

Town of Enfield
Planning Board Meeting Minutes
January 4, 2012
Enfield Community Building

PRESENT: Virginia Bryant, Mike Carpenter, Ann Chaffee, Stephen Givin, Calvin Rothermich, Marie Vandemark, Dan Walker

STAFF: Alan Teeter/Building Code Enforcement Officer
Sue Thompson/Planning Board Recording Secretary

Meeting called to order at 7:05 p.m.

Ann Chaffee made a motion to accept the minutes of the December 7 meeting with the following changes: Site Plan change to Site Plan Review Law. Dan Walker seconded the motion. Minutes passed unanimously.

Marcie Finlay, a local Ithaca Lawyer was introduced to the Board. Marcie is interested in helping the Board with an Aquifer Study for the town. She discussed the process of the USGS Survey which was done by Todd Miller, hydrologist with the U.S. Geological Survey New York Water Science Center. A grant to provide funding support for an Aquifer Study for the town would involve the U.S.G.S., Tompkins County and Enfield. The Town of Enfield Town could also look for funding support from local legislative offices. Usually these grant contracts are flexible with payments. The survey would focus on aquifers, creeks, feeder water, test wells, and protection of water.

Virginia Bryant will work with Marcie Finlay and Todd Miller to find out what monies are available and how the Board should start the grant process.

The Site Plan Review Law was discussed involving protection of the town, agriculture vs non-agriculture terms. Environmental Sensitive Areas term was discussed referring to page 2 of the Law. The question of what happens if a definition is made for Environmental Sensitive areas and what happens if other areas are left out. It was decided that a solid definition of sensitive areas is better. The statement to the Environmental Sensitive areas will be left in and to let the Town Board decide if they want a closer definition.

Virginia Bryant and Mike Carpenter took turns reading the Site Plan Review Law (SPRL) out loud to the Board.

There was discussion on the Wind Towers and if they were covered in the SPRL. Reference to Page 3 – Section 2.1, No. 5. The Towers are covered by the Wind Law of the Town.

The following changes were decided on by the Planning Board:

Page 3 – Section 2.1

1. ~~Construction of any large (10,000 square feet or more) for commercial or industrial use or structure.~~ Construction of any commercial or industrial Structure equal to or in excess of 10,000 ft². Such footage shall be calculated by considering the footage of all structures on the site, including parking areas.

Page 4 – Section 2.3 Delete the wording “and distinctiveness”

Page 6 - 0. Delete wording from ” Topsoil moved” to end of paragraph.

Page 6. Delete P

Page 7. Delete Q

Page 7. Delete R. The Board felt “R” was adequately covered by Article IV page 11/12

Page 14 No. 1 – There was discussion that a large corporation may not be effected by small fees. That perhaps the fees should reflect the state level fees of \$2,000 for the first violation. Mike Carpenter reported a violation of DEC law is a \$40,000 fine. A comment was made that perhaps a higher fee will encourage communication. It was recommended the Town Board needs to look into the fee schedule and periodically review, set and post their current application fees. Virginia Bryant will check with Roy Barriere regarding this schedule of fees.

Virginia Bryant will submit the final changes of the Site Plan Review Law to Roy Barriere and the Enfield Town Attorney. There will also be a statement made that this is the final submission of the Law by the Planning Board to the Town Board.

Dan Walker made a motion to adjourn the meeting. Calvin Rothermich seconded the motion. Meeting adjourned at 9:25 p.m.

Respectfully submitted,
Sue Thompson
Recording Secretary

Additional Ending Note: The final version of the Site Plan Review Law submitted to Roy Barriere by Virginia Bryant is attached.

Town of Enfield
Site Plan Review Law
Local Law # __ of 2011

BE IT ENACTED by the Town Board of the Town of Enfield, County of Tompkins, State of New York, as follows:

ARTICLE 1
INTRODUCTORY PROVISIONS

Section 1.0 - SHORT TITLE - This local law shall be known as the “Site Plan Review Law,” or simply as the “Local Law” herein.

Section 1.1 – AUTHORITY - This Local Law is adopted pursuant to the authority and provisions of § 10 of the Municipal Home Rule Law, § 10 of the Statute of Local Governments, and Town Law Article 16, including §§ 268 and 274-a therein.

