

Site Plan Review Law- Town of Butternuts

ARTICLE 1 ENACTMENT, POLICY AND TITLE

1.1 Enactment. The Town Board of the Town Of Butternuts, Otsego County, New York, does hereby ordain and enact the Town of Butternuts Site Plan Review Law pursuant to the authority and provisions of Section 210 of the Municipal Home Rule Law and Section 274 of Town Law.

1.2 Short Title. This local law shall be known as “Town of Butternuts Site Plan Review Law”. The Town of Butternuts is hereinafter referred to as the “Town”.

1.3 Intent and Purpose. Through site plan review, it is the intent of this local law to promote the health, safety, and welfare of the Town. It is the further intent of this local law to ensure the optimum overall conservation, protection, preservation, development and use within the Town through review and approval of site plans. It is not the intent of this local law to prohibit per se any land use activity, but to allow all land use activities which meet the standards set forth in this local law. Otsego County will not issue a building permit without site plan approval, except for those uses specifically excepted in Article II, Section 2.0.

ANY PERSON UNCERTAIN OF THE APPLICABILITY OF THIS LOCAL LAW TO A GIVEN LAND USE ACTIVITY MAY APPLY IN WRITING TO THE PLANNING BOARD FOR A WRITTEN JURISDICTIONAL DETERMINATION.

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

ARTICLE 2 APPLICABILITY AND DEFINITIONS

2.1 Applicability of review requirements. All new land use activities within the Town shall require site plan review and approval before being undertaken, EXCEPT the following:

1. Ordinary repair or maintenance of interior alterations to existing structures or uses.
2. Agricultural or gardening uses or timber harvesting.
3. The sale of agricultural produce and the temporary structures related to the sale of said produce.
4. Garage, lawn, or porch sales not exceeding three days or three times a calendar year.

2.2 Effect on existing uses. This law does not apply to uses and structures which are lawfully in existence as of the date this local law becomes effective. Any use which would otherwise be subject to this law, that has been discontinued for a period of two years or more shall be subject to review pursuant to the terms of this law before such use is resumed. Any use or structure shall be considered to be in existence provided the same had been substantially commenced as of the effective date of the local law and fully constructed within one year.

2.3 Relationship of this law to other laws and regulations. This local law in no way affects the provisions or requirements of any other federal, state, or local law or regulations. Where this local law is in conflict with any other such law, the more restrictive shall apply.

2.4 Definitions. “Land use activity” means any construction or other activity which changes the use or appearance of land or a structure, or intensity of use of land or structure. “Land use activity” shall explicitly include, but not be limited to, the following: new structures, expansion to existing structures, new roads, driveways, ponds, towers, wind turbines, free-standing solar power arrays, and excavation for the purpose of extracting soil or mineral deposit. This includes accessory structures built or placed on property.

ARTICLE 3 PROCEDURES

3.1 Procedures-Generally. Prior to undertaking any new land use activity except for uses specifically excepted in Section 2 of this local law, a site plan approval by the Planning Board is required.

Applicants for site plan approval should follow the recommended procedures related to sketch plan conference as herein set forth. Applicants must comply with all other procedures and requirements of this local law. Applicants may request a sketch plan conference prior to the preparation of a formal site plan. The intent of such a conference is to enable the applicant to inform the Planning Board of the proposal prior to the preparation of a detailed site plan, and for the Planning Board to review the basic site design concept, advise the applicant as to potential problems and concerns and to generally determine the information to be required on the site plan. In order to accomplish these objectives, the applicant may be required to provide the following:

1. A statement and rough sketch showing the locations and dimensions of principle and accessory structures, parking areas, access signs (with descriptions), existing topography and natural features; and where applicable, measures and features to comply with flood hazard and flood insurance regulation.
2. An area map showing the parcel under construction for site plan review, and all properties, subdivisions, streets, rights-of-ways, easements, and other pertinent features within 200 feet of the boundaries of the parcel. Map shall be of a scale and detail of not less than 200 feet per inch.
3. A topographic or contour map of adequate scale and detail to show site topography.

3.2 Application requirements. An application for site plan approval shall be made in writing to the Planning Board 10 days in advance of the monthly Planning board meeting and shall be accompanied by information contained in the following checklist.

Site Plan checklist:

1. Completed notarized copy of current Site Plan Review Application.
2. Fee of \$10.00 cash or check made payable to Town of Butternuts.
3. Tax map with sketch – including N arrow, parcel boundaries, highways, existing buildings, natural features, driveway, well, septic, location or proposed location.
4. Type of construction including purpose, design, materials, energy source and any other pertinent information.
5. Application for new driveway permit.
6. Application is valid for one year from date of approval.

