

ARTICLE 9  
**PLANNING BOARD: SPECIAL USE PERMITS AND SITE PLAN REVIEW AND  
APPROVAL**

Pursuant to the city laws and in accordance with the general City Law of the State of New York, as amended, the city shall have a planning board. The planning board will consist of seven members appointed by the mayor with the approval of a majority of the common council. The term of office is seven years. Appointments will be in a manner so that one member's term expires each succeeding year. If a vacancy occurs for a reason other than the expiration of a term, it will be filled by mayoral appointment for the remainder of the unexpired term. Members must be residents of the city. Members may not be members of the common council. The mayor and common council may provide for compensation to be paid to members, experts, clerks, and a secretary and provide for such other expenses as may be necessary and proper, not exceeding the appropriation made by the mayor and common council for his purpose. The mayor will designate a chairperson from among the members of the planning board, and in the absence of the chairperson, the planning board may designate a member to serve as chairperson. The appointment of chairperson is for a one-year term.

**Sec. 9.0. Special uses.**

9.0.1 Purpose and intent. The purpose of special use approval is to allow the proper integration into the community of uses which may be suitable only under certain conditions and at appropriate locations. Because of their unusual characteristics, or the special characteristics of the area in which they are to be located, special uses require special consideration so that they may be properly located with respect to the objectives of this zoning chapter and their effect on nearby properties.

9.0.2 Authorization to grant or deny special uses. The planning board is hereby authorized to approve special uses. The special uses listed in this zoning law may be permitted, enlarged, or otherwise altered upon authorization by the planning

board in accordance with the standards and procedures set forth in this section. In permitting a special use or the modification of a special use, the planning board may impose those standards and requirements expressly specified by this law and any additional conditions which the planning board considers necessary and reasonable to protect the best interests of the surrounding property, the neighborhood, or the city as a whole. These conditions may include, but are not limited to, size or controlling the location and number of vehicle access points, increasing the street width, limiting the number, size and location of signs, limiting hours of operation, and required fencing, screening and landscaping or other facilities to protect adjacent or nearby property. In the case of a use existing prior to the effective date of this law change in use or in lot area or an alteration of structure shall conform with the requirements dealing with special uses.

The duration of an approved special use permit shall be six months or such greater period not to exceed one year as may be specified in the approval by the planning board. Special use permit approval may be renewed by the planning board for a period of six months upon written application to the planning board and copies to the code enforcement officer, such application to be submitted prior to the expiration of the special use permit approval period.

On application, and after public notice and hearing, the planning board may authorize the issuance by the code enforcement officer of permits for any of the special uses for which this law requires such permits.

#### 9.0.3 Procedures for special uses.

- a. A property owner(s) or his agent(s) may initiate a request for a special use or modification of a special use by filing an application which includes a legal description of the property, a proposed current site plan showing the size and location of the lot, the location of all buildings and proposed facilities, including access drives, parking areas and all streets within 250 feet of the lot, plans and elevations necessary to show the proposed development, other drawings or information necessary to an understanding of the proposed use and its relationship to surrounding properties and a filing fee.
- b. In the case where a special use has been approved a building permit shall be issued after the granting of the special use by the planning board, and then only in accordance with the terms and conditions of the special use permit.
- c. Before a special use is permitted the proposed special use shall be subject to public notice and a public hearing, pursuant to the procedures specified in section 9.1.6.
- d. The planning board, on its own motion, may revoke any special use permit for non-compliance with conditions set forth in the granting of said permit after first holding a public hearing and giving notice of such hearing. The forgoing shall not be the exclusive remedy and it shall be unlawful and punishable for any person to violate any condition imposed by a special use permit. In such cases a period of 60 days shall be granted the applicant for full compliance prior to revocation of the said permit. In cases where there is imminent danger to the public health, safety or welfare, the revocation of the special use permit shall be immediate.
- e. The planning board may require that special use permits be periodically renewed after notice and a public hearing to determine if the original conditions have been complied with or whether conditions have changed since the original special use permit was granted.
- f. The planning board may, at its discretion, waive any submission requirements which it deems to be not relevant to the proposed use and site.