Section 1.2 – PURPOSE - The purpose and intent of this Local Law is to: protect the value of land throughout the Town; to encourage orderly and beneficial development of land; to prevent the pollution of air and water; to assure the adequacy of proper drainage methods; to provide for the preservation of open spaces; to abate and mitigate nuisances; to encourage the orderly development of land and the preservation of natural features, topography, and resources; and to generally protect the health, safety and public welfare of the residents of the Town. This Local Law seeks to assure a balance between development rights and activities and their impacts and the effects of such development activities upon the residents and the environment of the Town, such as by and through the mitigation of potential negative impacts resulting from development activities in certain environmentally sensitive areas, as well as through identifying and minimizing certain adverse effects of unregulated development upon drainage, traffic, public utilities, surface and ground water quality, wildlife habitat and other natural and public resources, and the need for and provision of community services. The Town has determined that certain uses, while allowed, need to be evaluated relative to their suitability to and compatibility with natural site conditions and

surrounding land uses. Thus, the intent of this Local Law is to promote the conservation, preservation, and development of the Town, while also helping to prevent and mitigate certain unwanted and deleterious impacts that may arise from the unregulated development of land for certain allowed uses. It is not the intent of this Local Law to allow or disallow any legal land uses, but instead to identify those which may have impacts that can or should be regulated to achieve the goals of this Local Law.

Section 1.3 – SUPERSESSSION - The provisions of Town Law § 274-a are expressly hereby superseded to the extent required to give effect to the terms, requirements, and procedures set forth in this Local Law, particularly, but not exclusively, as pertains to the timelines for review and the scope of, and requirements for, plans, applications, and maps. No requirements or powers conferred upon the Town under the Town Law, or under any other laws of the State of New York, are waived or superseded by their inclusion or exclusion herein, including, but not limited to, the right of the Town to require the dedication of open spaces, recreational areas, or to require or accept payments in lieu thereof.

Section 1.4 DEFINITIONS – the following terms shall have the following meanings when set forth in this Local Law:

- A. ACE: the Unites States Army Corps of Engineers.
- B. Applicant: any person or entity responsible for submitting a Site Plan application for review by the Planning Board, or otherwise responsible for compliance with the terms, conditions, and requirements of this Local Law.
- C. Building: a structure wholly or partially enclosed within exterior walls, or within exterior party walls, and a whole or partial roof, affording shelter to persons, animals, or property.
- D. CEO: the code enforcement officer of the Town.
- E. DEC: the New York State Department of Environmental Conservation.
- F. DOT: the New York State or United States Department of Transportation.
- G. EAF: a SEQRA Environmental Assessment Form.
- H. EIS: a SEQRA Environmental Impact Statement.
- I. Planning Board: the Planning Board of the Town.

J. SEQRA: the New York State Environmental Quality Review Act, codified in the Environmental Conservation Law at Article 8, and including Title 6 of the New York Codes, Rules and Regulations, Part 617.

K. Site Plan: a rendering, drawing, sketch, written plan, map, survey, or similar documents, prepared to specifications as required by and under this Local Law, which shows the arrangement, layout, and design of the proposed uses of land as shown upon such plan, together with supporting data and information as required by this Local Law, or as is reasonably requested or necessary in the discretion of the CEO and/or Planning Board, to render such plan complete and ready for review by the Planning Board.

L. Structure: an assembly of materials located on or permanently affixed to the ground, directly or indirectly, usually including underground parts, such as a foundation, and above ground parts. A Building is one type of structure.

M. Town: the Town of Enfield, in Tompkins County, New York.

N. Town Board: the Town Board of the Town.

O. Wetland: Any jurisdictional or mapped wetland identified by the DEC or ACE, together with its supporting waterways, water bodies, and drainageways, whether above or below ground, and including any other area that, based upon its hydrological, soil, and flora and fauna characteristics constitutes a wetland ecosystem as defined by DEC regulations and/or the delineation standards promulgated by the DEC.

ARTICLE II

APPLICABILITY, EXEMPTIONS AND REVIEW STANDARDS

Section 2.0 - GENERAL AUTHORIZATION - The Town Planning Board is hereby authorized to review and approve, approve with modification, or disapprove Site Plans in accordance with the provisions, standards and requirements of this Local Law. The Planning Board shall have the authority to impose such reasonable conditions and restrictions as are related or incidental to a proposed Site Plan. Upon approval of the Site Plan, any conditions must be met before the issuance of any permits unless expressly stated otherwise upon the Site Plan or in any Planning Board approval of such Site Plan.

Section 2.1 – APPLICATION TO LAND AND PROJECTS -

A. This Local Law applies to the following development and land activities:

2. **Construction of any large (10,000 square feet or more) for commercial or industrial use or structure.** ~~Construction of any commercial or industrial Structure equal to or in excess of 10,000 ft². Such footage shall be calculated by considering the footage of all structures on the site, including parking areas.~~
3. Construction of three or more dwelling units on one parcel of land.
4. Expansion of any non-agricultural Structure by 5,000 ft² or more.
5. Any project that includes the excavation, grading, or filling of one acre or more for non-agricultural purposes.
6. Construction and/or erection of any communication or other tower more than 100' above ground level, except for temporary towers having negligible or no permanent impact on the environment for which permits have been granted.
7. Construction or land disturbance activities whenever located within a wetland, a mapped flood plain, or a designated or identified Critical Environmental Area ("CEA") or Unique Natural Area ("UNA").