3.3 Required fee. \$10 –application is filed prior to start of construction
\$50- application is filed after construction has already started
\$500 -for each repeated offense

3.4 Reimbursable costs. Costs incurred by the Planning Board for consultation fees or other extraordinary expenses in connection with the review of a proposed site plan by an applicant shall be charged to the applicant.

ARTICLE 4 DESIGN STANDARDS

4.1. General standards and considerations. The Planning Board review of the site plan shall include, as appropriate, but is not limited to, the following general considerations:

- A. Location, arrangement, size, design and general site compatibility of buildings and signs.
- B. Adequacy and arrangement of vehicular traffic circulation between the site and the street network.
- C. Location, arrangement and sufficiency of off-street parking and loading.
- D. Adequacy of storm water and drainage facilities.
- E. Adequacy of water supply and sewage disposal facilities.
- F. Adequacy, type and arrangement of trees, shrubs and other landscaping constituting a visual and/or noise buffer between the applicant's and adjoining lands, including the maximum retention of existing vegetation.
- G. Adequacy of fire lanes and the provision of hydrants, ponds, etc..
- H. Special attention to the adequacy and impact of structures, roadways and landscaping in areas with susceptibility to ponding, flooding and/or erosion.
- I. Overall impact on the neighborhood including compatibility of design consideration. Attention will be given to the absence of or minimizing of nuisances to neighbors, including but not limited to lights, traffic noises, congestion, pollution, odors, pests, vivid colors or other non-traditional or exceptional appearance items, electromagnetic radiation, electronic interference with information reception, or any other infringements of normal residential privileges.
- J. Adequacy of plans and facilities for safe and adequate disposal of all materials or wastes to be handled or generated.

4.2 Structures. Structures shall not be placed within ten (10) feet of any property line and must be set back a minimum of 30 feet from the road.

4.3 Off Street parking and loading requirements. Any proposed use within the Town shall provide sufficient parking to accommodate the traffic generated by the proposed use and associated on-site traffic improvements that are deemed necessary to mitigate potential impacts on the level of service on public roads in the vicinity of the proposed development.

4.4 Landscaping, Screening and Buffering. The following standards are intended to enhance the appearance and natural beauty of the Town and to protect property values through preservation and planting of vegetation, screening and landscaping material. Specifically, these standards are intended to improve the appearance of major travel corridors and business areas; to reduce excessive heat, glare and accumulation of dust; to provide privacy from noise and visual intrusion; and to prevent the erosion of the soil, excessive storm water runoff and the consequent depletion of the groundwater table and the pollution of water bodies. The following provisions shall apply;

- 1) The preservation of mature shade trees, ridgelines, vegetation and unique site features, such as stonewalls, shall be encouraged as stated in the comprehensive plan.
- 2) A landscaped buffer area may be required to protect neighboring residential properties and soften the impact of facilities, buildings and parking areas. Where appropriate, a wall, fence or earthen berm of location, height and design approved by the Planning Board, may be substituted for the required planting.

4.5. Lighting of Non-Residential properties. Site lighting should be sufficient to facilitate the safe and convenient circulation of motorist and pedestrians, but not too bright so as to produce excessive light and glare. Given the rural nature of the Town, coupled with the close proximity of the residences in the vicinity of the Town's hamlet center, lighting shall be designed, directed and shielded in such a manner that direct light does not leave the perimeter of the site. All outdoor lighting, including the fixture, pole and other supporting elements, shall be designed to complement the overall design of the site and prevent excessive glare. To minimize excessive lighting, entry points and pedestrian crosswalks can be lit with accent lighting that helps to define these areas rather than using brighter lights throughout the site. Lower level lighting can then be used in other areas of the site where less lighting is required. Shorter lighting poles can also be used to light pedestrian walkways and/or lighted billboards. The following additional standards may be required.

4.6. Signs. In general, and unless otherwise specified in this Section, signs shall be located on the premises they advertise and shall not flash or move, or have the appearance of flashing or moving.

4.7. Noise and odors. The following standards are intended to mitigate potential nuisances between non-residential and residential land uses within the Town of Butternuts but shall not apply to Agricultural operations or Farming operations.

4.7.1 Noise standards. The Town of Butternuts Noise Ordinance will be applied to all activities on the proposed site. Please refer to Town of Butternuts Local Law #2-1990 for prohibited noises.

4.7.2 Odors and other Emissions.

- 1) Any activity or operation which results in the creation of odors of such intensity and character as to be detrimental to the health, safety or welfare of the public, or to interfere with the normal use and enjoyment of the property, shall be removed, stopped, or modified so as to eliminate the odor. Farming operations are exempt under the NYS Ag & Markets Right to Farm Laws.
- 2) Air pollution control and abatement shall comply with acceptable minimum Federal, State and local requirements, including receipt of all required permits. The maximum permitted density of smoke, dust and other particulate emissions during normal operations of any activity shall not exceed the maximum allowable under Federal and State regulations.

