

Town of Tonawanda

CHAPTER 215. ZONING CODE

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Part 4. Application & Review Procedures

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Article 40. Application Procedures

§215-40.1

APPLICABILITY

- A. Review Required.** Any person seeking to erect, construct, enlarge, alter, improve, demolish a building or structure; or establish, operate, convert, or change the nature of the use or occupancy of any building or structure within the Town of Tonawanda shall first be required to submit a development plan application and secure all necessary approvals and permits as required by this Zoning Law.
- B. Application Form.** Applications must be submitted in a form and in such numbers as outlined herein. Checklists of application submittal and review requirements may be made available within the Town's Planning and Development Office.
- C. Review Body.** For the purposes of this Zoning Law the terms "reviewing body" or "review body," shall refer to the Town board, commission, committee, official, or other designated decision-making body that is charged with review and/or approval authority as authorized under this Zoning Law and by NYS Law. This may include, but is not limited to the Code Enforcement Officer, Staff Plan Review Committee, Town Board, Planning Board, and Zoning Board of Appeals.
- D. Properties in Violation Prohibited.**
 - 1. No applications that include a building, structure, property, or use that is in violation of this Zoning Law, other laws of the Town of Tonawanda, or NYS laws, rules, and/or regulations shall be accepted or processed.
 - 2. Applications which, in whole or in part, include a proposal to rectify violations on such property may be considered in accordance with this Zoning Law.

§215-40.2

PRE-APPLICATION CONFERENCE

- A. Purpose.** The purpose of a pre-application meeting is to provide the applicant with the opportunity to seek nonbinding, advisory direction from the Town to better prepare the applicant and project application for the development review process. This process is optional and has no bearing on action on a formal application.
- B. Conference Recommended.** It is recommended that applicants request a pre-application meeting prior to entering the formal application review process to discuss the nature of the proposed application and to determine the best course of action for submittal. Meetings may be held with the Town Staff Plan Review Committee.
- C. Advisory Opinion.** In no way shall any comments or feedback provided by the Committee during a pre-application meeting be construed as an indication of decision or be legally binding in any way.
- D. Application Material.** Materials presented during the pre-application meeting may be incomplete and/or conceptual in design. A formal, complete application is required to be considered for approval prior to action.

§215-40.3**GENERAL APPLICATION PROCEDURES**

- A. Submittal.** All applications considered under this Chapter shall:
1. Be submitted to and processed by the Town's Planning and Development Department.
 2. Require the signature of the owner(s) of the subject property. Where there are multiple land owners, a written consent agreement among all land owners must be included. Tenants may submit applications with written consent of the property owner(s).
 3. Be provided in the required number and form, including at least 10 hard copies and one electronic copy (digital PDF). Development plan applications shall include one electronic and at least two stamped hard copies of all maps and site plans at the size and scale requested by the Director of Planning and Development.
 4. Include all application fees as established by §215-40.8 and as may be required elsewhere in this Chapter.
- B. Deadlines.** Applications shall be submitted at least 10 business days prior to the meeting at which the applicant wishes to be considered. Supplemental materials and amendments to applications already under review are also due at least 10 business days prior to the meeting of the reviewing body.
- C. Acceptance and Processing.**
1. Within 30 days of an application being filed, the Town's Planning and Development Department shall determine whether to accept the application as ready for processing or reject the application as not ready for processing.
 2. An application is considered accepted and ready for processing only if it is submitted in the appropriate number and form, includes all required materials, and is accompanied by the required fee.
 3. The acceptance of an application by the Town shall in no way be interpreted as a determination of the completeness, adequacy, or accuracy of application materials, but rather serve as an acknowledgement to the receipt of required fee and application materials in the correct number and form.
 4. If an application is determined to be not ready for processing, a paper or electronic written notice shall be provided to the applicant, along with an explanation of all known deficiencies that prevent review.
 5. No further processing of unaccepted applications will occur. When the deficiencies are corrected, the application will be placed in the next available processing cycle. If the deficiencies are not corrected within 62 days, the application will be considered withdrawn.
- D. Applicant Responsibilities.**
1. The applicant and/or their agent is expected to attend all meetings at which the application is to be discussed.
 2. In all cases, the burden is on the applicant to show that their application complies with the Town of Tonawanda local laws and regulations, and any other applicable NYS laws, rules, and regulations.

§215-40.4**REVIEW BODY ACTION**

- A. Initiation of Review.** The review process(es) provided herein shall begin within 30 days of application acceptance by the Town's Planning and Development Department. The review and decision period does not begin until such time that the Town's Planning and Development Department notifies the applicant that the application is ready for processing and the materials submitted are acceptable for review.
- B. Public Hearing.** Where required by this Chapter and NYS Law, the reviewing body shall hold at least one public hearing prior to the issuance of a decision.
- C. State Environmental Quality Review (SEQR).** Where required by NYS Law, the review body shall complete all required documentation and procedures in accordance with the State Environmental Quality Review Act (SEQRA).
- D. Issuance of Decision.**
1. Within 62 days following the close of the public hearing the reviewing body shall issue a decision to approve, approve with conditions or modifications, or deny the proposed application.
 2. Prior to issuing a decision on an accepted application, the reviewing body shall determine by resolution the application to be complete, noting any waived or additional application materials.
 3. Where County referral is required, no decision shall be issued by the reviewing body until the referral process is complete.
 4. The time period in which a decision must be rendered on the application may be extended by mutual consent of the applicant and the reviewing body.
- E. Written Decision.**
1. A written decision shall be provided by the Town explaining the rationale and findings of the reviewing body based upon the standards and review criteria contained in this Zoning Law. The written decision shall also make note of any conditions or modifications of the approval, where applicable.
 2. A copy of the decision shall be promptly filed with the Town Planning and Development Department and sent to the applicant.
- F. Findings.** The findings of the review body may be based on evidence submitted or the personal knowledge of the review body to show that:
1. It has made an intelligent review of the question.
 2. It has considered all the information or evidence.
 3. It has heard all parties in question.
 4. Any intimate knowledge it has of the subject under question has been considered.
 5. It has made a personal inspection of the parcel in question and from this examination certain findings were ascertained.
- G. Waiving Application Requirements.** A reviewing body is authorized to waive or modify, in whole or in part, required application material if in their opinion one or more of the following apply:

1. Any such material, or part thereof, is not requisite in the consideration of impact to public health, safety, or general welfare;
 2. Any such material is inappropriate or irrelevant to the proposal;
 3. Any such material is deemed unnecessary for an adequate, informed review.
- H. Additional Application Requirements.** A reviewing body may require the applicant to provide additional application material if it is found to be necessary for a complete, adequate, and informed review.

§215-40.5

COORDINATED REVIEWS

- A. Concurrent Reviews.** In some cases, an application may be subject to multiple reviews by this Chapter and the Town of Tonawanda Code. Where deemed appropriate by the Director of Planning and Development to streamline the application review process the following reviews may be conducted concurrently:
1. Development Plans. In accordance with Article 42.
 2. Special Use Permits. In accordance with Article 43.
 3. Subdivisions. In accordance with Chapter 185 of the Town of Tonawanda Code.
 4. Variances. In accordance with Article 45.
 5. Amendments. In accordance with Article 46.
- B. Application Requirements.** Where applicable, duplicate application materials may be combined to satisfy submittal requirements.
- C. Conditions of Approvals.**
1. Special Use Permit. If obtained prior to development plan approval, the special use permit shall be conditioned upon the applicant obtaining development plan approval. In the event that a development plan application is denied, the special use permit shall be considered null and void.
 2. Subdivision. Where a subdivision application is considered alongside a development plan application, the Planning Board shall first issue a decision on the subdivision plat. Should the subdivision application be denied, the development plan shall be considered null and void.
 3. Variance. Where a development plan, special use permit, or subdivision application requires a variance, approval of said variance must be obtained first. Should the variance be denied, the associated development plan, special use permit, and/or subdivision application shall be amended accordingly.
 4. Amendments. Approval(s) for any development action considered under this Chapter, for which a rezoning is also requested or required, shall be conditioned on the approval of the zoning amendment application by the Town Board. Should the rezoning be denied, all other development application approvals conditioned on the rezoning shall be considered null and void.

