

**Land Use Management Local Law (as amended)**

*The following sections are selected sections from the Local Law which are applicable to Site Plan Review. This is a helpful reference and the full code should be consulted. See Article IV Schedule of Regulations for zoning districts, permitted uses, setbacks, and other important information. See Article II of the Local Law for the definitions of terms used below.*

**SECTION 523. NON-CONFORMING USES, BUILDINGS AND STRUCTURES:**

The lawful use of any building or land existing at the time of the enactment or amendment of this Local Law may be continued, although such does not conform with the provisions of this Local Law.

A) Temporary Uses and Structures

Temporary permits may be issued by the Board of Appeals for a period not exceeding one (1) year, for nonconforming uses incident to construction projects, provided such permits are conditioned upon agreement by the owner to remove the structure or use upon expiration of the permit. Such permits may be renewed upon application for an additional period not exceeding one (1) year.

B) Discontinuance

When a non-conforming use has been discontinued for a period of twelve (12) months, such use shall not thereafter be re-established, and any future use shall be in conformity with the provisions of this Local Law.

C) Change of Use

No non-conforming use shall be changed to other than a conforming use for the district in which it is situated. Once changed to a conforming use, no building or land shall be permitted to revert to a non-conforming use.

D) Restoration

A non-conforming building damaged by fire or other similar acts of God may be repaired or rebuilt provided that the non-conformity shall not be increased and that construction starts within a period of one (1) year from the date of the damage.

E) Extension

A non-conforming use, building or structure shall not be extended, expanded or enlarged.

**\*6SECTION 524. Site Plan Review:**

a. Planning Board Authority. The Planning Board is hereby authorized to review site plans within the Town as hereinafter designated pursuant to and in accordance with the standards and procedures set forth herein. No site plan review shall be undertaken by the Planning Board without verification from the Code Enforcement Officer that the property, as currently utilized, is in complete compliance with the Code of the Town, unless such requirement is waived by a majority vote of the Planning Board members.

b. Code Officer Responsibilities. It shall be the duty of the Code Enforcement Officer to ensure that all site plan review applications are immediately transmitted to the Planning Board. Where

site plan approval is required, no building permit or certificate of occupancy, when required, shall be issued by the Code Enforcement Officer until site plan approval is provided by the Planning Board. The Code Enforcement Officer shall be responsible for the monitoring and inspection of improvements and construction related to approved site plans.

c. Applicability of Site Plan Review. All new land use activities in a zoning district where the applicable Schedule of Regulations indicates site plan review is required, including each additional permitted use listed in the Schedule of Regulations, and all new land use activities within the Lake Overlay Protection District (regardless of whether site plan review is required for the underlying zoning district), shall require site plan review and approval before being undertaken and before a building permit is issued. However, the following activities do not require site plan review:

1. Except in Lake Protection Overlay District, construction of one- or two-family dwelling and ordinary accessory structures, and related land use activities.

2. Non-structural landscaping or grading which disturbs less than one half of an acre in the

aggregate. However, in the Lake Protection Overlay District, landscaping or grading which disturbs one quarter of an acre in the aggregate, or any landscaping or grading which occurs lake side of the principal building on the lot, shall be subject to site plan review.

3. Ordinary repair or maintenance or interior alterations to existing structures or uses.

4. Exterior alterations or additions to existing buildings which would not increase the square footage of the existing building by more than 15%. However, in the Lake Protection Overlay District, exterior alterations or additions to existing buildings (a) which increase the square footage of the existing building by more than 10%, (b) which increase the height of the building, or (c) which occur on the lake side of the building, shall be subject to site plan review.

5. Nonstructural agricultural uses including timber cutting. However, in the Lake Protection Overlay district, the cutting of five (5) or more trees, except for removal of any dead or dying trees (as evidenced by a letter from an arborist to the Code Enforcement Officer) and those which present a safety hazard, shall be subject to site plan review.

6. The sale of agricultural produce using a temporary structure such as a farm stand.

7. Garage, lawn and porch sales not exceeding three days. If such sales are to take place four (4) or more times in any calendar year, site plan approval will be required.