B. The following development and land activities are exempt from the application of this Local Law:

1. Construction of single and two family dwellings, unless located within a Wetland, a mapped flood plain, or a designated CEA or identified UNA.
2. Land use activity that occurs in the course of normal agricultural or timbering operations as pursuant to sections 305-A and 308 of the Agriculture and Markets Law.

Section 2.2 - GENERAL CONSIDERATIONS -

A. The Planning Board's review of the materials submitted shall include, as appropriate, the following considerations:

1. The design, layout, and adequacy of access for fire and emergency vehicles, equipment, and personnel.
2. The design, layout, and adequacy of traffic and pedestrian access, and egress, and related issues of safety and circulation, both on-site and off-site. This includes consideration of parking and loading areas, and the design and location of signs.
3. The impacts on neighboring properties, and the mitigation of the same through the imposition of reasonable conditions and/or the use of landscaping, screening, and/or buffering.
4. The design, layout, and adequacy of building materials, landscaping, necessary utilities and appurtenances, and stormwater and drainage facilities.
5. The impacts to or upon sensitive environmental area(s), such as Wetlands, streams, ponds, UNAs, CEAs, and other waterbodies and unique natural areas.
6. The need for and/or provision of parks, recreational areas, and open spaces, including payments in lieu thereof.
7. The design and layout of any lighting for the proposed project.
8. The proposed hours of operation for any commercial or business facility.

Section 2.3 - GENERAL STANDARDS OF REVIEW - In reviewing an application for approval of a Site Plan, the Planning Board will be guided by the existing characteristics and conditions of the site, its surroundings, and the character of the surrounding neighborhood, by any particular design objectives of the Applicant, and by the quality and distinctiveness of the proposal. Additionally, and for each Site Plan, the Planning Board shall weigh and consider the general standards listed in this section, as applicable, and other specific concerns related to a particular site as may be identified by the CEO or the Planning Board.

A. Special attention shall be given to proper site drainage so the runoff of stormwater will not adversely affect neighboring properties or produce erosion, downstream flooding, or excessive turbidity in any nearby stream or body of water. Development on erodible soils, or on slopes of greater than 10%, shall be designed to minimize erosion both during and after construction.

B. No commercial or industrial building or use shall be located less than 50 feet from the lot line of another property owner.

C. A landscaped buffer strip planted along lot lines, or at other locations, or other screening or fencing, may be required by the Planning Board.

D. To preserve visibility at road intersections and enhance safety, no structures or fences or plantings should be permitted or occur within 50' of any intersection of any roadways, whether public or private roads.

E. An adequate amount of off-street parking shall be provided for the proposed use, and no off-street parking space shall be less than 10' from the road right-of-way.

F. All loading and unloading areas and outside storage areas, including areas for the storage of trash or dumpsters, that face or are visible from a public road or a neighboring property shall be screened from public view by vertical screening at least 6' in height. A landscape buffer, or a combination of landscaping and fencing, may be used to provide the required screening.

G. Multiple or extra-wide driveway cuts to provide access to any site shall be avoided in the site design whenever possible. On corner lots, within 200' of any intersection, or upon any grade or curve, the location of the driveway, roadway, or access/egress cuts, and the design and layout of the same, shall be approved by the Planning Board only after review and comment thereupon by the Town Highway Superintendent. Shared driveways or accessways shall be subject to appropriate easements for all lots and owners, and, as appropriate, subject to the review and comments of the Town Highway Superintendent, and if applicable, the NYSDOT.

H. Access and circulation plans for vehicular traffic, including roadway and intersection design, traffic controls, signage and lighting, shall be adequate to handle expected traffic volumes, and shall be approved by the Planning Board only after review and comment thereupon by the Town Highway Superintendent, and if applicable, the NYSDOT.

I. Exterior lighting, if any, shall be designed and located so that it does not produce glare on adjacent properties and does not impede the vision of traffic on any adjacent roadways or access/egress routes.

J. Approval of the type and design of any sewage disposal system shall be obtained from the Tompkins County Health Department.

K. Insofar as practical, topographic modifications (cut or fill) that will not be in keeping with adjacent land forms shall be avoided.

L. No offensive noise, traffic, odor, smoke, dust, heat, glare or electrical disturbance, nor any nuisance, shall be created or produced that cannot be contained inside a building on the site or otherwise adequately mitigated.

M. Any proposed roadways, public or private, shall be built to specifications as required by the Town Highway Superintendent and/or DOT, taking into account the volume and types of expected local and pass through traffic. Roadway layouts shall

be designed to provide for the appropriate extension of existing utilities and shall take into consideration topography, drainage, views, public convenience and safety, and the proposed uses of the land to be served by such roads. All road layouts and designs are subject to the approval of the Town Highway Superintendent, and all public roadways shall require permanent dedication by easement or in fee, each in a form as approved by the Town.