§215-40.6**REFERRALS**

- A. Internal Referral.** The reviewing body may refer any application to another Town board, committee, department, or official for review, comment, and advisement. Within 45 days receiving body shall submit its findings in writing to the referring body.
- B. Professional Referral.**
 - 1. The reviewing body may seek the opinion of any engineering, architectural, historical, planning, technical, environmental, legal consultant or attorney, or other expert or professional to aid in the review of an application.
 - 2. The applicant shall reimburse the Town for any costs incurred as part of such professional review in accordance with §215-40.8.
- C. County Referral.** The Town shall refer applications to the Erie County Department of Environment and Planning pursuant to NYS GML 239-m and in accordance with any planning referral agreements between the Town and County.
- D. Waterfront Application Referrals.** Applications in waterfront designated districts and the LWRP area may be referred to the NYS Department of State.
- E. Other Local, Regional, and State Referrals.** Referrals to other local, regional, and state agencies shall also be made in accordance with Town, County, and NYS Law.

§215-40.7**EXPIRATION, REVOCATION OF APPROVAL OR PERMIT**

- A. Expiration.** Except for variances granted in accordance with NYS Law, the approval of an application shall expire if one or more of the following occur:
 - 1. The approved use(s) cease operation for more than 12 consecutive months for any reason;
 - 2. The applicant fails to obtain necessary building permits or certificates of occupancy within one year of the approval date;
 - 3. The applicant fails to comply with the conditions of approval within one year of the date of issuance or completion of construction, where applicable;
 - 4. The applicant fails to initiate construction or operation of use within one year of the approval date;
 - 5. The applicant fails to complete construction; or
 - 6. The applicant fails to renew a time limited permit prior to the stated time period ending.
- B. Extensions.** The reviewing body may grant an extension for any condition in Subsection A upon written request by the applicant. The applicant shall include in such request the desired time period for the extension and the reasoning for requesting the extension. A fee may be required to process extension requests. The time period of such extension, if granted, shall be determined by the reviewing body.
- C. Revocation.** The Code Enforcement Officer may revoke the building permit associated with an approved project if the applicant violates the conditions of the approval or engages in any construction, alteration, or operation not

authorized by the approval and/or related permit(s). Such action shall include the revocation of any special use permit or other zoning authorization issued under this Zoning Law.

§215-40.8

PUBLIC HEARINGS & NOTICES

- A. Public Hearing Required.** The reviewing body shall schedule, notice, and conduct a public hearing for applications as required by this Zoning Law and NYS Law.
- B. Joint Hearings.** Where there are multiple applications for a single property or use before the reviewing body concurrent or joint public hearings may be held.
- C. Public Notices.** Public notice of public hearings shall be made in accordance with this Zoning Law and NYS Law, this may include mailed, media and posted notice.
- D. Media Notices.** The Town Clerk or designee shall cause publication of a notice in the Town's official newspaper and official website.
- E. Mailed Notices.** Written notice of public hearings to adjacent and nearby properties, adjoining municipalities, Erie County, and the State Commission of Transportation shall be provided where required by NYS Law.
- F. Posted Notices.**
 - 1.** It shall be the responsibility of the applicant to obtain a sign of public notice from the Town's Planning and Development Department and post said sign on the property in question at least seven business days prior to the scheduled public hearing.
 - 2.** The applicant shall place the sign on the property in a manner that is plainly visible from the public right-of-way.
 - 3.** The applicant shall pay an upfront and refundable deposit to the Town at the time of sign pickup. The amount of said deposit shall be provided in the Town's Fee Schedule.
 - 4.** Upon close of the public hearing, the sign shall be returned to the Town within seven business days. The Town shall refund the deposit once the sign has been surrendered. Failure to return to the sign within a timely manner shall result in the forfeiture of the deposit.
- G. Public Notice Expenses.** All costs for a public hearing, including, but not limited to, the legal ad(s), required mail notifications, and posting of signs shall be included in the public hearing fee provided in the Town's Fee Schedule.

§215-40.9

FEES

- A. Fee Schedule Established.** A schedule of fees for all permits, applications, and deposits as required in this Zoning Law shall be provided in a Fee Schedule, set by resolution of the Town Board. Such schedule may be amended from time to time as deemed necessary by the Town Board.
- B. Consultant Fees.**
 - 1.** The Town Board, ZBA, Planning Board, Town Development Services Staff, or other such review body may refer an application presented to them for professional engineering, architectural, historical, planning, technical,

environmental, landscaping, or legal consultation, or attorney, as shall be deemed reasonably necessary to enable an adequate, informed review.

2. The amount of a consultant fee shall be determined and approved by the Town Board. Consultants shall estimate their fees based on the services to be rendered on behalf of the Town from a review of the application, including such documents, maps, plans, specifications, drawings and the like as may be a part thereof.
3. The consultant will be retained pursuant to the procurement policy of the Town. The applicant shall make an escrow deposit with the Town, equal to the amount of the fees so determined. This escrow deposit shall be utilized to pay the cost of the special consultant's fees involved. The application shall not be deemed complete until such time as said escrow deposit has been made. If during the review the need for further specialist consultation is deemed reasonably necessary by the Board, the same cost estimate and escrow deposit procedure shall be followed.
4. Upon issuance of decision and within a period of 45 days thereafter, the Town Board shall adopt a resolution specifying whether the escrow deposit amount specified was sufficient, excessive, or insufficient. In the event the Town Board determines that said amount is excessive, the balance shall be returned to the applicant within 60 days. In the event the Board determines that the escrow deposit was insufficient, it shall so specify, and the applicant shall be required to make payment of such additional amount within 60 days.

Article 41. Zoning & Building Permits

§215-41.1

PERMITS REQUIRED

No person, firm, or corporation shall commence, cause to be done, or perform any other work associated with the erection, enlargement, alteration, improvement, conversation, or change in the nature of the use or occupancy of any building, structure, or lot without first obtaining a zoning permit, building permit, and certificate of occupancy where required by this Chapter and all other applicable local, state, and federal rules, laws, and regulations.

§215-41.2

BUILDING PERMIT & CERTIFICATE OF OCCUPANCY

- A. Building permits and certificates of occupancy shall be required and issued in accordance with the NYS Uniform and Fire Prevention Code and Chapter 54 of the Town of Tonawanda Code.
- B. No building permit or certificate of occupancy shall be issued for any development application under this Chapter until a zoning permit is secured by the applicant in accordance with §215-41.3.
- C. Building permit applications for accessory structures over 144 square feet and up to 180 square feet shall also require the issuance of a zoning permit.

§215-41.3

ZONING PERMIT

- A. Once all required reviews and approvals of this Zoning Law have been obtained and compliance with all standards herein is verified by Town Planning and Development Staff, the applicant shall be granted a zoning permit by the Director of Planning and Development.
- B. The issuance of a zoning permit shall be independent of and in no way indicate approval of a building permit or certificate of occupancy. The authorization and issuance of the latter shall be at the discretion of the Code Enforcement Officer as provided in Chapter 54 of the Town of Tonawanda Code.

Article 42. Development Plan Review

§215-42.1

AUTHORITY

- A. This Article is enacted pursuant to the authority granted to the Town Board of the Town of Tonawanda in Article 16 NYS Town Law and Section 10 of NYS Municipal Home Rule Law.
- B. This Article now supersedes and modifies §274-a of NYS Town Law in that authority and procedures are included herein for a sketch plan review process, administrative development plan review process, preliminary site plan review process, and final site plan review process.

§215-42.2

PURPOSE & INTENT

- A. The purpose of this Article is to define procedures for the Town Staff Plan Review Committee and Planning Board for review of development actions proposed throughout the Town to ensure that design elements are in compliance with the protection of the health, safety and overall welfare of the community.
- B. The intent of development plan review is to evaluate site plans and require changes consistent with minimizing conflicts which may result between the site layout and design of proposed uses and natural site conditions and features and/or existing or planned adjacent uses.
- C. Development plan review also serves the purpose of ensuring applications comply with clearly defined planning goals and policies such as are provided in the Town's Comprehensive Plan and other land use plans and studies.
- D. These regulations provide development plan review application submission requirements and evaluation criteria to allow the Town Staff Plan Review Committee and Planning Board to make a fair and informed decision as to whether the development, as proposed, is in compliance with concern for the health, safety and welfare of the environment, Town residents, and adjacent uses.
- E. For the purposes of this Chapter, a development plan shall refer to all materials necessary and required for administrative and/or site plan review of development actions in accordance with this Article.

