

Chapter 138

SITE PLAN REVIEW

ARTICLE I General Provisions

- § 138-1. Declaration of intent.**
- § 138-2. Delegation of authority.**
- § 138-3. Exemptions.**

ARTICLE II Review Procedures

- § 138-4. Site plan review process.**

§ 138-5. Planning Board action on site plan.

§ 138-6. Submission of final site plan.

§ 138-7. Construction phase.

§ 138-8. Penalties for offenses.

§ 138-9. Termination of site plan approval.

[HISTORY: Adopted by the Town Board of the Town of Westmoreland 6-10-2002 by L.L. No. 3-2002. Amendments noted where applicable.]

GENERAL REFERENCES

Building code administration and enforcement — See
Ch. 86.
Flood damage prevention — See Ch. 108.

Stormwater management — See Ch. 152.
Zoning — See Ch. 180.

ARTICLE I General Provisions

§ 138-1. Declaration of intent.

- A. The site plan review requirements in this chapter are intended to provide a consistent and uniform method of review of proposed development plans, to ensure full compliance with the regulations in this chapter and other applicable ordinances and state and federal laws, to achieve efficient use of the land, to protect natural resources, and to prevent adverse impact on nearby properties and to promote harmony between adjacent residential, industrial, business, and agricultural land uses. It is the intent of these provisions to encourage cooperation and consultation between the Town and the applicant to facilitate development in accordance with the Town's land use objectives.
- B. Definition of site plan. As used in this chapter the term "site plan" shall mean, a rendering, drawing, or sketch prepared to specifications and containing necessary elements, as set forth in Chapter 180, Zoning, of the Code of the Town of Westmoreland, which shows the arrangement, layout and design of the proposed use of land as shown on said plan.

§ 138-2. Delegation of authority.

- A. Authority for the review of site plans as required by this chapter is hereby delegated by the Town Board to the Planning Board of the Town of Westmoreland. The Planning Board shall have the power to review and approve, approve with modifications or disapprove site plans in residential, business, agricultural and industrial districts provided for in Chapter 180, Zoning, of the Code of the Town of Westmoreland.
- (1) In all districts, site plan approval by the Planning Board shall be required for:
- (a) The erection or enlargement of all buildings in all districts other than one- or two-family residences or uses accessory thereto;
 - (b) All uses of vacant land other than use customarily accessory to one- or two-family residences;
 - (c) Any changes in use or intensity of use which will affect the characteristics of the site in terms of (but not limited to) parking, loading, access, drainage, utilities, lighting or other Town services.
- (2) Before obtaining approval for a zoning or building permit in any zoning district mentioned above, the owner shall submit a site plan and map to the Planning Board for its review and approval. The application shall be accompanied by a nonreimbursable fee as shall be set by resolution of the Town Board.¹
- B. No permit for development subject to site plan approval shall be issued by the Enforcement Officer except upon authorization of and in conformity with the site plan approval by the Planning Board.
- C. Nothing herein is intended to conflict with or limit the authority of the Town Board.

§ 138-3. Exemptions.²

Property owners who desire to construct or alter a sign, except when the sign is part of the construction of a structure or building or an addition to an existing structure or building, are exempt from site plan review. However, such signs must comply with § 180-43J and K of the Code of the Town of Westmoreland.

ARTICLE II**Review Procedures**

[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]

§ 138-4. Site plan review process.

- A. Procedure for preliminary review process.

1. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

2. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

- (1) Sketch plan conference and concept review. Prior to the preparation or submission of any site plan, the Planning Board and the applicant shall hold a sketch plan conference so to enable the applicant to inform the Planning Board of said proposal prior to the preparation of same and for the Planning Board to review the general site design concept, advise the applicant of potential problems and concerns and to generally determine the information to be required on the site plan. For purposes of this concept review, the applicant shall provide to the Planning Board the following documents in triplicate:
 - (a) Area map showing the parcel under consideration for site plan review and all properties, subdivisions, streets and easements within 200 feet of the boundaries thereof;
 - (b) Sketch or map of the area which clearly shows the location of the improvements with respect to nearby street rights-of-way, properties, easements, and other pertinent features.
 - (c) Map of site topography at no more than five-foot contour intervals. If general site grades exceed 5% or portions of the site have susceptibility to erosion, flooding, or ponding, a soils overlay and topographic map showing contour intervals of not more than two feet of elevation should also be provided.
 - (d) Statement and rough sketch showing exact locations and dimensions of principal and accessory structures, parking areas, signs, existing and proposed vegetation and other planned features; anticipated changes in the existing topography and natural features including stormwater management plans and visual impact on adjacent properties; and, where applicable, measures and features to comply with flood hazard and flood insurance regulations. Where applicable, please include:
 - [1] Location, design, proposed use and height of all buildings (existing and proposed), including all accessory uses and structures;
 - [2] Location, design and type of construction of all parking and truck loading areas, showing access and egress, including a comparison of required and provided parking spaces and loading areas;
 - [3] Provision of pedestrian access, including provisions for meeting requirements set forth in Americans with Disabilities Act (ADA);
 - [4] Location of outdoor storage, including provisions for meeting requirements set forth in Americans with Disabilities Act (ADA);
 - [5] Location, design and construction materials of all existing or proposed site improvements, including drains, culverts, retaining walls and fences;
 - [6] Description of the method of sewage disposal and location, and design and construction materials of such facilities;

- [7] Description of the method of securing water and location, and design and construction materials of such facilities;
 - [8] Location of fire and other emergency zones, including the location of fire hydrants where available;
 - [9] Location and design of all energy distribution facilities, including electrical, gas and solar energy;
 - [10] Location, size, and design and construction materials of all proposed signs;
 - [11] Location and proposed development of all buffer areas, including existing vegetative coverage;
 - [12] Location and design of outdoor lighting facilities;
 - [13] Designation of the amount of building area proposed for retail sales or similar commercial activity;
 - [14] General landscaping and planting schedule;
 - [15] Other elements integral to the proposed development as considered necessary by the Planning Board, including identification of any state or county permits required for the project's execution;
 - [16] Completed environmental assessment for (EAF) in compliance with the State Environmental Quality Review Act (SEQR);
 - [17] Soil erosion and sediment control plan.
- (e) Please include on all maps and sketches/drawings the following information:
- [1] Title of map, sketch/drawing.
 - [2] Name and address of preparer.
 - [3] Date of map, sketch/drawing.
 - [4] North arrow and scale not smaller than one inch equals 40 feet.
 - [5] Boundaries of the property plotted to scale.
 - [6] Existing watercourses.
 - [7] Grading and drainage plan, showing existing and proposed contours.
- (f) The application should conform to the site plan review procedures herein and keep in conformance with the Comprehensive Plan. All documents, including the application, must be submitted in triplicate.
- (2) Application fees and costs for preliminary site plan approval. A fee as set by resolution of the Town Board shall accompany each application. Further, anticipated costs which the Planning Board expects to incur due to consulting

services or other review costs shall be paid by the applicant and placed in an escrow account. Any unspent funds shall be returned to the applicant within five days of Planning Board action on the final site plan.

- (3) Public notice. Once an application for site plan has been made, in writing, to the Chairman of the Planning Board and a copy submitted to the Town Clerk and fees paid to the Codes Enforcement Officer, a written notice shall be given to the owners of property immediately adjacent and extending 100 feet from the property at least five days prior to the initial site plan review by the Planning Board. The notice shall state the name of the applicant, the location of the subject property, the date of the initial review, and a description of the proposed use or occupancy.

B. Review of site plan.

(1) Review criteria.

- (a) The Planning Board shall review all proposed site plans based upon, but not limited to, the criteria set forth herein:

- [1] Location, arrangement, size and design compatibility of buildings, lighting and signs in regards to the reviewed and adjacent properties;
- [2] Adequacy, arrangement and safety of vehicular traffic access and circulation, including intersections, road widths, pavement surfaces, dividers, and traffic controls;
- [3] Adequacy and arrangement of pedestrian traffic access and circulation, walkway structures, control of intersections with vehicular traffic and overall pedestrian convenience and safety;
- [4] Location, arrangement, appearance, and sufficiency of off-street parking and loading;
- [5] Adequacy of stormwater and drainage facilities;
- [6] Adequacy of water supply and sewage disposal facilities;
- [7] Location, arrangement, size, design, and general site compatibility of buildings, lighting and signs;
- [8] 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;
- [9] Adequacy of fire lanes and other emergency zones and the provision of fire hydrants.
- [10] In case of an apartment complex or other multiple dwelling, the adequacy of usable open space for play areas and informal recreation;