N. Roadways shall intersect as nearly at right angles as possible, and in no case shall they intersect at an angle of less than 60°. Road grades at intersections shall not exceed 5% for a distance of 80 feet from the center of the intersection unless otherwise approved by the Town Highway Superintendent. In all other respects roadways shall comply with applicable laws, rules, and regulations of the Town, Tompkins County, and the State of New York, including the requirements of the DOT.

~~O. All natural features such as trees, streams, hilltops, and views shall be preserved whenever possible in designing and laying out any Site Plan. The Planning Board may require changes in the layout to assure that natural features will be preserved, undisturbed, and/or incorporated into the Site Plan and/or its design. Topsoil moved during the course of construction shall be redistributed so as to provide, when possible, at least 6 inches of cover to all areas disturbed, and topsoil shall not be removed from the site without Planning Board approval and compliance with the Town and New York State Laws and requirements relating to stormwater and sediment control. To the fullest extent possible, existing trees that are greater than four inches in diameter, measured at a height of 4 feet above the ground, shall be conserved. Where the site contains a pond or stream that is not part of a DEC or ACE designated or jurisdictional wetland, the natural flow and course of said body of water shall be preserved unless the Planning Board determines that realignment will enhance the Site Plan or stream without adverse impacts to adjoining properties, downstream lands, Wetlands, the environment, and flora and fauna.~~

~~P. Easements across lots shall be provided for utilities and any necessary infrastructure where necessary and, wherever possible, utilities and communications services, lines, and appurtenances shall be located underground or along rear or side property lines.~~

~~Q. If in a regulated MS4 area, any soil disturbances of one acre or more may or will require a Stormwater Pollution Prevention Plan ("SWPPP") and compliance with the DEC's general permit and SPDES permit requirements and conditions.~~

~~R. Whether any performance or completion bond, letter of credit, escrow, or other security is required for any needed or desired permanent infrastructure or improvements, or for or in relation to any rights or improvements, as build or to be built, as are or may be proposed or required to be the subject of dedication or cessation to the Town, are needed or required for the proposed Site Plan (see Article V, below). **PB FELT 'R' IS ADEQUATELY COVERED BY ARTICLE IV**~~

Section 2.4 - EFFECT ON EXISTING USES –

A. This law does not apply to uses and Structures which are lawfully in existence as **at** the date this Local Law becomes effective. Any use or Structure shall be considered to be “in existence” as of the effective date of this Local Law if: (i) a building permit has been issued; and (ii) the improvements are fully constructed and completed within one year from the effective date of this Local Law; and (iii) a certificate of compliance or a certificate of occupancy is duly issued within said one year.

B. Any use which would otherwise be subject to this Local Law that has been discontinued for a period equal to or in excess of one year shall be subject to review pursuant to the terms of this Local Law prior to and before any prior or new use is resumed or commenced.

C. If any land is sold, assigned, subdivided, or transferred, whether in whole or in part, after such one year of disuse, then all so-called “grandfather rights” shall be and be deemed permanently extinguished.

Section 2.5 - RELATIONSHIP OF THIS LAW TO OTHER LAWS AND REGULATIONS -

This Local Law in no way affects or impairs the provisions or requirements of other federal, state, or local laws and ordinances, or their applicable regulations. Whenever the circumstances of any proposed development require compliance with this or any other such law or regulation, the Planning Board shall attempt to integrate, as appropriate, Site Plan review with such other requirements, and/or this Local Law shall be considered an initial review procedure relative to other such laws and/or regulations. Where it is determined that there is a conflict with any other such law or regulation, the more restrictive requirements shall apply. All Site Plans, and reviews thereof, shall comply with any other applicable laws, regulations, and rules, including, but not limited to, the requirements of SEQRA.

ARTICLE III APPLICATION AND REVIEW PROCEDURES

Section 3.0 - APPLICATION AND REVIEW PROCEDURES - Prior to undertaking any listed land use activity (or resuming such listed activity after the requisite period of discontinuance) a Site Plan review and approval by the Planning Board is required. Applicants for Site Plan review and approval should follow the recommended procedures related to the pre-application conference (sometimes known as a “sketch plan conference”), but all Applicants must comply with all other procedures and requirements of this Local Law.

A. Pre-application Conference: A pre-application conference may be held between the Planning Board and the Applicant to review the basic site design concept and to generally determine the information to be required for the Site Plan and its review.

