted Action** - an action that may have a significant effect on the environment as explained in Part 617.2 of SEORA Law.

**Working Days** - all weekdays, not including Saturday, Sunday or any Holiday recognized by New York State.

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

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ARTICLE III  
Site Plan Review

**Section 3.010 - Procedures - General:** Prior to undertaking any improvement activity, except for uses specifically listed in Section 2.010.B. of this local law, site plan approval by the Planning Board is required. 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 law.

**Section 3.020 - Sketch Plan Conference:** A sketch plan conference between the Planning Board and the applicant, prior to the preparation and submission of a formal site plan, may be held at the discretion of the Planning Board. The intent of such a conference is to enable the applicant to inform the Planning Board of their proposal prior to the preparation of a detailed site plan; and for the Planning Board to review the basic site design concept, advise the applicant as to any 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, at a minimum, the following information:

- A. A statement and rough sketch showing the locations and dimensions of principal and accessory structures, parking areas, access signs (with descriptions), existing and proposed vegetation, and other planned features; anticipated changes in the existing topography and natural features; and where applicable, measures and features to comply with flood hazard and flood insurance regulations.
- B. 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 parcel; and other special districts.
- C. A topographic map of the site at contour intervals of between two (2) feet to twenty (20) feet as determined by the Planning Board. If general site grades exceed five (5) percent or portions of the site have susceptibility to erosion, flooding or ponding, a soil overlay and a topographic map showing contour intervals of not more than two (2) feet of elevation should also be provided.
- D. A completed EAF form. Type I Actions require submission of a long EAF. For Unlisted actions, a short EAF is acceptable, unless the Planning Board determines that the potential impacts to the environment are substantial enough to require a long form EAF.

**SECTION 3.030 - Application Requirements:** An application for site plan approval shall be made in writing to the chairman of the Planning Board at least one week prior to the scheduled meeting and shall be accompanied by plans containing information listed on the following checklist. When the sketch plan conference is held, the accompanying information shall be drawn from the following checklist as determined necessary by the Planning Board at said sketch plan conference.

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- 1) Title of drawing including name and address of applicant and person responsible for preparation, identification of New York State licensed architect, landscape architect or engineer where appropriate on such drawing;
  - 2) North arrow, scale at 1" = 200' or some agreed upon scale as specified by the Town of Windham;
  - 3) Boundaries of the property plotted to scale;
  - 4) Existing buildings;
  - 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, and exterior dimensions of all buildings;
  - 7) Location, design and type of construction of all parking and truck loading areas, showing access and egress;
  - 8) Provision for pedestrian access, where applicable;
  - 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, location, design and construction materials of such facilities;
  - 12) Description of the method of securing potable water, and location, design and construction materials of such facilities;
  - 13) Location of fire and other emergency zones, including the location of fire hydrants;
  - 14) Location, design and construction materials of all energy distribution facilities, including electrical, gas and alternate energy;
  - 15) Location, size, and design and type of construction of all proposed signs;
  - 16) Location and proposed development of all buffer areas, including existing vegetative cover;
  - 17) Location and design of outdoor lighting facilities;
  - 18) Identification of the location and amount of building area proposed for retail stores or similar commercial activity;
  - 19) General landscaping plan and planting schedule;
  - 20) An estimated project construction schedule;
  - 21) Record of application for and status of all necessary permits from other governmental bodies;
  - 22) Identification of any permits from other governmental bodies required for the project's executions;
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- 23) Other elements integral to the proposed development as may be considered necessary in the particular case by the Planning Board;
- 24) Location of wells, septic systems and leach fields on adjoining property within 200 feet of site;
- 25) Location of existing well or wells on the site;
- 26) Relationship of the site to any special districts;
- 27) Copies of any existing deed restrictions on the property;
- 28) For properties located within any designated Historic Districts, copies of building elevations, with exterior finish material specifications, color samples, and descriptions of all roof, wall and exterior details;

**SECTION 3.040 - Required Fees:** Fees for all applications provided for in this law shall be required for each such applications and shall be set by resolution of the Town Board from time to time.