8. Docks, except in the Lake Protection Overlay District where a dock permit is required.

d. Decisions on Application of Regulations. Any person uncertain of the applicability of site plan review to a given land use activity may apply in writing to the planning board for a written jurisdictional determination.

e. Fees. Except as otherwise stated, site plan fees, dock permit fees, and other administrative fees for this Section shall be assessed by resolution of the Town Board.

**SECTION 524.1 Submission of Site Plan:**

a. Site Plan. A site plan for such lot or tract as a scale of 1"-50' or a scale less to the inch, prepared by an architect, landscape architect, civil engineer, surveyor, land planner or other competent person, (unless, in view of the specific nature of that application, preparation by such a professional is expressly waived by the Planning Board) including thereon the following information shall be submitted to the Town Planning Board for approval:

1. Preliminary architectural or engineering plans including elevations showing the use, location and dimensions of proposed buildings and open spaces.

2. A site plan showing the proposed land use activity including the location and square footage of buildings, location and dimensions of driveways, ingress and egress from the property, driveway intersections with streets, parking areas and maneuvering areas.

3. A storm drainage and grading plan for analysis of proposed handling of surface water runoff and erosion control, including, where applicable under State or Federal Requirements, a Storm Water Notice of Intent and a Storm Water Pollution Prevention Plan.

4. A plan showing utilities and utility easements including method of sewage disposal in detail. If a private disposal system is used and permitted, plans for the system shall bear the stamped approval of the Broome County Health Department.

5. Plans for all signs to be erected including dimensions, elevations and sign locations.

6. A landscape plan, prepared by a professional landscape architect or other competent person employed by a commercial garden center, showing landscaping to be installed and maintained in front, side and rear yards as developed, including shade trees, deciduous shrubs, evergreens, defined areas of well-kept grassed areas and ground cover. All such landscaping, grassed areas and ground cover areas shall be maintained in a healthy growing condition at all times.

7. Plan of lighting for the exterior of structures and for any interior roadway, driveway, parking area, and off -street loading area.

8. A proposed construction and implementation schedule, and schedule of hours of operation for commercial and business uses.

9. In all cases where the Planning Board shall deem it advisable to determine whether or not the facility will be in conformation with the applicable performance standards or other provisions of this ordinance, the Planning Board shall require adequate testing procedures and shall utilize expert assistance at the expense of the applicant.

Upon written request by the applicant, the Planning Board, upon majority vote, may waive any of the above requirements only if the particular requirement is wholly inapplicable to the particular new land use activity which gave rise to the requirement of site plan review.

b. Existing Site Plans. In the event the applicant has previously received a site plan approval for the subject property and the Town has on file any of the above items, the applicant must still comply with the requirements of this Section and Sections 525 and 526 but must do so by amending and/or supplementing such existing site plan.

**SECTION 524.2 Site Plan Action**

The Town Planning Board shall review said site plan and additional information and shall approve, approve with modifications or disapprove said site plan with regard to achieving without limitations thereto the following objectives:

- a. A harmonious relationship between such uses and uses located in adjacent districts as reflected in the Comprehensive Plan.
- b. The maximum safety of vehicular access and egress from the site to existing and prospective streets and highways.
- c. The maximum adequacy of interior circulation and parking facilities with particular attention to vehicular and pedestrian safety.
- d. The adequacy of transitional landscaping and setbacks in regards to achieving maximum compatibility and protection to adjacent property.

Any approval of site plan review by the Planning Board pursuant to this article shall be valid only for so long as the premises which are the subject of site plan approval are used for the specific use and purposes stated in that application; therefore, if at any future time the applicant or a successor in interest, assignee or lessee shall wish to dedicate the premises to any other use, he shall make a new application for site plan review in accordance with the provisions of this section. Should any previously approved site plan activity be discontinued for a period of more than NO consecutive days (except for uses that typically close on a seasonal basis), such prior site plan approval shall lapse, and an application shall be made for re-issuance of said approval prior to the reopening of said activity.