Applicants are encouraged to arrange for a pre-application conference with the Planning Board and, as part of such conference, the Applicant may request a sketch plan review. Sketch plan reviews are an optional step and provide for a preliminary and non-binding review of a roughed-out sketch plan. Sketch plan review gives the Applicant the opportunity to informally present the project to the Planning Board, and allows the Planning Board and the Applicant to discuss any areas of concern involved with the proposed development, and/or to simplify issues in the later formal review stages. In order to accomplish these objectives, the Applicant shall provide the following if sketch plan review is requested:

1. A description and rough sketch showing the proposed plan.
2. A map of the area showing the parcels under consideration for Site Plan review, all adjacent properties, roads and other pertinent features.
3. A map of site topography, such as a USGS quadrangle or equivalent showing the proposed site. The Planning Board may at its discretion accept photos in lieu of this requirement.

B. Filing a Site Plan Application: Applications for Site Plan review shall be filed with the CEO and shall be in writing. All Town forms for the Site Plan review process shall be completed, a Site Plan survey drawn to scale shall be provided, together with the following documents, information, and details:

1. The name and address of the landowner of record and the Applicant, if not the same.
2. A surveyed identification map showing the location and orientation of the proposed development relative to the local road system, a scale of the drawing(s), a north arrow, the date of the survey or drawing, the gross acreage of the site or development area, an identification of existing buildings and land uses on the site and upon adjacent properties, and a depiction and layout of the proposed Structures, buildings, improvements, and land uses, including roads, access and egress ways, parking areas, landscaping, and buffer strips or screening.
3. The locations of any floodplain designated by the National Flood Insurance Program, and the location of any Wetlands and any areas either recognized or designated as UNAs or CEAs.
4. An indication of existing and proposed topography and drainage systems for the site, including the proposed stormwater management and drainage upon and from the site. Natural drainage ways shall be maintained whenever possible.
5. The proposed water source and sewage disposal system(s).

6. The location, size and type of any proposed site lighting and signs.
7. A landscaping plan, if any.
8. A brief statement describing: the project and the type of exterior building material to be used; disclosure as to whether any Structure or the project involves the storage or handling of hazardous materials or the use of any above or below ground storage tanks; whether the proposal will create odors, smoke, noise, or dust and airborne particulates above ambient existing levels; whether the development or intended land use will have any potential negative impacts on the community including, but not limited to, physical, environmental, social and/or economic effects, or any other potential negative effects impacting the health, safety and/or general welfare of the community; a statement as to whether there are any easements or deed restrictions affecting the project or Site Plan; and a statement as to whether the project is in keeping with the character of the surrounding neighborhood and the Town's Comprehensive Plan.
9. A proposed roadway, walkway, traffic, and signage plan for access to and egress from the development or parcel(s).
10. A completed SEQRA environmental assessment form upon the forms provided by the CEO.
11. And, if in or within 500' of an agricultural district, an agricultural data statement pursuant to Article 25, § 305-a, of the New York State Agriculture and Markets Law.

C. Preliminary Review of Application: The CEO shall review all application materials and determine whether the application is substantially complete. If substantially complete, the CEO shall then forward the application to the Planning Board, together with any comments or recommendations, and the Planning Board shall consider or review the application at the next duly called meeting, but only so long as the materials are received by the Planning Board at least 10 business days before such meeting. If deemed necessary, both the CEO and the Planning Board may require additional information to complete its review. If the CEO determines the application to be incomplete, the CEO shall return the application to the Applicant and inform the Applicant of the deficiencies of the application.

D. Referral to County Planning Board: The CEO shall determine if the proposed action is subject to referral to the Tompkins County Planning Department in accord with Article 12-B, §§ 239-l, -m, and/or -n of the General Municipal Law, and the guidelines and agreements of or with the Tompkins County Planning Department. If referral is required or desired, the CEO shall submit the materials, together with any SEQRA documents, to the County Planning Department as soon as is practical.

E. State Environmental Quality Review: The Planning Board shall comply with SEQRA when considering Site Plan reviews and approvals.

F. Review and Decision:

1. Review and Decision Without Public Hearing: Within 62 days following the date that the Planning Board receives a completed application and Site Plan, the Town Planning Board shall render a decision to approve, approve with conditions, or deny the Site Plan unless the Town Planning Board elects to conduct a public hearing. Any such application shall be deemed received and the 62-day time period shall commence at the time the completed application and Site Plan are first presented to the Planning Board at a duly called public meeting. The 62-day time period may be extended upon consent of both the Applicant and the Planning Board, and such 62-day time period shall be deemed extended to the extent reasonably necessary to comply with and complete any required SEQRA reviews. If the Town Planning Board fails to render a decision within said 62-day period, as may be herein extended, the Site Plan shall be considered approved.