4.8. Site Access and Traffic Management. These regulations are intended to protect the public health, safety, and welfare of residents by ensuring that site-generated traffic is accommodated through properly designed driveways, and that engineering standards are applied to adjacent roadways.

4.8.1. Site Access Requirement Driveway location and Driveway Design will require the approval of the road owner (Town of Butternuts Highway Superintendent, Otsego County, or the New York State Department of Transportation) to ensure safe sight distances for the entrance and exit of vehicles at the driveway and safe ingress and egress for the property of ambulance and fire apparatus.

4.9 Erosion control and storm water management. Applications for site plan approval shall include an Erosion & Sediment control plan or a Storm Water Pollution Prevention Plan (SWPPP) if so determined by the SEQRA Environmental Assessment.

4.9.1 No more than 100 feet of ditch can drain directly into the road ditch. More than 100 feet will need to be drained to a retention area.

4.9.2 Erosion control and storm water management. Applications for site plan approval shall include an Erosion & Sediment control plan or a Storm Water Pollution Prevention Plan (SWPPP) if so determined by the SEQRA Environmental Assessment.

4.10 Sewer and Water. No site development plan for any use shall be approved unless adequate provision is made for wastewater treatment and for clean potable water supply, as required for the intended use. The following standards must be met;

1. All site development plans relating to water supply and wastewater treatment shall comply with applicable New York State Department of Health and State Department of Environmental Conservation standards.
2. Where applicable, sewer system permits are required prior to issuance of the building permit for any site development.

4.11 Flood Hazard Areas. Construction in those areas designated by FEMA would need to be referred to FEMA and Otsego County Flood Plain administrator.

4.12 Freshwater Wetlands. Applicants for site plan approval that affect areas regulated by the New York State Department of Environmental Conservation must comply with current regulations.

4.13 Protection of streams and other waterbodies. All DEC rules shall apply.

ARTICLE 5 – STANDARDS FOR SPECIFIC LAND USES

5.1 Bed and Breakfast. All bed and breakfasts (B&B's) shall comply with the applicable provisions of the New York State Uniform Fire Prevention and Building Code and the rules and regulations there under. A B&B may be established and operated on an existing lot used as a single family residence. Each B&B shall be established, maintained and operated so as to preserve and compliment the residential character and integrity of the surrounding area. Such use shall have obtained approval by the NYSDOH for any required on- site sanitary sewage or water supply facilities, as may be applicable. The owner shall provide to the Town Clerk proof of registration with Otsego County.

5.2 Campgrounds

1. **Definition.** A campground is defined as a parcel of land whose primary purpose is use or intended use to be let or rented for campers or for occupancy by tents, trailers, recreational vehicles or temporary or permanent structures (cabins) to be used for transient occupancy. The primary use is to be recreational, and to retain an open air or natural character.
2. **Internal Roadways.** All internal roadways shall be designed and constructed to permit ambulances and fire apparatus to access all campsites and buildings.
3. **Parking.** At least one parking space shall be provided for each site. Additional parking shall be provided on the parcel for registration, and for visitors.
4. **Water Supply and Sewage Disposal.** Water supply for campsites and restroom/bathing facilities shall conform to the requirements of New York State and Otsego County health law. Sewage disposal for restroom/bathing facilities and sewage dump stations shall conform to the requirements of New York State and Otsego County health law.
5. **Screening.** A campground that is adjacent to a residential parcel shall employ visual screening in the form of natural plantings or fencing to minimize visual impact.
6. **Streams, Water Bodies and Wetlands.** All sites shall be in compliance with applicable NYS DEC standards.

5.3 Cellular Towers. Site Plan for cellular towers shall be in accordance with Town of Butternuts Local Law #2 of 2001

5.4 Home Occupations. A legally existing dwelling unit or accessory structure may be occupied as a home that occupies more than twenty-five percent (25%) of the dwelling unit or more than 500 square feet provided that it is compliance with the New York State Uniform Fire Prevention and Building Code.

5.5 Commercial Manufactured Home Parks Each manufactured home lot shall have a manufactured home stand (concrete pad) that will provide for the practical placement on a base on the lot of both the manufactured home and its appurtenant structures and provide for the retention of the home on the lot in a stable condition. All projects must comply with Otsego County Codes.

5.6 Commercial Self- Storage Facilities

- 1) Self-storage facilities shall be limited to storage use only. No activities other than the rental of storage units and the pickup and deposit of storage items shall be allowed.
- 2) Screening. A commercial storage facility that is adjacent to a residential parcel shall employ Visual screening in the form of natural plantings or fencing to minimize visual impact.

5.7 Ponds. The creation of a pond will be subject to Site Plan Review for the purpose of setbacks from property lines and potential impact of outflow. All pond developments shall comply with applicable New York State Department of Environmental Conservation standards.