### **SECTION 524.3 Building Permit**

Building permits shall be issued by the Enforcement Officer in cases where site plan approval is required only after receipt of approval from the Planning Board. The Planning Board shall transmit the application with its written finding to the Enforcement Officer within 75 days. A failure to act within 75 days of the receipt of the application will permit the Enforcement Officer to act without the Planning Board's recommendation.

- a. Changes — an applicant wishing to make any changes in a duly reviewed site plan shall make application for a new building permit.
- b. In the event that an applicant fails to obtain a building permit within one year of site plan approval, the site plan approval of the Planning Board shall be null and void.

### **SECTION 524.4 Standards**

The Town Planning Board shall apply the standards listed for each applicable District and the objectives of Section 524.2 to determine that the requirements of this section are met.

\***SECTION 525. Sawmills.** A special use permit shall be required for the operation of a sawmill

in an Agricultural or Limited Industrial District, pursuant to the requirements set forth in Sections 605-610. In addition to the general requirements specified in Sections 606 and 607, which are applicable to all special use permit requests, the following specific requirements for a sawmill shall be complied with unless such requirements are modified by the Planning Board in the special use permit review process.

A) Any sawmill proposed for use in an Agricultural District shall conform to the following requirements:

1) No mill yard site shall be located within 1000 feet of any school, hospital, religious institution or library.

2) Notification of any proposed sawmill location shall be given to all properties within one-quarter mile of the proposed mill yard prior to the public hearing required under §605(8).

3) An appropriate buffer strip of no less than 500 feet shall be provided between the mill yard and any abutting residential property. Said buffer strip should preferably be wooded.

4) In order to mitigate noise impact on neighboring properties, the mill operator shall:

a. Maintain EPA-approved mufflers in proper and working condition at all times for all vehicles used on-site during operation;

b. Limit all on-site manufacturing operations to Monday - Saturday, 6:00 a.m. to 7:00 p.m. No truck operation or deliveries shall occur after 9:00 p.m.

5) If within one year after commencement of sawmill operation, the Town Clerk receives bona fide complaints filed by near-by land owners, the Zoning Board shall analyze the complaints to determine if noise impacts are significant. If the Board determines that the noise impacts are significant, the Board shall provide certified notification to the mill operator. Upon receipt of such certified notification from the Board, the mill operator shall develop, within 45 days of such notification, a noise control program acceptable to the Board. (The mill operator shall be allowed to continue operations during this period).

Upon Board approval of the noise control plan, the plan shall be implemented within 60 days or such other reasonable time as the Board may specify.

The Board reserves the right to hold a public hearing prior to requiring additional noise control measures.

6) Changes in hours of operations, installation of additional equipment, substantially increased wood production, or construction of additional structures shall require Board approval.

7) In addition to the standard requirements for Site Plan Review, any applicant shall submit certain additional information with their application. A worksheet will be provided by the Office of Code Enforcement.

8) Extension of an existing non-conforming operation shall not be permitted.

B) In addition to the special use permit requirements, all saw mills proposed for location in a Limited Industrial District shall conform to the requirements set forth in subparagraphs (A)(4), (A)(5) and (A)(7) of this section.

Additionally, the Board may, in its discretion, require conformance to the requirement set forth in subparagraphs (A) (1), (A) (2) , (A) (3), (A) (6), or (A)(8) of this section."

## **SECTION 526 LAKE PROTECTION OVERLAY DISTRICT.**

### **526.1 ALLOWABLE USES**

A. Properties that fall within the Lake Protection Overlay District, as described in this Law, and shown on the zoning district map shall comply with the standards set forth in this section regulating activity within the Lake Protection Overlay District. These requirements shall be considered in addition to use restrictions or other applicable regulations for each zoning district.

B. In the event that regulations imposed by this ordinance conflict with regulations of an underlying zoning district, the regulations established by this ordinance shall prevail to the extent of the conflict and no further.