- [11] Protection of adjacent or neighboring properties against noise, glare, unsightliness, or other objectionable features;
 - [12] Special attention to the adequacy of structures, roadways, and/or landscaping in areas with susceptibility to ponding, flooding, and/or erosion;
 - [13] Such other elements as relate to the health, general safety and welfare of the community.
- (b) When reviewing site plan application for any use in all zoning districts, the Planning Board shall use the development guidelines adopted by the Town Board as a basis for rendering a decision as to approval or denial of such application.
- (2) Consultant review. The Planning Board may consult with the Code Enforcement Officer, Fire Commissioners, Superintendent of Highways, other local and county officials and its designated private consultants, in addition to representatives of federal and state agencies, including, but not limited to, the Soil Conservation Service, the State Department of Transportation and the State Department of Environmental Conservation.
 - (3) Public hearing. The Planning Board will conduct a public hearing on the preliminary site plan. Such public hearing shall be conducted within 62 days of the receipt of the application for preliminary site plan review and shall be advertised in a newspaper of general circulation in the Town at least 10 days prior to the public hearing. Where applicable, written notice shall be provided as noted above at § 138-4(A)(3).
 - (4) Decision timeline. Within 62 days of the public hearing, and upon compliance with the SEQRA as hereinafter defined, the Planning Board shall inform the applicant of its recommendation and/or decision. The time within which a decision must be rendered may be extended by mutual consent of the applicant and the Planning Board.

§ 138-5. Planning Board action on site plan.

- A. SEQRA applicability. The proposed development in question may be subject to the provisions of the State Environmental Quality Review Act (SEQRA). The Planning Board shall identify the type of action proposed per SEQRA standards. Depending on the size, location and other factors, the development may be identifiable as a Type I or unlisted action. The Planning Board shall review the environmental assessment form (EAF) submitted with the application. The SEQRA type of action will dictate the next steps in the review process should same be applicable.
- (1) Environmental impact statement. If it is determined that an environmental impact statement must be prepared for the proposal in question, all time periods and deadlines are stayed until a draft environmental impact statement is filed. An application is not complete and therefore the review period does not start until a

determination of no significance has been made or until a draft environmental impact statement has been completed. When the draft environmental impact statement is completed, the time frame for the Planning Board review begins. If another agency has determined that the proposal in question may have a significant effect on the environment, the Planning Board shall not issue a decision until a final environmental impact statement has been filed.

- (2) Compliance with SEQRA. When compliance with SEQRA is complete, the Planning Board shall act on the application within 62 days.
- B. Decision on preliminary site plan review. Within 62 days of the public hearing, and upon compliance with the SEQRA, the Planning Board shall render a decision.
- (1) Format.
 - (a) The Planning Board's decision shall be in the form of a written statement to the applicant stating whether or not the preliminary site plan is approved, disapproved, or approved with modifications.
 - (b) Approval may be rendered, after payment by the applicant of all fees and reimbursable costs due the Town, by the Planning Board endorsing its decision on a copy of the final site plan and forwarding a copy to the applicant and Enforcement Officer and filing same with the Town Clerk.
 - (c) The Planning Board's statement may include recommendations of desirable modifications to be incorporated in the final site plan, and conformance with the said modifications shall be considered a condition of approval.
 - (d) If the preliminary site plan is disapproved, the Planning Board's statement will contain the reasons for such findings. In such a case, the Planning Board may recommend further study of the site plan and resubmission to the Planning Board after it has been revised or redesigned.

§ 138-6. Submission of final site plan.

A. Final site plan.

- (1) After receiving Planning Board approval on the preliminary site plan, with or without modifications, the applicant shall submit a final, detailed site plan to the Planning Board for final approval. If more than six months have elapsed since the time of the Planning Board's action on the preliminary site plan and if the Planning Board finds that conditions may have changed significantly in the interim, the Planning Board may require resubmission of the preliminary site plan for further review and possible revision prior to accepting the proposed final site plan for review.
- (2) The final site plan shall conform substantially to the approved preliminary site plan. It shall incorporate any modifications that may have been recommended by the Planning Board in its preliminary review. All such compliances shall be clearly indicated by the applicant on the appropriate submission.