2. Review and Decision With Public Hearing:

a. The Planning Board may conduct a public hearing upon the Site Plan ~~in~~ at its discretion. If a public hearing is desired or required, it shall be scheduled within 45 days of receipt of the completed application from the CEO.

b. For all public hearings, the Planning Board shall mail notice of public hearing to the Applicant at least 10 days prior to the date of the hearing (or at least 14 days if the hearing is on the SEQRA review), shall mail written notice of the hearing to all landowners within 600' of the proposed site at least 10 days before such hearing (or at least 14 days if the hearing is on the SEQRA review), and shall publish at least one notice of public hearing at least 5 days (or at least 14 days if the hearing is on the SEQRA review) before the hearing in the official newspaper of the Town.

c. The Town Planning Board shall render a decision on the Site Plan within 62 days of the close of the public hearing, unless such 62-day time period is extended upon consent of both the Applicant and the Planning Board; and such 62-day time period shall be deemed extended to the extent reasonably necessary to comply with and complete any required SEQRA

reviews. If the Town Planning Board fails to render a decision within said 62-day period, as may be herein extended, the Site Plan shall be considered approved.

d. All of the above time constraints and deadlines may be extended by mutual consent of the Applicant and the Planning Board

SECTION 3.1 - WAIVER OF SITE PLAN REQUIREMENTS -

A. The Planning Board may by resolution except or exempt an Applicant from any one or more of the requirements of this Local Law by waiver, except for the landowner and public notice requirements . All requests for a waiver from any requirements set forth in this Local Law shall be made by the Applicant in writing and shall contain a statement as to the grounds upon which the Applicant relies for requesting the waiver, including all allegations of any facts on which the Applicant will rely. Where the Planning Board finds that a waiver of certain requirements is justified then a waiver may be granted, provided, however, that no waiver shall be granted unless the following conditions are met:

1. The Planning Board finds and records in its minutes that granting the waiver is justified and would be in accord with the intent and spirit of this Local Law, and is otherwise not adverse to the best interests of the community.
2. There are special circumstances involved in the particular case and denying the waiver would result in undue hardship to the Applicant, provided that such hardship has not been self-imposed.
3. The waiver requested and/or granted is the minimum degree of variation from the requirements of this Local Law as is necessary to accomplish the relief found appropriate in connection with such waiver application.

B. The Planning Board may condition the granting of any waiver upon any one or more reasonable conditions or requirements.

SECTION 3.2 – FILING AND WRITTEN DECISION OF THE PLANNING BOARD - All determinations made under or in relation to this Local Law shall be in writing and a full written record of the Planning Board minutes, resolutions, and/or decisions, together with all documents pertaining to the application and review, shall be filed in the office of the CEO, and a copy shall be mailed to the Applicant.

**ARTICLE IV
SECURITY, BONDING, AND DEDICATION REQUIREMENTS**

SECTION 4.0 – PERFORMANCE BONDS AND OTHER SECURITY – Whenever any permanent infrastructure and improvements are required by any Site Plan, a performance bond, irrevocable letter of credit, escrowed payment and escrow agreement, or other security sufficient to cover the full cost of the same, as estimated by the Planning Board, shall be furnished to the Town by the Applicant or owner whenever the Planning Board, in its sole discretion, without recourse, shall require the same. The requirements of Town Law §§ 274-a(7) and 277(9) shall apply to this requirement whenever so imposed.

SECTION 4.1 – DEDICATED INFRASTRUCTURE AND IMPROVEMENTS – Whenever any permanent or temporary infrastructure or improvements are proposed to be subject to dedication to the Town, whether in fee, by easement, right-of-way, or by or through an offer of cessation, or otherwise, including, but not limited to streets, highways, sidewalks, stormwater facilities, parks, recreation areas or trails, etc., the approval of the Town Board as to the method and manner of construction shall be required, together with approval by the Town Board and the Town Attorney as to the method, means, terms, and form of dedication. In all cases, all filing or other fees incurred in such act(s) of dedication shall be a cost of the Applicant.

**ARTICLE V
MISCELLANEOUS PROVISIONS**

SECTION 5.0 – CODE ENFORCEMENT OFFICER - The Town Board shall appoint a CEO to carry out the duties assigned by this Local Law, including those of review and enforcement. The CEO, or his or her designee, shall be responsible for the overall inspection of site improvements, including coordination with the Planning Board and other officials and agencies, as appropriate. The CEO, or his or her designee, shall not issue building permits for construction or any certificates of occupancy or compliance unless the requirements of this Local Law have been met, including any conditions imposed upon any site or Site Plan. If the Planning Board has approved a Site Plan with conditions, all conditions must be met before the CEO issues a building permit, or any certificate of occupancy or compliance, unless the Planning Board condition or approval expressly states otherwise.

SECTION 5.1 – CONSULTANT REVIEW - The CEO and Planning Board may consult with and obtain assistance and advice from such agencies or experts as they deem necessary for any Site Plan review, including, without limitation, Fire Commissioners, the Town Highway Superintendent and the DOT, the Town Board, the Town Engineer, the Town Attorney, the County Planning Department, the County Health Department, other local county officials, representatives of federal and state agencies, and

architects, engineers and attorneys. All consultant review costs shall be paid by the Applicant to the extent legally required or allowed.