### **526.2 REQUIREMENTS TO RECEIVE SITE PLAN APPROVAL:**

A. This local law is intended to supplement the New York State Department of Environmental Conservation's (DEC) authority over the review of applications and issuance of permits for construction activities. If a permit or approval is required by the DEC or any other governmental agency for the property subject to site plan review, a copy of such permit or approval shall be filed with the Code Enforcement Officer, and such permit or approval shall be attached to and made a condition of performance for any permit or site plan approval issued under this Section. Notwithstanding anything to the contrary, final site plan approval may be withheld or conditioned upon acquisition of all necessary county, state and federal permits or licenses required for the property.

#### **B. Site Plan Data Required**

In addition to the site plan information required pursuant to Section 524.1, any application for Site Plan Review in a Lake Protection Overlay District shall contain the following additional information.

i. a perimeter line which encompasses all proposed activities, and identifies the location and extent of the Lake Protection Overlay District boundary, together with all rights of ways and easements which may be affected by the project.

ii. A detailed description of outdoor lighting. All lighting fixtures must direct light downward and prevent spillover of lighting to adjacent properties. Use of exterior lighting continuously

during nighttime hours shall be discouraged.

iii. A plan for controlling traffic to the lakefront, detailing construction and maintenance of paths, stairs or boardwalks.

iv. If applicable, a grading Plan that delineates areas of cut and fill, and identifies changes in topography and drainage. If the area to be graded exceeds 2,500 square feet the applicant shall submit a map showing the existing contours of the site and finished contours to be achieved by grading. Contours shall be sufficiently detailed to define the topography over the entire site (generally at two-foot intervals).

v. Detailed drawings and descriptions of all temporary and permanent soil erosion and sedimentation control measures, and bank stabilization measures.

vi. Detailed visual analysis, containing photographs of the existing views and photo simulation showing the completed project from various vantage points..

vii. Detailed drawings delineating areas to be cleared of vegetation before and during development activities, with area calculations and descriptions of the vegetation to be removed, and detailed drawings and descriptions of proposed vegetation restoration for those same areas.

C. Any application for Site Plan Review in the Lake Protection Overlay District shall be immediately forwarded to the Oquaga Lake Improvement Association.

D. Due notice, referral to the appropriate agencies and a public hearing shall be conducted on each application for a site plan review in a Lake Protection Overlay District, in accordance with the notice and procedural provisions set forth in sections 605-607 of this Article.

E. Miscellaneous Regulations.

1. No fixed structures, other than docks, shall be allowed to extend over the water. Docks shall be subject to the requirements set forth in Section 526.5.

2. The use of pesticides and lawn fertilizers shall not be permitted in the Lake Protection Overlay District.

3. Maximum building heights for single-family detached dwellings shall not exceed thirty-five (35) feet.

4. Accessory structures shall not exceed a maximum height of fifteen (15) feet.

5. Outdoor storage of boats and equipment shall be adequately buffered using trees, vegetation and/or berms to screen the items being stored from adjacent properties and from the lake. The adequacy of the buffering shall be determined by the Town Planning Board as part of the site plan review and approval process.

6. No lot with lake frontage hereinafter created, modified or subdivided in the Lake Protection Overlay District shall have any less than 35 feet of lake frontage.

7. Where practical, trees with a diameter of six (6) inches or greater shall be retained on the site.

8. Commercial vessels used for dock construction shall not be permitted on the Lake when there are no outstanding permits for dock construction.

**526.3 SETBACK REQUIREMENTS** (Section 526.3 amended by LL 1-2006; 4/11/06 - new language is underlined)

A. All structures proposed to be built within the Lake Protection Overlay (LPO) District shall be set back according to the requirements below, except for the following uses: pump houses, recreational docks at approximate water level, storm water and erosion control devices, movable picnic tables and benches, and stairways and walkways. For purposes of this section, fences, boathouses, sheds, garages,

storage units, and cabanas shall all be included in the definition of a structure.