- B. Supplemental information to accompany final site plan. The following additional information shall accompany the submission of the final site plan:
- (1) Record of application for and status of all necessary permits from state and county officials;
 - (2) Detailed sizing and final material specification of all required improvements; and
 - (3) An estimated project construction schedule.
- C. Required referral. Prior to taking action on the final site plan, the Planning Board shall refer the plan to the County Planning Department for advisory review and a report in accordance with §§ 239-1 and 239-m of the General Municipal Law, where the proposed action is within the distance of 500 feet from the boundary of any city, village, or town or from the boundary of any existing or proposed county or state park or other recreation area or from the right-of-way of any existing or proposed county or state parkway, thruway, expressway, road or highway or from the existing or proposed boundary of any county or state owned land on which a public building or institution is situated.
- D. Planning Board action on final detailed plan. Within 62 days of receipt of the application for final site approval, the Planning Board shall render a decision to the Code Enforcement Officer. If no decision is made within said period, the final site plan shall be considered approved.
- (1) Approval. Upon approval of the final site plan and payment by the applicant of all fees and reimbursable costs due the Town, the Planning Board shall endorse its approval on a copy of the final site plan and shall forward such copy to the Code Enforcement Officer.
 - (2) Disapproval. Upon disapproval of the final site plan, the Planning Board shall so inform the Code Enforcement Officer and the Code Enforcement Officer shall deny a building permit to the applicant. The Planning Board shall also notify the applicant in writing.

§ 138-7. Construction phase.

A. Performance guaranty.

- (1) Performance bond. Concurrent with the filing of an application for a building permit with the Code Enforcement Officer, the applicant shall place on file with the Code Enforcement Officer a performance bond to the Town in the amount of 75% of the estimated cost of construction of the site work.
- (2) Certificate of occupancy.
 - (a) No certificate of occupancy shall be issued until all improvements shown on the site plan are installed or a sufficient performance guaranty has been posted for improvements not yet completed. The sufficiency of such performance guaranty shall be determined by the Planning Board after

consultations with the Town Board, Enforcement Officer, Town Attorney or other appropriate parties. Such performance guaranty may take the form of:

- [1] A contract bond, which may be a performance bond, a labor and materials bond, and/or maintenance bond;
- [2] A letter of credit;
- [3] An escrow check;
- [4] A certified check;
- [5] Staged permit approval of all construction.

(b) At the conclusion of the project, all bonds will be returned to the applicant.

B. Inspection of improvements.

- (1) The Code Enforcement Officer, with the assistance of the Town Engineer where applicable, shall be responsible for the overall inspection of site improvements, including coordination with the Planning Board and other officials and agencies as appropriate, and shall, periodically throughout the construction, review the work for conformance with the approved site plan.
- (2) The applicant will be notified if the work does not conform to the approved site plan and shall have 30 days to remedy deficiencies. The Town may take corrective action should applicant fail to remedy any such deficiencies within 30 days. Any and all costs of such corrective action will be the responsibility of the applicant.

§ 138-8. Penalties for offenses.

- A. Where a violation of this chapter occurs, the Enforcement Officer shall send written notice to the last known owner of record of the property as determined by the assessment records, informing said owner of the specific violation and stating that action must be taken by said owner to remove such violation within 30 days or proceedings to compel compliance with this chapter and/or Chapter 180, Zoning, of the Code of the Town of Westmoreland will be instituted. Any person or persons who commit or permit any acts contrary to the provisions of this chapter shall be guilty of a violation thereof and, upon conviction, shall be subject to a fine not exceeding \$250 and not less than \$50 or imprisonment not to exceed 15 days, or both fine and imprisonment. Each week a violation continues shall constitute a separate, additional violation. Any violation of this chapter may also be enjoined pursuant to law.
- B. In case any building or structure is erected, constructed, reconstructed, altered, converted or maintained, or any building, structure or land is used in violation of this chapter, the Town Board of the Town of Westmoreland may institute any appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, conversion, maintenance or use, to restrain, correct or abate such violation, to prevent the occupancy of said building, structure or land or to prevent any illegal act, conduct business or use in or about such premises.

§ 138-9. Termination of site plan approval.

If construction of the site plan in accordance with the approved plans and specifications has not begun within one year after the date of the Planning Board resolution approving the site plan and authorizing issuance of a building permit or if construction is not completed within the date set therefor by the Planning Board in its approval, the site plan and all building permits issued thereunder shall become null and void; the approval shall be deemed revoked and vacated by the Planning Board, unless the applicant shall obtain written extension of time from the Planning Board on such conditions as the Planning Board may require in order to ensure completion of construction.