9.0.4 Standards governing special uses. A special use shall comply with the standards of the district in which it is located. In approving such uses, the planning board shall take into consideration the public health, safety and welfare and comfort and convenience of the public in general and of the residents of the immediate neighborhood in general and shall, to the maximum extent possible further the expressed intent of this law and the accomplishment of the following objectives:

- a. In order to grant any special use, the planning board shall find that the request is in harmony with the general purpose and intent of this zoning law, taking into account the location and size of use, the nature and intensity of the operations involved in or conducted in connection with the use and the size of the site with respect to streets giving access thereto.
- b. In order to grant any special use, the planning board shall find that the establishment, maintenance, or operation of the use applied for, under the circumstances of the particular case, will not be detrimental to the health, safety or general welfare of persons residing or working in the neighborhood of such proposed use or will not be detrimental or injurious to the property and improvements in the neighborhood or to the general welfare of the city.
- c. The proposal will not result in the destruction, loss, or damage of any natural, scenic or significant historical resource.
- d. The proposal will not create excessive additional requirements of public cost for public facilities and services; and will not be detrimental to the economic welfare of the community.
- e. The proposal will be served adequately by essential public facilities such as highways, streets, police and fire protection, stormwater drainage, water and sewer, schools or that the applicant for the proposed special use shall otherwise provide that these services be adequately obtained.
- f. The proposal essentially conforms with the comprehensive development plan.
- g. All proposed structures, equipment or material shall be readily accessible for fire and police protection.
- h. The proposed use shall be of such location, size, and character that, in general, it will be in harmony with the appropriate and orderly development of the district in which it is proposed to be situated and shall not be detrimental to the orderly development of adjacent properties, in accordance with the zoning classification of such properties.
- i. The proposal conforms to all applicable requirements of article 10, "Development guidelines".

In addition to the above, in the case of any use located in, or directly adjacent to, a residential district:

- a. The location and size of such use, the nature and intensity of operations involved in or conducted in connection therewith, its site layout and its relation to existing streets shall be such that both pedestrian and vehicular traffic to and from the use and the assembly of persons in connection therewith will not be hazardous or inconvenient to, or incongruous with, the said residential district or conflict with the normal traffic of the neighborhood.
- b. The location and height of buildings, the location, nature and height of walls and fences, and the nature and extent of landscaping on the site shall be such that the use will not hinder or discourage the appropriate development and use of adjacent land and buildings.

**Sec. 9.1. Site plan review and approval.** [L.L. No. 42-00, § 3, 6-22-2000; L.L. No. 602, § 1, 11-12-2002; L.L. No. 1-08, § 1, 1-14-2008]

9.1.0 Intent. The intent of site plan approval is to authorize the city's planning board to review and approve site plans for uses otherwise permitted by this law in order to determine full compliance with the intent of the standards of this law. The objective is to evaluate site plans in order to minimize conflicts between the site layout and design of proposed uses and existing uses and natural site conditions and thereby minimize any adverse effects affecting the health, safety, and overall welfare of the community.

9.1.1 Authorization. The power to approve, approve with modification, or disapprove site plans for as required by this chapter is vested in the city's planning board. Section 27 of the General City Law of New York State provides legislative authority for the common council to authorize the planning board to review and approve site plans. Prior to issuing a building permit for construction, expansion or change in use of any use, a site plan and supporting documentation shall be submitted to the planning board for its review and approval. The planning board may require that the site plans be prepared by a licensed architect or engineer. Such requirement shall be based on the complexity of the site features and of the proposed structure(s) or land use as related to same.

9.1.2 Applicability and exceptions. Under this article, all new development or land use activities within the city shall require site plan review before being undertaken, except the following:

1. Construction or expansion of a single one-family or two-family dwelling and ordinary accessory structures, and related land use activities.
2. Landscaping or grading which is not intended to be used in connection with a land use reviewable under the provisions of this law.
3. Ordinary repair or maintenance or interior alterations to existing structures or uses.
4. Exterior alterations or additions to existing structures which would not increase the square footage of the existing structure by more than 500 square feet.
5. Agricultural or gardening uses not involving substantial timber cutting.
6. All signs (except in conjunction with new development).
7. Garage, lawn and porch unless:
  - a) They last more than three days; or
  - b) They are held at the same place more than three times within 12 months.

9.1.3 Concept plan conference. Concept plan submittal is optional and may be waived by the planning board. The purpose of concept plan submittal is to encourage the person applying for a use to consult early and informally with the planning board in order to save time and money and to make the most of opportunities for desirable development.

9.1.3.1 Requirements. A concept plan, if prepared, shall be submitted in triplicate to the planning board. Before preparing a concept layout, the developer may discuss with the planning board the general requirements as to design of streets, reservations of land, drainage, sewage, water supply, fire protection, and other improvements as well as procedural matters.

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 Cattaraugus County Highway Superintendent at the concept layout stage in order to resolve problems of street openings or storm water drainage at the earliest possible stage in the design process. The planning board shall provide written comments on the concept plan of a proposed development and in the course of its review may consult with other interested public agencies.