SECTION 5.2 – FILING FEES & DEVELOPER’S AGREEMENTS - An application for Site Plan review and approval shall be accompanied by a **non-refundable fee*** as periodically set or amended from time to time by resolution of the Town Board. An additional fee equal to the actual costs of Site Plan or SEQRA review shall also be charged to the Applicant whenever required or allowed by law, including the fees allowed by 6 NYCRR, Part 617, § 617.17. The Planning Board may require, prior to the commencement of review or preparation of an EIS, that a deposit be made to the Town in an amount reasonably estimated to cover the anticipated amount of costs, disbursements, and fees as may be incurred in relation to the EIS. All fees and charges payable by the Applicant or developer shall be reasonably determined in accord with law. In lieu of periodic fee calculations and payment requirements, an Applicant or developer may sign a developer’s agreement to provide for an escrow reserve account to fund and more efficiently proceed through the Site Plan review process.

SECTION 5.3 – ENFORCEMENT, VIOLATION AND PENALTIES – Each and all of the following provisions shall be applicable in relation to any violation of any of the terms, conditions, or requirements of this Local Law by any act, or by any failure to act:

- A. When any term, provision, or requirement of this Local Law is violated, the CEO may issue a written notice of violation to the person or entity in violation hereof. Such notice of violation shall contain the name and address of the person or entity alleged to have violated this Local Law, the address, when available, or a description of the building, structure or parcel upon which the violation occurred or is occurring, a brief statement specifying the nature of the violation, a statement of the fine or penalty that may or could be assessed against any person or entity to whom the notice of violation is directed, and a clear statement identifying whether the notice commences or will commence a civil or criminal proceeding. The election by the CEO to issue a notice of violation does not preclude the sooner, simultaneous, or later issuance of civil or criminal process alleging a violation of this Local Law.
- B. The Town Highway Superintendent, the CEO, and any New York State peace or police officers are hereby authorized to issue and serve civil papers and appearance tickets with respect to any violation of this Local Law.
- C. The CEO may issue a stop work order for or in relation to any violation of this Local Law. Any person or entity receiving a stop work order shall be required to halt all clearing, grading, and construction until the CEO or a court of competent jurisdiction allows work to re-commence.
- D. In addition to any other right or remedy allowed by law or in equity, the Town may also maintain actions or proceedings in the name of the Town in a court of competent jurisdiction to compel compliance with or restrain by injunction the violation of any provision or requirement of this Local Law.

E. All provisions of New York law generally applicable to misdemeanors shall apply to any criminal proceeding brought under this Article. Each and any misdemeanor referenced hereunder shall be deemed an unclassified misdemeanor. The following civil and criminal fines and penalties shall apply to any violation of the terms, conditions, and requirements of this Local Law:

1. First Violation: Any person or entity that violates any of the provisions of this Local Law shall be (i) guilty of a violation and subject to a fine of not more than ~~\$150.00~~, \$2,000* or (ii) subject to a civil penalty of not more than \$250.00* to be recovered by the Town in a civil action. Every such person or entity shall be deemed guilty of a separate offense for each week that such violation, disobedience, omission, neglect or refusal shall continue. Similarly, a separate civil penalty shall apply and/or be assessable for each week that such violation, disobedience, omission, neglect or refusal shall continue.

2. Second Violation: Any violation that is found to have occurred within 2 years of any prior civil or criminal determination of any other violation of this Local Law shall be deemed a second violation. Any person or entity that commits any second violation shall be (i) guilty of a violation subject to a fine of not less than \$150.00*, nor more than \$500.00*, or (ii) subject to a civil penalty of not less than \$250.00*, nor more than \$750.00* to be recovered by the Town in a civil action. Every such person or entity shall be deemed guilty of a separate offense for each week that such violation, disobedience, omission, neglect, or refusal shall continue. Similarly, a separate civil penalty shall apply and/or be assessable for each week that such violation, disobedience, omission, neglect, or refusal shall continue.

3. Third and Subsequent Violations: Any violation that is found to have occurred within 2 years of any prior civil or criminal determination of any second violation of this Local Law shall be deemed a third or subsequent violation, as applicable. Any person or entity who commits a third or subsequent violation of this Local Law shall be (i) guilty of an unclassified misdemeanor and subject to a fine not less than \$500.00*, nor more than \$2,500.00*, and/or a period of incarceration not to exceed 120 days, or both, or (ii) subject to a civil penalty of not less than \$1,000.00*, nor more than \$5,000.00*, to be recovered by the Town in a civil action. Every such person or entity shall be deemed guilty of a separate unclassified misdemeanor for each week that such violation, disobedience, omission, neglect or refusal shall continue. Similarly, a separate civil penalty shall apply and/or be assessable for each week that such violation, disobedience, omission, neglect, or refusal shall continue.