§215-42.3

OPTIONAL SKETCH PLAN REVIEW

- A. **Purpose.** Applicants are strongly encouraged to submit a preliminary sketch plan to the Town Staff Plan Review Committee prior to the preparation of a formal development plan application. The purpose of this review is to:
 - 1. Provide guidance on the review and approval process and generally determine the information necessary for formal development plan review.
 - 2. Advise the applicant as to potential problems and concerns with the proposal.

3. Discuss plans for the applicant's entire holdings, including phasing and define the project and phases to be submitted for development plan review.

B. Advisory Opinion.

1. Feedback on the sketch plan will be provided as to whether the proposal aligns with the Town Comprehensive Plan and any other approved plans and studies.
2. To the extent feasible, the Town shall provide the applicant with an indication of whether the proposal, in its major features, is acceptable or offer recommendations for modifications before expenditures for more detailed plans are made.
3. In no way shall any comments or feedback provided by the Town during sketch plan review be construed as an indication of approval by the review body or be legally binding in any way.

C. Sketch Plan Review Procedure.

1. Meetings of the Town Staff Plan Review Committee with the applicant shall be held in accordance with §215-14.5 C.
2. The Committee may refer a sketch plan to the Planning Board at the request of the applicant or where, in their opinion, additional feedback from the Planning Board is necessary and appropriate.

D. Sketch Plan Materials. The applicant shall provide at least three copies of the following information at a date specified by the Director of Planning and Development prior to the scheduled meeting date.

1. A map showing the applicant's entire holdings, the parcel under consideration and a general description of all properties, subdivisions, streets, rights-of-way, easements and other pertinent features within 500 feet of the boundaries of the parcel, including property uses.
2. All locations and dimensions of principal and accessory structures, ingress and egress, parking areas, signs, existing and proposed vegetation and other existing or planned features on the property.
3. A narrative describing anticipated changes to existing topography and natural features.
4. A description of environmentally sensitive features, including all regulated wetlands, and proposals for their protection.
5. Proposed water supply and sewage and waste disposal facilities.
6. Provisions for stormwater drainage, recreation, and open space and, where applicable, measures and features to comply with flood hazard and flood insurance regulation.

E. Waiver of Development Plan Application Materials.

1. Upon review of the sketch plan, the Town Staff Plan Review Committee may waive requirements for submission of application materials.
2. Submission requirements shall only be waived where the Committee finds, due to character, size, location, or special circumstances, such

information is not required to adequately perform development plan review.

3. In this regard, a finding must be made by the Committee in accordance with §215-40.4 F.

F. State and County Consultation. Developers of land adjoining state or county highways are advised to consult with the District Engineer of the New York State Department of Transportation or County Highway Superintendent at the sketch plan stage to resolve problems of street openings or stormwater drainage at the earliest possible stage in the design process.

G. Submittal of Formal Development Plan. Within six months of the sketch plan conference, the applicant shall submit to the Town a formal development plan application in accordance with Article 40. If six months elapses between the original sketch plan submittal and the submission of the development plan, a resubmission of an updated sketch plan may be requested.

§215-42.4

APPLICABILITY

A. Review Required. No construction or site improvement work may commence without development plan review and approval in accordance with the following table.

B. Exempt Actions. Actions exempt from development plan review shall still require the issuance of a zoning and/or building permit in accordance with Article 41.

| ACTION | EXEMPT | ADMIN REVIEW | SITE PLAN REVIEW |
|-------------------------------------------------------------------------------------------------|--------|--------------|------------------|
| CONSTRUCTION / EXPANSION / ALTERATION | | | |
| Residential Use | | | |
| Single- or Two-Family Dwelling on an Approved Lot | | | |
| Multi-Family Dwelling, up to 4 units | | | |
| Multi-Family Dwelling, over 4 units | | | |
| Nonresidential or Mixed Use | | | |
| Up to 20,000 sf or 25% of Existing Gross Floor Area ² | | | |
| Over 20,000 sf or 25% of Existing Gross Floor Area ² | | | |
| Accessory Use or Structure ¹ | | | |
| Up to 144 sf in Gross Floor Area | | | |
| Over 144 sf in Gross Floor Area | | | |
| Accessory Dwelling Unit or In-Law Suite | | | |
| Outdoor Assembly, Seating, Sales, Display, or Storage Area | | | |
| Parks, Pools, or Playgrounds | | | |
| Commercial or Public Use | | | |
| Private Residential Use | | | |
| Landscaping, Exterior Lighting, Mechanical Equipment, or Stormwater/Green Infrastructure | | | |
| Residential Use, up to 4 units | | | |
| Multi-Family Use, over 4 units | | | |
| Nonresidential or Mixed Use | | | |

| ACTION | EXEMPT | ADMIN REVIEW | SITE PLAN REVIEW |
|-------------------------------------------------------------------------------|----------------------------------------|--------------|------------------|
| CONSTRUCTION / EXPANSION / ALTERATION | | | |
| Off-Street Parking / Loading Area | | | |
| 10 Spaces or Less | | | |
| Over 10 Spaces | | | |
| Driveway | | | |
| Residential Use, up to 4 units | | | |
| Multi-Family Use, over 4 units | | | |
| Nonresidential Use, Within Existing Curbcut, Apron, or Opening | | | |
| Nonresidential Use, Requiring New or Altered Curbcut, Apron, or Opening | | | |
| Energy Systems and Facilities | | | |
| Solar Energy, Small-Scale | | | |
| Solar Energy, Large-Scale or Utility Scale | | | |
| Wind Energy Conversion System | | | |
| Battery Energy Storage System, Tier 1 or 2 | | | |
| Battery Energy Storage System, Tier 3 | | | |
| Telecommunications Equipment | | | |
| OTHER ACTIONS | | | |
| Ordinary Repair, Maintenance, or Replacement In-Kind | | | |
| Interior Building Alteration | | | |
| Alterations to a Building Facade | | | |
| Change of Use | | | |
| Improvement in Accordance with a Previously Approved Plan | | | |
| Modification or Amendment to Approved Development Plan | Return to Original Issuing Review Body | | |
| Planned Unit Development (PUD) District | | | |
| Action Involving the Expansion or Alteration of Utility Infrastructure | | | |

NOTES: (1) Accessory use or structure includes decks, patios, porches, garages, sheds, etc. For full list see §215-24.4.
 (2) Whichever is less.

§215-42.5

ADMINISTRATIVE REVIEW

- A. Authorized Review Body.** Actions requiring administrative review, per §215-42.4, shall be reviewed and decided upon by the Town Staff Plan Review Committee.
- B. Application Processing.** Administrative review applications shall be submitted and processed in accordance with Article 40 of this Chapter.
- C. Application Requirements.** Administrative review applications shall include all materials as required by §215-42.8. All maps shall be drawn at a scale of 50 feet to one inch or larger or other scale deemed appropriate by the Director of Planning and Development.
- D. Administrative Review Procedure.**
 - 1.** The Town Staff Plan Review Committee shall review and decide upon applications in accordance with §215-40.4.

2. The Committee may refer any administrative review application to the Planning Board if, in their opinion, it is found that such application requires a discretionary or more significant review to determine the appropriateness of such proposal.
 3. Upon referral by the Committee, the Planning Board shall assume final site plan review decision authority in accordance with §215-42.6.
- E. **Review Criteria.** In conducting their review the Committee shall consider the development plan review criteria provided in §215-42.7, as applicable.
 - F. **Public Hearings.** No public hearing shall be required for administrative review applications. Where such application has been referred to the Planning Board, however, the requirements of preliminary and final site plan review shall apply.
 - G. **Referrals.** All internal, professional, and required referrals shall be made in accordance with §215-40.6 and this Article.
 - H. **Coordinated Reviews.** Administrative review may be coordinated with other development applications in accordance with §215-40.5.
 - I. **Endorsement of Approved Plans.** Upon approval, the Director of Planning and Development shall endorse their approval via signature on a copy of the development plan. For conditionally approved plans, the endorsement shall be executed only after demonstration that the plan has been amended to reflect such conditions or modifications.