**SECTION 3.050 - Acceptance of Final Application:** No application shall be accepted as final and the application shall be held in abeyance until:

- A. SEQRA environmental review is completed.
- B. If review is required pursuant to §239 of the General Municipal Law, a recommendation from the Greene County Planning Board has been received, or more than thirty (30) days have elapsed from the date of referral;
- C. If the site is located within a sewer district and requires sewerage or additional capacity, an approval for an allotment/connection is obtained from the Town Board;
- D. All appropriate mapping and conceptual plans/designs are in acceptable form and available for review at the Town Hall;
- E. All items as required in Section 3.030 and Section 3.040 have been met.

**SECTION 3.060 - Reimbursable Costs and Review Fees:**

In reviewing any site plan application, the Planning Board may secure the advice or assistance of one or more expert consultants as qualified to advise whether a proposed use will conform to the requirements of this article. The applicant will be notified prior to the board incurring any reimbursable costs or review fees.

Once established, any review fees for the services of such consultant(s) shall be borne by the applicant who will provide monies needed to establish an escrow account from which fees shall be paid. A copy of the report(s) of such consultant(s) shall be furnished to the applicant upon completion.

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ARTICLE IV  
Review Standards

**SECTION 4.010 - General Standards and Considerations:** The Planning Board's review of the site plan shall include, as appropriate, but is not limited to, the following general considerations:

- A. Location, arrangement, size, design and general site compatibility of buildings, lighting, and signs.
- B. Adequacy and arrangement of the vehicular traffic access and circulation, including intersections, road widths, pavement surfaces, dividers, and traffic controls.
- C. Location, arrangement, appearance, and sufficiency of off-street parking and loading.
- D. Adequacy and arrangement of pedestrian traffic access and circulation, walkway structures, control of intersections with vehicular traffic, and overall pedestrian convenience.
- E. Adequacy of stormwater and drainage facilities.
- F. Adequacy of water supply and sewage disposal facilities.
- G. Adequacy, type, and arrangement of trees, 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.
- H. Special attention to the adequacy and impact of structures, roadways, and traffic circulation for the provision of emergency services and fire protection.
- I. Special attention to the adequacy and impact of structures, roadways and landscaping in areas with susceptibility to ponding, flooding, and/or erosion.
- J. Overall impact on the neighborhood, including compatibility of design considerations.
- K. Overall compatibility with the natural resource characteristics of the site.

ARTICLE V  
Public Hearing and Planning Board Decision

**SECTION 5.010 - Public Hearing:**

The Planning Board may conduct a public hearing on the site plan if considered desirable by a majority of its members. Such hearing shall be held within sixty-two (62) days of acceptance of a final application for site plan review and shall be advertised in the Town's Official

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newspaper of general circulation in the Town at least ten (10) working days before the public hearing and the applicant must be mailed a notice of the hearing ten (10) working days in advance.

In accordance with current tax records, all known property owners with property abutting and within 500 feet of the site, shall be notified by the applicant by mail (certified return receipt requested) within three (3) working days after the hearing date is set. However, for ordinary residential structures subject to site plan review, garage sales, and driveways, the Planning Board may limit the notification to the abutting property owners, with "abutting" including lands directly across the street from the site for which an approval is being sought. The applicant shall submit a copy of such notice and proof of mailing to the Planning Board at the public hearing.

**SECTION 5.020 - Abandonment:**

In the event an applicant, consultants or representatives for site plan review do not appear before the planning Board in conjunction with its application for a period of one year for purposes of advancing the application process, the Planning Board, in its discretion, may declare the site plan application to be abandoned. In the event the application is deemed abandoned and the applicant still desires to seek approval of its site plan, the applicant must make a new application for site plan approval and pay all required application fees.