The concept plan shall include the following information:

1. An area map showing:
  - a. Applicant's entire holdings, that portion of the applicant's property under consideration for development and any adjacent parcels owned by the applicant.
  - b. All properties, their ownership and uses, subdivisions, streets, zoning districts, easements, and adjacent buildings within 500 feet of the applicant's property.
2. A site development plan, including but not limited to:
  - a. Existing natural features such as water bodies, watercourses, wetlands, wooded areas, individual large trees, flood hazard areas.
  - b. Zoning districts, school districts.
  - c. Special improvement districts (water, sewer, lights, fire, drainage and the like).
  - d. Easements.
  - e. All existing built features.
  - f. All proposed buildings, structures and public improvements.
3. A map showing the topography of the site.
4. A soils overlay, if general site grades exceed 10% or if portions of the site have susceptibility to erosion, flooding or ponding.

The requirement for submission of these documents may be waived at the sole discretion of the planning board.

9.1.4 Preliminary site plan application. Application for preliminary site plan approval shall be made in writing in triplicate to the code enforcement officer. The code enforcement officer shall notify the city clerk of receipt of the application and

shall refer the application to the planning board for its review and approval. For the purposes of this law, the submission date shall be the date of the first planning board meeting following submission to the code enforcement officer.

9.1.5 Preliminary site plan requirements. The preliminary site plan application shall include the information listed below. The planning board may at its discretion waive any preliminary requirements which are not relevant to the proposed use and site.

1. An area map showing that portion of the applicant's property under consideration for development, any adjacent parcels owned by the applicant, and all streets, zoning districts, easements and adjacent buildings within 500 feet of applicant's property.
2. A preliminary site plan shall include the following information:
  - a. Title of drawing, including the name and address of the applicant.
  - b. North arrow, scale and date.
  - c. Boundaries of the project at a scale of not more than 200 feet to one inch.
  - d. Existing natural features such as watercourses, water bodies, wetlands, wooded areas and individual large trees, showing features to be retained.
  - e. Existing and proposed contours at intervals of not more than 10 feet.
  - f. Location of proposed land uses and their areas in square feet or acres, the uses proposed and the height of each proposed structure.
  - g. Location of all existing or proposed site improvements including streets, drains, culverts, retaining walls, fences and easements, whether public or private.
  - h. Description of sewage disposal and water systems and the location proposed for such facilities.
  - i. Provision for buffer areas and other landscaping.
  - j. Delineation of residential areas, if proposed, indicating the general extent of each area, a description of the dwelling unit types proposed, and a calculation of residential density in dwelling units per gross acre for each such area.
  - k. Location of all parking and truckloading areas, showing access and ingress drives.
  - l. The location, design and size of all signs and lighting facilities.
  - m. The approximate locations and dimensions of areas proposed for neighborhood parks or playgrounds, or other permanent open space.
  - n. Building orientation, footprint and elevations.
  - o. The location and design of all energy distribution facilities, including electrical, gas and solar energy.

- p. Provision for energy efficiency.
  - q. Grading and erosion control measures including the proposed location of sediment sink/settling pond and interceptor swales, etc.
  - r. Location and design for stormwater management facilities.
  - s. A drainage report including supporting design data and copies of the engineering computations used to determine the design capacities and performance requirements of drainage facilities.
  - t. The lines and dimensions of all property which is offered, or is to be offered, for dedication for public use, with the purpose indicated thereon, and of all property that is proposed to be reserved by deed covenant for the common use of the property owners of the development.
3. The planning board may require additional information which appears necessary for a complete assessment of the project.
4. The planning board's review of the preliminary site plan shall include, but is not limited to the following considerations:
- a. Adequacy and arrangement of vehicular traffic access and circulation, including emergency vehicle access.
  - b. Location, arrangement, appearance and sufficiency of off-street parking and loading.
  - c. Location, arrangement, size and design of buildings, lighting and signs.
  - d. Relationship of the various uses to one another and their scale.
  - e. Adequacy, type and arrangement of trees, shrubs and other landscaping constituting a visual and noise buffer between adjacent uses and adjoining lands.
  - f. Adequacy of storm water and sanitary waste disposal.
  - g. Adequacy of structures, roadways and landscaping in areas susceptible to flooding and ponding or erosion.
  - h. Compatibility of development with natural features of the site and with surrounding land uses.
  - i. Adequacy of floodproofing and flood prevention measures consistent with the flood hazard prevention regulations of the Federal Emergency Management Agency (FEMA).
  - j. Adequacy of building orientation and site design for energy efficiency. The extent to which the proposal plan conserves energy use and energy adequate sunlight for use by solar energy systems.
  - k. Adequacy of open space for play areas, informal recreation and the retention of natural areas such as wildlife habitats, wetlands and wooded areas.