§215-42.6

SITE PLAN REVIEW

A. Authorized Review Body.

1. Actions requiring site plan review, per §215-42.4, shall be reviewed and decided upon by the Planning Board.
2. All such applications shall be subject to both preliminary site plan review and final site plan review in accordance with this Section.

B. Application Processing.

Preliminary and final site plan review applications shall be submitted and processed in accordance with Article 40 of this Chapter.

C. Application Requirements.

1. Preliminary site plan review applications shall include all materials as required by §215-42.9.
2. Final site plan review applications shall include all materials as required by §215-42.10.
3. All site plan maps shall be drawn at a scale of 50 feet to one inch or larger or other scale deemed appropriate by the Planning Board.

D. Preliminary Site Plan Review Procedure.

1. The Town Staff Plan Review Committee shall conduct a review of preliminary site plans prior to action by the Planning Board.
2. The Committee's written findings and any recommended modifications shall be referred to the Planning Board for their consideration.
3. Upon receipt of the Town Staff Plan Review Committee's findings and recommendations, the Planning Board shall review and issue a decision on the preliminary site plan in accordance with §215-40.4.

E. Final Site Plan Review Procedure.

1. Upon receiving preliminary site plan approval, the applicant shall submit a final site plan application in accordance with Article 40.
2. The Planning Board shall review and issue a decision on the final site plan in accordance with §215-40.4.
3. If more than one year has elapsed since the preliminary site plan was approved, and if conditions have substantially changed, the Director of Planning and Development may require resubmission of a preliminary site plan.

F. Review Criteria. In conducting their reviews the Planning Board shall consider the development plan review criteria provided in §215-42.7, as applicable.

G. Public Hearings.

1. A public hearing for preliminary site plan review applications may be held at the discretion of the Planning Board.
2. A public hearing shall be required for final site plan review.

H. Referrals. All internal, professional, and required referrals shall be made in accordance with §215-40.6 and this Article.

I. Coordinated Reviews. Site plan review may be coordinated with other development applications in accordance with §215-40.5.

J. Endorsement of Approved Plans. Upon approval, the Planning Board Chair shall endorse their approval via signature on a copy of the development plan. For conditionally approved plans, the endorsement shall be executed only after demonstration that the plan has been amended to reflect such conditions or modifications.

K. Phased Development Plans.

1. In the case of a proposed development which is to be phased over several years, the applicant shall submit an overall plan for the total development of the project and a phasing plan. The overall plan shall include all preliminary site plan application materials necessary to facilitate the assessment of all potential development impacts of the total planned project.
2. If the overall plan for the project is approved, then the first phase of the project may continue for final site plan review and approval. If there is no substantial change in the overall plan or phasing plan, each succeeding phase of the development need only be reviewed for final site plan approval. If there are substantial changes to the overall plan or phasing plan, subsequent phases shall be required to go back for preliminary site plan review and approval.

§215-42.7**REVIEW CRITERIA**

The Town Staff Plan Review Committee and Planning Board shall consider the following during administrative, preliminary, and final site plan review, as applicable.

A. Adopted Plans and Studies. Conformance with the Town of Tonawanda Comprehensive Plan, Local Waterfront Revitalization Program (LWRP), Tonawanda Opportunity Area (TOA), and other relevant plans and studies.

B. Zoning Regulations. Conformance with all:

1. Use, bulk, and dimensional requirements of Part 2 of this Chapter.
2. Design and development standards of Part 3 of this Chapter, including, but not limited to, off-street parking, loading, and access management, landscaping, and screening, building and site design, exterior lighting, and sign regulations.

C. Building and Site Design.

1. Compatibility of proposed uses and structures to that of adjacent properties, considering location, arrangement, size, materials, design, and transitional treatments. This may include an assessment of the appropriateness of proposed building and site design elements with the desired character of the district and/or neighborhood.
2. Appropriateness of. This may include the assessment of the compatibility and relationship of proposed structures with the desired character of the district and/or neighborhood.
3. Adequacy, type, and arrangement of trees, shrubs, and other landscaping and screening measures constituting a visual and/or noise deterring buffer between on-site uses and those adjacent thereto.
4. Sufficient protection of adjacent properties from noise, glare, unsightliness, or other objectional features.

D. Transportation Network.

1. Adequacy and arrangement of vehicular traffic and circulation, including intersections, road widths, traffic controls, traffic-calming measures, and accessibility by fire and emergency vehicles.
2. Adequacy and arrangement of pedestrian and bicyclist access and circulation, including separation from vehicular traffic and connections provided internally and externally to the site.
3. The location, arrangement, appearance, and sufficiency of off-street parking and loading areas.

E. Environmental and Recreational Resources.

1. Preservation of and compatibility with natural site features and critical environmental resources, such as woodlots, watercourses, wetlands, floodplains, and animal habitat areas.
2. Provision and dedication of public open space, parks, and recreational facilities and the adequacy of those facilities for their intended purpose.
3. Preservation or enhancement of public access to the Niagara River, Ellicott Creek, and other public parks and recreation areas.
4. Adequacy of stormwater, drainage, and erosion management plans.
5. Provision of green infrastructure or other such methods to reduce run-off.

F. Services and Utilities.

1. Adequacy of sanitary waste disposal and water supply facilities.
2. Adequacy and appropriate location of utility systems.

NOTE: Existing building and site design standards from current §215-152 E and F are in Draft Part 3 so they are aligned with the relevant regulations.

3. Adequacy of proposed waste and trash management plan.
4. Adequacy of snow storage and/or proposed snow removal plan.

G. Other Considerations.

1. Encouragement of the most appropriate use of land and utilization of the site.
2. Adequacy and appropriateness of construction plans and phasing.
3. Potential for adverse effects to the functioning, economic stability, prosperity, and health, safety, or general welfare of nearby property owners and the community.

§215-42.8

ADMINISTRATIVE REVIEW APPLICATION MATERIALS

An administrative review application shall include the following materials, as deemed necessary and appropriate by the Town Staff Plan Review Committee. The Committee may require some or all application material be prepared by duly licensed professionals.

- A. Required application form, including the name, address, and signature of the applicant, property owner, and developer.
- B. Description or narrative of all proposed uses and structures.
- C. Site plans drawn at a scale deemed appropriate by the Committee, with continuation on sheets as necessary for written information. The plans shall indicate the following:
 1. The location of all properties, their ownership, uses thereon, subdivisions, streets, easements, and adjacent buildings within 100 feet of the property in question.
 2. The location and use of all existing and proposed structures on the property in question, including all building and lot dimensions.
 3. The location of all existing and proposed topography as revealed by contours or key elevations, including final site grading.
 4. The location and proposed impacts to environmental features, including, but not limited to, open spaces, trees, watercourses, steep slopes, wetlands, floodplains, and watersheds.
 5. The location and dimensions of existing and proposed landscaping, screening, walls, and fences, including information regarding the size and type of plants and building materials proposed.
 6. The location and dimensions of existing and proposed public and private streets, off-street parking areas, access drives, driveways, sidewalks, ramps, curbs, and paths.
 7. A waste and trash management plan including the type, size, location, appearance, and operation of dumpsters or other trash receptacles.
 8. The type, size, location, appearance, and operation of all outdoor mechanical equipment.
 9. The location, height, intensity, bulb type, and light color of all exterior lighting fixtures.

- 10. The location, height, size, material, and design of all existing and proposed signs.
- 11. The location all new or modified downspouts or stormwater systems, including the configuration of a system for stormwater drainage or green infrastructure.
- 12. The location of existing and proposed utility systems including sewage or septic, water supply, telephone, cable, electric, internet, and fiber.
- D. Building elevations, drawn at a scale deemed appropriate by the Committee and descriptions of all exterior building materials.
- E. Plans for disposal of construction and demolition waste.
- F. Identification of any state or county permits required for the project and record of application for and approval status of such permits.
- G. All NYS SEQQR documentation as required by law.

§215-42.9

PRELIMINARY SITE PLAN APPLICATION MATERIALS

An application for preliminary site plan review shall include the following materials. Such material shall be prepared and signed by a civil engineer or surveyor licensed to practice in NYS.