F. Upon any violation of this Local Law by any person or entity, the Planning Board and the CEO may decline and refuse to issue any approvals, endorsements, certifications, building permits, certificates of occupancy, certificates of compliance, and any similar or other document or approval in relation to the lands affected until the terms, conditions, and requirements of this Local Law have been met or such person or entity is otherwise in compliance with this Local Law.

G. Any person or entity that is in violation of this Local Law may be required to restore any land to its undisturbed condition. In the event that restoration is not undertaken within a reasonable time after notice, the Town may commence any one or more civil proceedings in the Town Court, or any other court of competent jurisdiction, to compel, permit, or recover the costs of such restoration.

H. Each and all remedies and rights provided to the Town under this Local Law are and shall be deemed cumulative. The Town's pursuit of any one right or remedy does not effect a waiver or an election of remedies relative to any other right, action, or remedy, and the Town may thereafter pursue or continue to pursue any other right or remedy it may have in law, equity, or in admiralty. The rights and remedies herein stated are not the exclusive rights and remedies of the Town. The Town reserves all rights to seek compliance or enforcement, including pursuant to and under Town Law § 268 and Executive Law § 362.

SECTION 5.4– CONSTRUCTION - The term “shall” is mandatory, and the terms “may” or “should” are permissive. Any word that is gender-referenced shall be construed to include all genders and the neuter. Capitalized words shall have the meanings ascribed to them whenever the meaning or context thereof so admits or requires. Defined words and phrases that are not capitalized shall be presumed to be capitalized and deemed defined words and phrases, unless the context thereof admits or requires otherwise.

SECTION 5.5 – PARTIAL INVALIDITY - If any word, phrase, sentence, part, section, subsection, or other portion of this Local Law, or the application hereof to any person or to any circumstance, is adjudged or declared invalid or unenforceable by a court or other tribunal of competent jurisdiction, then, and in such event, such judgment or declaration shall be confined in its interpretation and operation only to the provisions of this Local Law that are directly involved in the controversy in which such judgment or declaration is rendered, and such judgment or declaration of invalidity or unenforceability shall not affect or impair the validity or enforceability of the remainder of this Local Law or the application hereof to any other persons or circumstances. If

necessary as to such person or circumstances, such invalid or unenforceable provision shall be and be deemed severed, the remainder of this Local Law shall remain in force and effect, and the Town Board hereby declares that it would have enacted this Local Law, or the remainder hereof, even if, as to particular provisions and persons or circumstances, such portion is severed or declared invalid or unenforceable.

SECTION 5.6 – LIMITATION OF TOWN LIABILITY AND INDEMNIFICATION - The Town, and its officers and agents, shall not be liable or responsible for any injuries to persons or damages to property or rights due to the Town's actions, or failures to act, under or pursuant to this Local Law, unless it is proven to a reasonable degree of certainty that such injury or damage was caused by a willful or intentional act of the Town or its officers or agents. This provision shall be construed and applied to the maximum extent permitted by law, and does not create any theory or claim of liability where none exists at law or in equity.

SECTION 5.7 – ARTICLE 78 - Any person aggrieved by any decision or determination (except for an informal or advisory opinion) of the Planning Board, the CEO, or any public official, officer, department, board, or bureau of the Town, may apply to the Supreme Court for review by proceeding under Article 78 of the Civil Practice Law and Rules. Such petition or request for review shall be made within 30 days of the decision or determination so appealed from, and this Local Law does not create any right or remedy under said Article 78 where none otherwise exists or is recognized in law, equity, or admiralty.

SECTION 5.8 – EFFECTIVE DATE - This Local Law shall take effect immediately upon filing with the New York State Secretary of State.

***RE: THE MATTER OF SETTING FEES (for Applications) AND FINES**

- An application for Site Plan review and approval shall be accompanied by a **non-refundable fee*** as periodically set or amended from time to time by resolution of the Town Board.---The Board needs to periodically review, set and post their current application fee
- The PB feels that the amount of the **fine** for the First Violation should be somewhat reflective of the amount that can be levied by NYS (\$2,000---according to M. Carpenter, PB Co-chair) for a site plan law violation. We propose that the wording be changed (as above in) to reflect this: **subject to a fine of not more than (italics are VB's) \$2,000*** Note: a violation of DEC law incurs a \$40,000 fine!--- also according to M. Carpenter
- The PB does feel that the fines should have the potential for a higher limit (ergo the "up to") to discourage scofflaws
- **? Do the other amounts for fines/civil penalties have to be specified in the law? Or can there be a separate schedule duly referenced in the law that is periodically set or amended from time to time by resolution of the Town Board.?**

- Of course, none of us are lawyers, so we leave it up to the Town Board and the Town Attorney to finalize the SPRL.