- l. Adequacy of pedestrian access, circulation, convenience and safety, including compliance with the requirements for access by the physically challenged which are incorporated in the American Disabilities Act (ADA).
- m. Those requirements that apply that are found in Article 10.

In its review of a preliminary site plan, the planning board may consult with the code enforcement officer, fire and police departments, other local and Cattaraugus County officials, and any designated private consultants, in addition to representatives of federal and state agencies including, but not limited to, the soil conservation service, the New York State Department of Transportation (NYSDOT) and the New York State Department of Environmental Conservation (NYSDEC).

9.1.6 Public hearing. Upon the planning board's certification that the preliminary site plan application is complete and satisfactory, the planning board shall schedule a public hearing. Applicants are required to mail notices of such public hearings to the owners or occupants of all lands within a radius of 250 feet from any part of the property for which site plan review is requested. Such notices shall be postmarked at least 10 days prior to the date scheduled for the public hearing.

9.1.7 Notification of decision on preliminary site plan. Within 45 days of the public hearing at which a preliminary site plan is considered, the planning board shall act upon it. The planning board's action shall be in the form of a written statement to the applicant stating whether or not the preliminary site plan is approved, conditionally approved, or disapproved. A copy of the appropriate minutes of the planning board shall be a sufficient report. The planning board's statement may include recommendations as to desirable revisions to be incorporated in the final site plan application. If the preliminary layout is disapproved, the planning board's statement will contain the reasons for such findings. In such a case the planning board may recommend further study of the proposal and resubmission of the preliminary site plan.

9.1.8 Final site plan application. After receiving approval, with or without conditions, from the planning board on a preliminary site plan, and approval for all necessary permits and curb cuts from the director of public works and responsible local, county and state officials, the applicant may prepare its final site plan and submit it to the planning board for its review and approval. The planning board, at its discretion, may waive the concept and final application procedure.

If more than one year has elapsed between the time of the planning board's report on the preliminary site plan and submission by the applicant of a final site plan application, and if the planning board finds that conditions have changed significantly in the interim, the planning board may require a resubmission of the preliminary site plan for further review and possible revisions prior to accepting the proposed final site plan application for review. The final site plan shall conform to the approved preliminary site plan, and shall incorporate any revisions or other features that may have been recommended by the planning board at the preliminary review. All revisions shall be clearly indicated by the applicant.



9.1.9 Notification of decision on final site plan. Within 62 days of the submission of the final site plan, the planning board shall render a decision.

1. Upon approval, the planning board shall endorse its approval on a copy of the final site plan and shall forward it to the code enforcement officer who shall then issue a building permit if the project conforms to all other applicable requirements.
2. Upon disapproval, the planning board shall so inform the code enforcement officer and he shall deny a building permit. The planning board shall also notify the applicant in writing of its decision and its reason for disapproval. A copy of the appropriate minutes may suffice for this notice.
3. Specifications for improvements shown on the site plan shall be those set forth in this law and in other laws, rules and regulations, or in construction specifications of the city.

9.1.10 Time restriction for action on final site plan. The duration of an approved site plan shall be six months or such greater period not to exceed one year as may be specified in the approval by the planning board. Site plan approval may be renewed by the planning board for a period of six months upon written application to the planning board and copied to the code enforcement officer, such application to be submitted prior to the expiration of the site plan approval period.

9.1.11 Failure to comply with any condition of the site plan approval shall constitute a violation of the zoning law subjecting the applicant or any successor in interest in the property for which site plan approval was granted to all penalties set forth in Article 17 of the Zoning Law. The applicant, or any successor in interest the property for which site plan approval was granted shall be required to appear before the planning board for review of the conditions of site plan approval within 30 days. The planning board upon such review may remove or amend the conditions of site plan approval.

## **Sec. 9.2. Appeal.**

The applicant or any interested person may appeal a decision of the planning board. The appeal is made to the Supreme Court for review by a proceeding under Article 78 of the Civil Practice Law and Rules. Such proceedings shall be instituted within 30 days after the filing of a decision on a special use permit or site plan review application.

## **Sec. 9.3. Fees for required special use permits or site plan review.**

The common council may require the payment of fees to the city by applicants whose proposals require special use permits or site plan review as described by this article. Fees for special use permits or site plan review in accordance with this article shall be established from time to time by law of the common council.