A. Legal Data.

- 1. The name and address of the owner of record. The name and address of the person, firm or organization preparing the site plan.
- 2. The date, north point, and written and graphic scale.
- 3. Sufficient description or information to precisely define the boundaries of the property. All distances shall be in feet and tenths of a foot. All angles shall be given to the nearest 10 seconds or closer. The error of closure shall not exceed one in 10,000.
- 4. The locations and owners of all lands within 200 feet of the site boundaries, as shown on the latest tax records, and Tax Map identification numbers.
- 5. The existing zoning of the site and all properties within 500 feet of the site's perimeter.
- 6. The location, width, and purpose of all existing and proposed easements, reservations, and areas dedicated to public use within or adjacent to the property, including public infrastructure.
- 7. A complete outline of existing and proposed deed restrictions or covenants applying to the property.

B. Vehicular, Pedestrian, and Bicyclist Transportation Network.

- 1. The locations, names, and widths of existing and proposed streets.
- 2. The location of existing and proposed pedestrian and bicycle public accessways on-site and within 200 feet of the site boundaries, including clear demarcation of striping and signage designed to maintain separation of vehicles, pedestrian, and bicycle circulation.

3. Traffic flow patterns within the site, including existing and proposed means of access and egress, driveways, curb cuts, fire lanes and emergency zones, and other paved areas on-site and within 200 feet of the site boundary.
4. Profiles indicating grading and cross-sections of proposed roadways, sidewalks, and bicycle infrastructure and their construction materials.
5. A detailed traffic study for large developments or for those in heavy traffic areas to include:
 - a) The projected number of motor vehicle trips to enter or leave the site, estimated for dairy and peak hour traffic intervals.
 - b) The projected traffic flow pattern, including vehicular movements at all major intersections, likely to be affected by the proposed use of the site to.
 - c) The impact of this traffic upon existing abutting public and private ways in relation to existing road capacities and intersection levels of service. Existing and proposed daily and peak hour traffic volume as well as road capacities and intersection levels of service shall also be given.

C. Buildings, Structures, and Use of Land.

1. The location, size, and type of construction of all existing and proposed uses and structures on and within 100 feet of the lot line.
2. For residential uses, include the number of units by type and gross density per acre. For commercial and industrial uses, identify the amount of gross floor area proposed for each use.
3. Elevations illustrating front, rear, and side profiles of all proposed buildings and structures. The elevations shall clearly delineate the bulk and height of all buildings and other permanent structures included in the proposal and the height and dimension of all signs.
4. The location, design, direction, power, and time of use for any outdoor lighting.
5. The location, size, design, and materials for all proposed outdoor signs.
6. The location, size, and design of outdoor storage and waste receptacles and proposed screening for such.
7. The location, size, and design of all existing or proposed site retaining walls and fences.
8. The location and design of all uses not requiring structures, such as off-street parking and loading areas and solid waste storage areas.
9. Any setbacks or other dimensional information required for determining conformance with this Chapter.

D. Environmental, Recreational, Historic, and Archaeological Features.

1. Contours of existing site conditions and proposed drainage and grading plans with intervals of two feet or less.

2. Any proposed new grades, indicating clearly how such grades will meet existing grades of adjacent properties.
3. A drainage plan showing the locations, dimensions, grades, and flow direction of existing and proposed drainage ditches, culverts, and other stormwater management facilities. This shall include calculations of the impact to existing drainage created by the proposed development.
4. The location of existing and proposed watercourses.
5. The location of existing local, state, and federal floodplain and wetland boundaries, including areas known to be subject to flooding or stormwater overflows.
6. The location of existing natural habitats, wooded areas, rock outcrops, trees with a diameter of six inches or more measured three feet above the base of the trunk and other significant existing natural and environmental features.
7. The Local, state, and federally recognized historic or archaeological resources on or adjacent to the site and any proposed impacts thereto.
8. The location and design of existing and proposed recreation facilities, parks, and areas of open space, both public and private.
9. The percentage of the site dedicated to open space and vegetative cover.
10. A landscaping plan in accordance with Article 3, including a planting schedule. The dimensions of all landscaped screening or buffer areas shall be clearly marked.

E. Utilities.

1. All existing and proposed underground and above ground utilities, including telecommunication and energy generation and distribution facilities such as electrical, gas, or solar energy.
2. The description of the water supply system, including location and size of all proposed water lines, valves and hydrants, and of all sewer lines and alternate means of water supply, storm, and sanitary sewer.

F. Waterfront Projects. The following additional submission requirements apply to site plan applications for projects within the MU-W District and LWRP boundary:

1. Elevation plan and building material details for all buildings, facades, or structures visible from existing or proposed public streets or open spaces, including the Niagara River.
2. Graphic representation of existing and proposed views across the site to the Niagara River from public streets and open spaces.

G. Construction Information.

1. The estimated project construction schedule and phasing plan, if applicable.
2. A grading plan including stabilization and erosion control measures to be used during and after construction.

3. An estimate of the total cost of the proposed site improvements which shall be confirmed by the Code Enforcement Officer or Town Engineer.
4. A stormwater pollution prevention plan (SWPPP) consistent with the requirements of Chapter 73, Stormwater Management, of the Town Code, if applicable. The SWPPP shall meet the performance and design criteria and standards in §73-9 therein.
5. A record of applications and approval status of all necessary permits from other local, county, state, and federal agencies.

§215-42.10

FINAL SITE PLAN REVIEW APPLICATION MATERIALS

Final site plan applications shall include the following:

- A. Approved Preliminary Site Plan.** All materials of the approved preliminary site plan application.
- B. Subdivision Plat.** A final subdivision plat in accordance with Chapter 185 of the Town of Tonawanda Code, where applicable.
- C. Transportation Network Specifications.**
 1. The lines of existing and proposed streets and sidewalks immediately adjoining and within the site, including geometric layout of proposed streets.
 2. Design and construction specifications and cross-sections of proposed streets, including finished grades in relation to existing ground elevation.
 3. Design and construction specifications and cross-sections of proposed sidewalks, bike facilities, and other multi-modal facilities.
- D. Utilities Plan.**
 1. The location, size and profile of any existing and proposed sewers (stormwater or sanitary), manholes, drain inlets, catch basins, water mains and pipes on the property or into which any connection is proposed.
 2. Provisions for water supply and sewage disposal and evidence that such provisions have been reviewed and approved by the Erie County Department of Health, the Erie County Department of Environment and Planning or the New York State Department of Environmental Conservation, as necessary.
- E. Land Survey.** The location of existing and proposed survey monuments. Before acceptance of the dedication of the highways or streets, a certificate by a licensed land surveyor must be filed certifying that the proposed monuments have been placed where indicated on the map.
- F. Town Design and Construction Specifications.** References to Town standards for all facilities to be constructed or installed and verification of conformance with the requirements therein.
- G. Legal Information.**
 1. The lines and purposes of existing and proposed easements immediately adjoining and within the site.
 2. The lines, dimensions, and areas in square feet of all property that is proposed to be reserved by deed on the site.

3. A legal description of all areas to be dedicated to the Town.
4. Documentation of all other required local, county, state, and federal licenses and approvals.