5.8 Site plan review of small wind and solar energy production facilities. The following process for review of small wind and solar energy production facilities is meant to cover systems that the electrical output does not exceed 110% of the anticipated electrical needs of the agricultural and/or residential use of the property on which it is located. Building mounted or integrated solar energy systems are subject to state and county regulations.

1. Sketch of the parcel on a location map (e.g., tax map) showing boundaries and dimensions of the parcel of land involved and identifying contiguous properties and any known easements or right-of-ways and roadways. Show the existing features of the site including land and water

areas, water or sewer systems, utility lines and the approximate location of all existing structures on or immediately adjacent to the site. Include a NYS DEC Environmental Assessment short form.

2. Show the proposed location and arrangement of small wind energy production facilities or the solar device on the site.
3. Include copies of plans or drawings prepared by the manufacturer.
4. Provide a description of the project and a narrative of the intended use of the proposed wind energy production facility or solar device, including any anticipated changes in the existing topography and natural features of the parcel to accommodate the changes. Include the name and address of the applicant and any professional advisors. If the applicant is not the owner of the property, provide authorization of the owner.
5. A legible electrical diagram to clearly describe the wind energy system or solar device as it will be installed. The diagram is to show all major system components from the wind turbine or the solar device to the utility meter.
6. Any project exceeding 110% annual usage must meet applicable town law.

The following apply only to wind energy production facilities;

1. Describe systems for automatic braking, governing, or feathering to prevent uncontrolled rotation of the rotor blades and turbine components.
2. Show that the wind tower is setback 1.1 times the combined height of the tower and blades from property lines and power lines. There will be no exception for power lines. A property line exemption may be allowed with written permission from the neighbor.
3. Show that the minimum setback distance between the tower base and any human-occupied building is 5 times the rotor diameter.
4. Any project exceeding 110% annual usage must meet applicable town law.

Article 6 PUBLIC HEARING AND PLANNING BOARD DECISION

6.1 Public Hearing. The Planning Board may conduct a public hearing on site plan if deemed desirable by a majority of its members. Such hearing shall be held within forty-five (45) days of the receipt of the application for site plan review and shall be advertised in the Town's official newspaper, or if there is none, in a newspaper of general circulation in the Town at least five (5) days before the public hearing. If a hearing is deemed necessary by the Board, the applicant or the applicant's designated representative will be notified, and must be present at the meeting where the application is being considered. In the event the applicant or the applicant's representative is not present, no action shall be taken and the applicant shall be required to renew the application to be advertised and placed on the agenda for the next regular scheduled meeting. The renewal fee shall be seventy-five dollars (\$75). In the event the applicant or the applicant's representative does not renew the application at least ten (10) days prior to the next regular scheduled meeting and also attend the next announced meeting, the application shall become void and the applicant must reapply to the Planning Board.

6.2 Planning Board decision. Within forty-five (45) days of receipt of the application for site plan approval, or if a public hearing is held within forty-five (45) days of the public hearing, the Planning Board shall render a decision. In its decision, the Planning Board may approve, approve with modification, or disapprove the site plan. The time period in which the Planning Board must render its decision may be extended by the time required for review and response by the Otsego County Planning Department when required by Sections 239 (l) and (m) of General Municipal law, or by mutual consent of the applicant and the Planning Board.

- A. Approval: Approval of the site plan requires a majority vote of the Planning Board. If the application was reviewed the Otsego County Planning Department under Sections 239 (l) and (m) of the General Municipal law, and they returned a recommendation of disapproval or modification, approval requires a vote of majority plus one. Upon approval of the site plan, and payment of fees and costs due the Town by the applicant, the Planning Board shall endorse the application and make two copies of said approved application. One copy will be filed by the Planning Board and the other copy will be presented to the Assessor. The application will be valid for one (1) year from the date of approval.
- B. Approval with modification: The Planning Board may conditionally approve the site plan, including accepting such modifications recommended by the Otsego County Planning Department under Sections 239 (l) and (m) of General Municipal law. A copy of the written statement containing such modifications shall be given to the applicant. The applicant must demonstrate to the Planning Board that such conditions are met, all fees and costs to the Town are paid before the Planning Board shall endorse and make two copies of the site plan.
- C. Disapproval: Upon disapproval of the site plan the Planning Board will return the application along with its reasons for disapproval and retain a copy of said application for its records.

ARTICLE 7 APPEAL OF PLANNING BOARD DECISION

7.1 Appeal procedure. Any person aggrieved by any decision of the Planning Board or any officer, department, board or bureau of the Town may apply to the Supreme Court of the State of New York for a review by a proceeding under Article 78 of the Civil Practice Law and Rules. Such proceedings shall be instituted within thirty (30) days after the filing of a decision in the office of the Town Clerk.

ARTICLE 8 ENFORCEMENT

Failure to comply with this law may result in civil litigation.