B. No structure shall be allowed within 35 feet of ordinary high water mark.

C. Where the imposition of the above setback precludes the location of a dwelling, other primary structure or any other structure within the meaning of this section, the applicant may request an area variance for relief of the setback requirement. The Town's Zoning Board of Appeals shall review each application in accordance with Article VI of this Law. In considering any variance pursuant to this section, the Zoning Board of Appeals shall take into consideration each of the standards listed in §526.4(A) of the LUMLL, and shall grant the variance only upon a determination that those factors are impacted by the proposed project to the minimum extent possible.

D. No variance shall be granted for any use or structure in violation of the intent and purpose of this Article.

#### **526.4 SITE PLAN APPROVAL STANDARDS**

A. In addition to Site Plan Review Standards set forth elsewhere in this Law, the following standards shall be considered by the Town Planning Board when reviewing any Site Plan submission in the Lake Protection Overlay District:

- i. The Site Plan shall demonstrate that the impact to fish, birds, wildlife and native vegetation is minimized by preserving natural habitat,
- ii. The Site Plan shall demonstrate that erosion and sedimentation shall be prevented, and that the risk of structural loss due to future changes in lake levels is minimized.
- iii. The Site Plan shall demonstrate that the natural character and aesthetic value of the shoreline is maintained by minimizing the visual impact of the development.
- iv. Site development shall be fitted to the topography and soil so as to create the least potential for vegetation loss and site disturbance.
- v. All structures shall be located to maintain an open and unobstructed view to the waterfront from adjacent properties, roadways and pedestrian ways, to the maximum extent possible.

#### **526.5 DOCKS:**

A. A dock permit and site plan approval shall be required from the Code Enforcement Officer and Planning Board prior to the commencement of construction, modification or installation of any dock, except that a dock permit and site plan are not required to repair, maintain or replace in-kind an existing dock where:

1. Its current configuration has been previously permitted,
2. The repairs do not change the size, shape, location or height, and
3. No work on cribbing below mean high water level is proposed.

B. Permits shall be subject to the following conditions:

1. Piers and docks shall have a maximum height above Mean High Water Mark of eighteen inches (18"). There shall be no superstructure permitted above the decks of piers or docks.
2. No pier or dock shall be constructed in a configuration other than straight or T-, L- or



U- shaped.

3. The width of any dock shall not exceed twelve (12) feet, and the length shall not exceed twenty-five (25) feet from the Mean High Water Mark out into the Lake.

4. Every dock shall have a minimum clearance or setback of ten (10) feet from adjacent property lines, as extended at a ninety-degree angle from the lakefront.

5. Lighting of the surface of any pier or dock shall be provided in such a manner as not to produce any offensive glare when viewed from the water or land. The use of lowmast lighting fixtures and deflector shields to direct lighting downward shall be required to reduce or eliminate glare. Any waterfront electrical work must be installed and certified by a licensed electrician.

6. The number of private piers or docks permitted for each waterfront lot used for single-family residential purposes shall not exceed the following:

i. One hundred (100) feet or less of water frontage: a total of one (1) such structure, which may be in the straight configuration only.

ii. One hundred one (101) to two hundred fifty (250) feet of water frontage: a total of two (2) such structures, in any permitted configuration.

iii. Two hundred fifty one (251) or more feet: a total of three (3) such structures, in any permitted configuration.

7. No dock construction shall be permitted between the dates of May 15 and September 15 of each year. Maintenance and repair of existing docks, and reinstallation of temporary docks, shall be permitted.

8. Docks with canopies or other roof-like structures shall not be permitted.

C. A permit is required from the Department of Environmental Conservation for work lakeward of the Mean High Water Level, including the construction of seawalls or riprap, installation of waterlines and cables, placement of sand, and dredging.

D. Boat lifts are only permitted in accordance with the following provisions:

1. boat lifts must be attached to a permitted dock and approved as part of a dock permit

2. boat lifts may not be placed within the 10ft setback applicable to docks

3. only 1 boat lift shall be permitted for each lot

4. a boat lift and all necessary apparatus, including the boat itself when fully raised out of the water, must not exceed a height of 10 feet above the water.

5. boat lifts with canopies or other roof-like structures shall not be permitted.