§215-42.11

GUARANTY OF SITE IMPROVEMENTS

- A. **General.** Subsequent to the granting of site plan approval, no certificate of occupancy shall be issued until all infrastructure and improvements shown on the site plan are installed or a sufficient performance guaranty has been provided by the applicant for infrastructure and improvements not yet completed.
- B. **Performance Guaranty Options.** In order that the Town has the assurance that the construction and installation of infrastructure and improvements such as storm sewers, water supply, sewage disposal, sidewalks, parking and access roads will be constructed in accordance with Town standards and/or any site plan approval modifications, the Code Enforcement Officer or Town Engineer may require that the applicant enter into one of the following agreements with the Town:
 1. Furnish a bond executed by a surety company in a dollar amount equal to 150% of the cost of construction of such infrastructure and improvements as shown on the plans. Such bond shall be based on an estimate furnished by the applicant, confirmed by the Code Enforcement Officer or Town Engineer and approved by the Town Board.
 2. Deposit a certified check payable to the Town in amount equal to 150% of the total cost of construction of such infrastructure and improvements as shown on the site plan and confirmed as in Subsection B(1) herein.
- C. **Conditions.**
 1. The performance guaranty shall be to the Town and shall provide that the applicant, his/her heirs, successors, assigns or his/her agent will comply with all applicable terms, conditions, provisions and requirements of this Zoning Law and will faithfully perform and complete the work of constructing and installing such infrastructure or improvements in accordance with the approved site plan.
 2. Any such performance guaranty shall require the approval of the Town Board.
 3. Certified checks shall be made payable to the Town of Tonawanda and will be placed in an escrow account established by the Town for this purpose.
 4. Letters of credit shall require the approval of the Town Board in consultation with the Town Attorney as to form, sufficiency and manner of execution and shall be duly notarized.
- D. **Extension of Time.** The construction or installation of any infrastructure and improvements or facilities (other than roads), for which a guaranty has been made by the applicant in the form of a bond or certified check, shall be completed within one year from the date of approval of the site plan. Road improvements shall be completed within two years from the date of approval of the site plan. The applicant may request an extension of time to complete such improvements, provided that the applicant can show reasonable cause for the inability to complete such improvements within the required time. The

extension shall not exceed six months, at the end of which time the Town may use as much of the bond or check deposit to construct the improvements as necessary. The Code Enforcement Officer may also grant the applicant an extension of time whenever construction of improvements is not performed in accordance with applicable standards and specifications.

- E. Schedule of Infrastructure and Improvements.** When a performance guaranty is issued pursuant to the preceding subsections, the Town and applicant shall enter into a written agreement itemizing the schedule of infrastructure and improvements in sequence with the cost opposite each phase of construction or installation, provided that each cost as listed may be repaid to the applicant upon completion and approval after inspection by the Town of such improvement or installation. However, 10% of the guaranty shall not be repaid to the applicant until one year following the completion and inspection by the Town of all construction and installation covered by the check deposit or performance bond.
- F. Inspections.** Inspections during the installation of infrastructure and improvements shall be made by the Code Enforcement Officer or other assigns to ensure conformity with the approved plans and specifications as contained in the contract and this Zoning Law. The applicant shall notify the Code Enforcement Officer or other assigned personnel when each phase of infrastructure and improvements is ready for inspection. Upon acceptance of infrastructure and improvements, the Code Enforcement Officer shall issue a letter to the applicant or his/her representative that provides sufficient evidence for the release by the Town of the portion of the performance guaranty as designated in the contract to cover the cost of such completed work.
- G. Phased Development.** The Code Enforcement Officer may further request, subject to Town Board approval, that the applicant deposit a separate performance guaranty for each phase of development proposed. In this event, 5% of the performance guaranty shall be withheld from the applicant until 60 days following the completion, inspection and acceptance by the Town of all construction and installation covered by such deposit. No subsequent phase of development shall be undertaken until each earlier phase has been completed and approved by the Code Enforcement Officer or other assigns.

Article 43. Special Use Permits

§215-43.1

PURPOSE & INTENT

- A. The purpose of this Article is to regulate special uses, which by nature of their operation, may have a higher potential for incompatibility with adjacent uses or otherwise unique characteristics which require a case-by-case review of their location, design, configuration, and impacts on the surrounding area.
- B. The standards of this Article are intended to provide for the individual review and approval of such uses to ensure compatibility of the use in its proposed location and mitigate any potential adverse impacts the use may have on the district or neighborhood.

§215-43.2

APPLICABILITY

- A. **Permit Required.** A special use permit shall be obtained for all uses as noted in the district tables of Part 2 of this Chapter prior to their establishment or operation.
- B. **Additional Use Regulations.** In addition to the general district and development requirements of this Chapter, specially permitted uses shall also conform to the requirements of Article 24, where applicable.

§215-43.3

REVIEW PROCEDURE

- A. **Authorized Review Body.** Special use permit applications shall be reviewed and decided upon by the Town Board.
- B. **Application Processing.** Special use permit applications shall be submitted and processed in accordance with Article 40 of this Chapter.
- C. **Application Requirements.** Special use permit applications shall include all materials as required by §215-43.4.
- D. **Town Board Action.** The Town Board shall review and decide upon applications in accordance with §215-40.4.
- E. **Review Criteria.** In conducting their review, the Town Board shall consider the special use permit review criteria provided in §215-43.5, as applicable.
- F. **Public Hearings.** A public hearing shall be held for all special use permit applications prior to issuance of decision.
- G. **Referrals.** All internal, professional, and required referrals shall be made in accordance with §215-40.6.
- H. **Coordinated Reviews.** The review of special use permit applications may be coordinated with other development applications in accordance with §215-40.5.

§215-43.4**APPLICATION REQUIREMENTS**

A special use permit application shall include the following, as applicable:

- A. A site plan denoting the location of the subject property and all structures thereon, as well as all property, uses, and structures within 300 feet of the proposed use.
- B. A description of the proposed use and nature of its operation, including:
 - 1. A business plan, vision, or model, and/or summary of products, goods, and services to be sold or provided;
 - 2. The proposed hours of operation;
 - 3. The number of employees at maximum shift;
 - 4. The maximum seat capacity;
 - 5. The timing and manner of any and all anticipated deliveries;
 - 6. A recycling and waste management plan; and
 - 7. The nature and type of all mechanical equipment provided and/or required.
- C. An interior floor plan, including, but not limited to, the arrangement of seats, kitchen and/or bar size and location, storage areas, bathroom facilities, and location of machines or other mechanical equipment.
- D. A narrative describing how the proposed use will satisfy the review criteria of §215-43.5.
- E. All SEQR Documentation as required by NYS Law.
- F. Where administrative, preliminary, or final plan review is also required, the application materials of Article 42 shall also apply.

§215-43.5**REVIEW CRITERIA**

- A. **General Criteria.** In reaching a decision, the Planning Board shall consider and shall determine, either from its own knowledge and investigation or from testimony or other information submitted to it, written findings on whether the proposed use:
 - 1. Will be generally consistent with the goals of the Town Comprehensive Plan, LWRP, and other adopted plans and studies;
 - 2. Will meet all relevant standards, guidelines, and requirements set forth in this Zoning Law, including any applicable additional use regulations of Article 24;
 - 3. Will be an economically viable use of the property and/or will not cause there to be any significant decrease in the future economic viability of the property;
 - 4. Will be compatible with existing uses adjacent to and near the property;
 - 5. Will provide adequate measures (such as landscaping and screening) to mitigate potential adverse impacts on surrounding property and preserve or enhance the traditional character of the Town;

6. Will not have an undue burden or effect on the orderly development and character of the neighborhood or upon the development and conduct of other lawful uses in the vicinity;
 7. Will not be a nuisance to adjacent residents and property in terms of the production of obnoxious or objectionable noise, dust, glare, odor, refuse, fumes, vibrations, traffic, crowds, parking of automobiles, unsightliness, contamination or other similar conditions;
 8. Will not cause undue harm to or destroy existing sensitive natural features on the site or in the surrounding area or cause adverse environmental impacts such as significant erosion and/or sedimentation, slope destruction, flooding or ponding of water, or degradation of water quality;
 9. Will not destroy or adversely impact significant historic and/or cultural resource sites; and
 10. Will not otherwise be detrimental to the convenience and general health, safety, or welfare of the public.
- B. Standard for Review.** Failure to meet one or more of the above criteria may result in denial of an application.