**SECTION 5.030 - Planning Board Decision:**

Within sixty-two (62) days of acceptance of the final application for site plan approval, or if a public hearing is held within sixty-two (62) days of the close of the public hearing, the Planning Board shall render a decision. In its decision the Planning Board may approve, approve with modifications or disapprove the site plan. The time period in which the Planning Board must render its decision can be extended by mutual consent of the applicant and the Planning Board.

- A. **Approval:** Upon approval of the site plan, and payment by the applicant of all fees and reimbursable costs due the Town, the Planning Board shall endorse its approval on a copy of the site plan and shall file it and a written statement of approval within the Town Clerk within five (5) days. A copy of the written statement of approval shall be mailed to the applicant by certified mail, return receipt requested.
- B. **Approval with Modifications:** The Planning 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 requested. After adequate demonstration to the Planning Board that all conditions have been met, and payment by the applicant of all fees and reimbursement costs due the Town, the Planning Board shall endorse its approval on a copy of the site plan and shall file it and a written statement of approval with the Town Clerk within five (5) days. A copy of the

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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 Planning Board shall be filed with the Town Clerk within five (5) days and a copy thereof mailed to the applicant by certified mail, return receipt requested, along with the Planning Board's reasons for disapproval.

Before the final approval may be granted on any project, all approvals from all pertinent departments and agencies, in writing, must be submitted to the Town.

No approved site may be altered without permission of the Planning Board. Once a site plan is filed with the Town Clerk it may not be altered without returning to the Planning Board for review.

### **SECTION 5.040 – Expiration of approval:**

All final and/or conditional final site plan approvals shall be valid for a period not to exceed twelve (12) months. If the twelve (12) month period expires, and no substantial construction has been initiated, the approval shall be null and void. The mere issuance of a building permit shall not extend the above-stated twelve (12) month period. Prior to the expiration, the applicant may petition the Planning Board in person for no more than two (6) month extensions and must show cause as to why the approval should not be deemed null and void.

In the event the applicant appearing before the Planning Board fails to show good cause for not advancing the project to satisfy the resolution conditions or does not provide evidence that third-party permits and approvals have been diligently pursued, the Planning Board in its sole discretion may deny the request for extension and require that the applicant file a new site plan application and pay all required application fees.

## ARTICLE VI

### **Performance Bond or other Surety**

As an alternative to the installation of private infrastructure and improvements, prior to approval by the Planning Board, a performance bond or other security sufficient to cover the cost of the same, as estimated by the Planning Board or a Town department or official designated to make such estimate, where such department estimate is deemed acceptable by the Planning Board, shall be furnished to the Town by the owner. Such security shall be provided to the Town pursuant to the provisions contained in § 277(9) of the New York State Town Law.

## ARTICLE VII

### **Miscellaneous Provisions**

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**SECTION 7.010 - Enforcement Officer:**

The Town Board shall appoint an enforcement officer to carry out the duties by this local law or by any additional regulations adopted pursuant to Section 6.020 thereof. If appointed, the enforcement officer shall be responsible for the overall inspection of site improvements, including coordination with the Planning Board and other officials and agencies, as appropriate.

**SECTION 7.020 - Further Regulations by Planning Board:** The Planning 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. The adoption of such further rules and regulations shall be subject to Town Board approval.

**SECTION 7.030 - Integration of Procedures:** Whenever the circumstances of proposed development require compliance with Site Plan Review Law and with any other local law, ordinance or requirement of the Town, the planning 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.

**SECTION 7.040 - Enforcement:** Any person, corporation, partnership, or local law, or any conditions imposed by a permit pursuant hereto shall be guilty of an offense and subject to a fine of not more than Two Hundred Fifty (\$250.00) Dollars or by penalty of Two Hundred Fifty (\$250.00) Dollars to be recovered by the Town in a civil action. Every such person or entity shall be deemed guilty of a separate offense for each week such violation, disobedience, omission, neglect or refusal shall continue.

**SECTION 7.050 - Effective Date:** This local law shall become effective upon filing with Secretary of State.