§215-43.6

SPECIAL USE PERMIT TIME LIMITATIONS

- A. Purpose.** The Town Board may impose limitations on the time period for which the special use permit is granted if, in their opinion, the temporary issuance of such permit is necessary to verify the appropriateness and compatibility of the use as proposed.
- B. Duration.** The duration of a special use permit shall of a set period of time determined by the Town Board to provide the applicant with a reasonable return on investment and allow for adequate observation of the use in standard operation.
- C. Renewal of Permit.**
 1. Special uses that have been issued a time limited permit and intend to continue operation thereafter shall be required to reapply for special use permit approval at least 30 days prior to the initial permit's expiration date.
 2. Renewal applications shall be submitted, processed, reviewed, and decided upon in accordance with the provisions of this Article.
 3. In granting special use permit renewal, the Town Board may remove or modify the conditions and time limitation of the initial permit, as deemed necessary or appropriate.
- D. Denial.** The Town Board may deny a renewal of a special use permit when any of the following apply:
 1. The petitioner has failed to comply with one or more of the conditions of the prior approval;
 2. Substantial new issues regarding the permit conditions during the operation of the use have arisen;
 3. The general requirements of this Chapter have not been met; or

4. There are changes in the area or neighborhood that would be incompatible with the special use.

§215-43.7

TRANSFER OF PERMITS

Special use permit approval shall be considered to run with the land rather than applicant. Therefore, where a change of owner, operator, or occupant occurs, the approved special use permit for the property may be transferred in accordance with the following:

- A. **Notice of Change.** The subsequent owner or occupant shall, prior to taking possession of such premises, give written notice to the Town's Planning and Development Department indicating the change of ownership or occupancy of such premises and shall execute such forms as shall be reasonably required by said Department.
- B. **Compliance with Existing Approvals and Conditions.** The subsequent owner or occupant shall continue to comply with all the conditions and provisions of the existing special use permit and any associated site plans. Written acknowledgement of and agreement to the conditions and provisions of these existing approvals shall be provided to the Town by the owner or operator with the notice of change.
- C. **Compliance with Existing Conditions.** Where modifications or alterations to the operation of the authorized special use are proposed by the applicant, a new special use permit shall be required in accordance with this Article.

§215-43.8

REAPPLICATION FOR DENIED SPECIAL USE PERMITS

A reapplication for a special use permit request which has been previously denied shall not be considered unless substantial revisions have been completed from the original application previously denied, as determined by the Town Planning Board.

Article 44. Planned Unit Development (PUD) Districts

§215-44.1

PURPOSE & INTENT

- A. The purpose of the PUD District is to use the authority granted by NYS Town Law, §261-c and NYS Municipal Home Rule Law to promote flexibility in development to better achieve community goals and to promote consistency with the comprehensive plan.
- B. The procedures herein established are intended to substitute procedural protections and substantive regulations in recognition of the fact that traditional density, bulk, spacing, and use regulations, which are useful in most instances, may impose inappropriate pre-regulations and rigidities upon the development or redevelopment of parcels or areas which lend themselves to an individual, planned approach.

§215-44.2

REZONING PROCEDURE

- A. The Town Zoning Map may be amended from time to time, by local law duly enacted by the Town Board, to provide PUD districts. The provisions of this Article establish special procedures for amending the Town Code and zoning map to permit the mapping of PUD districts and should be read in conjunction with those articles establishing district regulations.
- B. A planned unit development district may be mapped on the zoning map by the adoption of a local law by the Town Board, simultaneously with approval of a preliminary planned unit development plan in accordance with §215-44.4.

§215-44.3

COORDINATION WITH SUBDIVISION & SITE PLAN REQUIREMENTS

- A. **Subdivision Review.** If the applicant proposes the sale of lots as part of the planned unit development, the subdivision review will be carried out simultaneously with the review of the preliminary planned unit development plan, and the subdivision review conducted in any planned unit development district shall be conducted in accordance with Chapter 185, Subdivision of Land.
- B. **Preliminary and Final Plats.** The plans required under this Article must be submitted in a form that will satisfy, when applicable, subdivision requirements for preliminary and final plats.
- C. **Subdivision Standards.** The dimensional regulations, including but not limited to lot area, coverage, height, and yard setbacks, are hereby replaced by an approval process in which the Town Board, after consultation with and recommendation by the Planning Board, shall determine appropriate land use intensity and/or dwelling unit density for individual projects within the PUD as

they are proposed. The determination shall be thoroughly documented, including all facts, opinions and judgements justifying the selection.

- D. Final Site Plan.** The final planned unit development plan shall serve as the final site plan for the purposes of this Chapter.

§215-44.4

PRELIMINARY DEVELOPMENT PLAN REVIEW PROCEDURES

The procedure for the review of a preliminary planned unit development plan shall be as follows:

- A. Preapplication Meeting.** Applicants may request a preapplication meeting to review proposed planned unit development concept plans in accordance with §215-42.3.
- B. Application Submittal.**
1. Applicants shall prepare and submit a written request for rezoning to create a planned unit development district in accordance with Article 46 as well as an application for preliminary planned unit development approval in accordance with this Article.
 2. Applications for preliminary planned unit development plan approval shall include the same application requirements as described for preliminary site plan review in §215-42.9.
- C. Application Processing.**
1. Applications shall be accepted and processed in accordance with Article 40.
 2. The Town Board or Planning Board, at the time of initial review, may determine within its sole discretion that the proposed planned unit development plan is not in accordance with the goals and plans of the Town, or otherwise not in the public interest, and deny the application without further review.
- D. Planning Board Review and Recommendation.**
1. The Planning Board shall review the application with the owner to determine if it meets the standards of this Article and Chapter.
 2. The Planning Board may recommend amendments to the preliminary planned unit development plan as are deemed reasonably necessary to protect natural resources, limit impacts, protect the established or permitted uses in the vicinity and to promote the orderly growth and sound development of the Town.
 3. In making its recommendation on the proposed development and changes, if any, the Planning Board shall consider the following factors:
 - a) Conformity with the Town's Comprehensive Land Use Plan.
 - b) The need for the proposed land use in the proposed location.
 - c) The existing character of the neighborhood in which the uses will be located and the redevelopment goals as stated in redevelopment plans prepared by the Town.
 - d) The pedestrian circulation and open space in relation to structures.

- e) The traffic circulation features within the site and the amount, location and access to automobile parking areas, and the impact of the proposal on existing transportation systems.
 - f) The adequacy of the proposed public/private utilities, including water supply, sewage treatment and stormwater drainage facilities.
 - g) The height and bulk of buildings and their relation to other structures in the vicinity.
 - h) The proposed location, type and size of display signs, driveways and/or loading zones and landscaping.
 - i) The safeguards provided to minimize possible detrimental effects of the proposed use on adjacent properties and the neighborhood in general.
 - j) Impacts on the neighborhood, including preservation of resources, open space, and recreational activities, especially the preservation of important viewsheds.
 - k) Economic benefits and costs.
 - l) Such other matters as the Planning Board may consider pertinent, including but not limited to the site plan review criteria of §215-42.7.
4. The Planning Board shall recommend approval, approval with modifications or conditions, or disapproval of the application, and shall make its recommendation to the Town Board within 62 days after referral to the Planning Board, unless mutually extended by the applicant and the Planning Board.

E. Town Board Review and Decision.

1. As part of the preliminary planned unit development review, the Town Board shall prepare a proposed local law for the creation of a planned unit development district. The proposed local law shall follow the format of a model law provided by the Town Board, and any recommendations of the Planning Board may then be incorporated into the proposed local law by the Town Board.
2. The Town Board shall hold a public hearing on the proposed rezoning (draft local law) and preliminary planned unit development.
3. The Town Board, in reaching its decision on the proposal, should consider the standards of §215-46.2, this Zoning Law, and any other factors it deems reasonable.
4. Upon receipt of the Planning Board's recommendation, or 62 days after referring the application to the Planning Board, whichever is later, the Town Board may act on the application in accordance with §215-40.4.
5. Any conditions imposed by the Town Board shall run with the land and shall not lapse or be waived as a result of any subsequent change in the tenancy or ownership of any or all of said area.

- F. SEQRA Compliance.** During its review and prior to the approval of a preliminary planned unit development plan pursuant to this Article, the Town shall comply with the provisions of SEQRA.

§215-44.5**FINAL DEVELOPMENT PLANS & ISSUANCE OF PERMITS**

A. Final Development Plans.

1. Any final planned unit development plans shall be in substantial conformance with the preliminary planned unit development plans.
2. Prior to the issuance of any permits for the erection or enlargement of any buildings within a planned unit development district, final precise site and elevation plans for all buildings and landscaping within the district or approved phase of the development, shall be submitted to the Planning Board for review and recommendation to the Town Board.
3. If the initial application for approval of a preliminary planned unit development plan included final precise plans for the complete development, building permits may be issued in accordance with those plans.
4. If the preliminary planned unit development plan did not include all details, or if the applicant wishes to construct in phases or to modify the preliminary planned unit development plan, including modifying conditions, final planned unit development plans, with all required detail, shall be submitted, as required in final site plan review section of Article 42.
5. Final planned unit development plans shall be submitted to the Town Board. If the proposed final planned unit development plan deviates, in the Town Board's determination, significantly from the preliminary planned unit development plan, the Town Board may elect to treat the proposed final planned unit development plan as an amended preliminary planned unit development plan and restart the Planning Board review and public input process and reconsideration of a new preliminary and/or final planned unit development plan, or relevant portion thereof.
6. Changes/deviations that may be considered significant or substantial shall include, but not be limited to, the following:
 - a) Changes in traffic patterns, access, or circulation, including vehicular or pedestrian, or road standards.
 - b) An increase in density.
 - c) Changes in building height.
 - d) Reductions of proposed open space and/or buffering/screening of adjacent properties.
 - e) Changes in total bedroom counts of more than 5%.
 - f) Changes in bedroom mixes of more than 5%.
 - g) Changes in the development schedule.
 - h) Changes in the final governing agreements, provisions, or covenants, or increased impacts on natural features.
 - i) Changes in phasing, if applicable.
 - j) Changes in proposed use or mix of uses, especially to more intensive uses (e.g., impact to traffic, land coverage, any other impacts to other elements listed).

7. In connection with the review of final planned unit development plans, deviations in any of the conditions previously established may be authorized pursuant to the provisions of this Chapter.
- B. **Permits.** Except as approved by the Town Board, no permit shall be issued for grading, or for the erection, enlargement, or maintenance of buildings or structures in a planned unit development district, and no person shall perform any such development or construction work, except in full compliance with the final development plans approved as herein provided.

§215-44.6

TERMINATION OF APPROVAL

- A. **Termination.** If after one year from date of a preliminary planned unit development plan approval a final planned unit development plan approval has not been received, or if after one year from date of a final planned unit development plan approval substantial site work has not begun, the approvals given under the terms of this Article shall terminate.
- B. **Resubmittal of Final Site Plan.** The land shall remain zoned as a planned unit development district until removed by subsequent adoption of a local law by the Town Board, but no building permits may be issued or construction activity occur until a new or amended final planned unit development plan approval is approved pursuant to the provisions of this Article.
- C. **Extensions.** The applicant may, for valid reasons, request an extension of time from the Town Board from these deadlines, which may be granted in the sole discretion of the Town Board.

Article 45. Variances & Appeals

§215-45.1

VARIANCES & APPEALS

The rules, regulations, and procedures of NYS Town Law §267 shall apply to all applications for variances, appeals, and interpretations considered under this Zoning Law. The following requirements are provided for ease of reference. In the case of conflicts with or amendments to NYS Town Law, the state regulations shall supersede the regulations of this Article.

- A. Authorized Review Body.** The Zoning Board of Appeals (ZBA) shall have the power to review and decide upon all appeal, variance, and interpretation applications.
- B. Application Processing.** All matters for review by the ZBA shall be submitted and processed in accordance with Article 40 of this Chapter.
- C. Application Requirements.** All applications before the ZBA shall include the materials identified on the Town's application forms or otherwise requested by the Code Enforcement Officer to allow for an adequate and informed review.
- D. ZBA Action.** The ZBA shall review and decide upon applications in accordance with §215-40.4.
- E. Review Criteria.** In conducting their review of variances, the ZBA shall consider the criteria only as provided by this Article and NYS Town Law.
- F. Public Hearings.** A public hearing shall be held by the ZBA for all appeal and variance applications.
- G. Referrals.** All internal, professional, and required referrals shall be made in accordance with §215-40.6.
- H. Coordinated Reviews.** The review of variance applications may be coordinated with other development applications in accordance with §215-40.5.

§215-45.2

USE VARIANCE REVIEW CRITERIA

The ZBA shall not grant a use variance without the applicant having shown that applicable zoning regulations and restrictions have caused unnecessary hardship. In order to prove such unnecessary hardship, the applicant shall demonstrate that for each and every permitted use under the zoning regulations for the particular district where the property is located the following conditions exist:

- A.** The applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence;
- B.** The alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood;
- C.** The requested use variance, if granted, will not alter the essential character of the neighborhood; and
- D.** That the alleged hardship has not been self-created.

§215-45.3**AREA VARIANCE REVIEW CRITERIA**

In making its determination, the ZBA shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination the ZBA shall consider the following:

- A.** Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance;
- B.** Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance;
- C.** Whether the requested area variance is substantial in relation to the requirement;
- D.** Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and
- E.** Whether the alleged difficulty was self-created; which consideration shall be relevant to the decision of the ZBA but shall not necessarily preclude the granting of the area variance.

§215-45.4**MINIMUM VARIANCE ALLOWABLE**

The ZBA, in the granting of variances, shall grant the minimum variance that it shall deem necessary and adequate to address the hardship proved by the applicant and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

§215-45.5**APPEALS PROCEDURE**

Appeals may be taken by any person aggrieved by the Code Enforcement Officer or other Town official's decision or action; or by an officer, department, or other review body of the Town. Said appeal shall be filed in accordance with the following:

- A.** A petition shall be taken within 60 days after the filing in the Town Planning and Development Department of any order, requirement, decision, interpretation, or determination of a review body authorized under this Chapter.
- B.** The ZBA shall specify the grounds of said petition and relief sought.
- C.** The Code Enforcement Officer or Director of Planning and Development shall transmit to the ZBA all papers constituting the record upon which the action appealed from was taken. The Code Enforcement Officer shall, within five days, notify any petitioner of the denial of a petition presented to the Building Department for a building permit on account of violation of the Zoning Law.
- D.** An appeal stays all proceedings in furtherance of the action appealed from unless the Code Enforcement Officer, after the notice of appeal shall have been filed with him, certifies to the ZBA that, by reason of acts stated in the certificate, a stay would, in his opinion, cause imminent peril to life or property. In which case proceedings shall not be stayed otherwise than by a restraining order granted by the ZBA, Town Board, or by a court of record on application, on notice to the Code Enforcement Officer and on due cause shown.

Article 46. Amendments

§215-46.1

ZONING AMENDMENTS (REZONINGS)

- A. Authority to File.** Amendments to the zoning text or zoning map (rezonings) may be initiated by the Town Board, recommendation of the Planning Board, or petition presented to the Town Board in accordance with NYS Town Law.
- B. Application Processing.** All applications shall be submitted and processed in accordance with Article 40 of this Chapter.
- C. Application Requirements.** All rezoning applications shall include the materials identified on the Town's application forms or otherwise requested by the Director of Planning and Development.
- D. Planning Board Review and Recommendation.** The Planning Board shall conduct a review of amendment applications and provide a written recommendation of decision to the Town Board in accordance with §215-40.4.
- E. Town Board Review and Decision.** Upon receipt of a recommendation from the Planning Board, the Town Board shall review and decide upon the application in accordance with §215-40.4. If the Town Board approves the rezoning the text and/or map shall be amended after publication as required by NYS Law.
- F. Review Criteria.** In conducting their review, the Planning Board and Town Board shall consider the criteria provided by §215-46.2.
- G. Public Hearings.** A public hearing shall be held by the Town Board prior to issuing a decision on the rezoning.
- H. Referrals.** All internal, professional, and required referrals shall be made in accordance with §215-40.6.
- I. Coordinated Reviews.** The review of amendments may be coordinated with other development applications in accordance with §215-40.5.

§215-46.2

REVIEW CRITERIA

In reviewing zoning amendments the Planning Board and Town Board must consider the following criteria:

1. Whether the proposed amendment corrects an error or inconsistency in the zoning law or meets the challenge of a changing condition;
2. Whether the proposed amendment is in substantial conformance with the adopted plans and policies of the municipality;
3. Whether the proposed amendment is in the best interests of the municipality as a whole;
4. Whether public facilities (infrastructure) and services will be adequate to serve development allowed by any requested rezoning;
5. Whether any rezoning will substantially harm the public health, safety or general welfare or the value of nearby properties;

6. Whether any rezoning is compatible with the zoning and use of adjacent property;
7. Whether the property in question is suitable for the uses and development to which it has been restricted under the existing zoning regulations; and
8. Whether the gain, if any, to the public health, safety and general welfare due to denial of the application outweighs that of the hardship imposed upon the landowner, if any, as a result of denial of the application.