

Town of Fallsburg, NY

ARTICLE VII
Site Plan Review

§ 310-7.1. Authority and purpose.

The Town of Fallsburg Planning Board is authorized, in accordance with §§ 274-a and 274-b of the New York State Town Law, to review and approve, approve with modifications or disapprove site plans connected therewith. Through site plan review, it is the intent of this article to promote the health, safety and general welfare of the residents of the Town and to ensure that proposed development and use of land within the Town of Fallsburg will have a harmonious relationship with the existing or permitted use of contiguous land and of adjacent neighborhoods. Uses requiring site plan review are allowed by right, wherein impacts may be mitigated by site design to allow for approval with acceptable alterations.

§ 310-7.2. Applicability and effect of site plan review.

A. Exceptions. The following are exempt from site plan review:

1. One-family and two-family residences (but excluding condominium, townhouse and cooperative developments) and accessory structures;
2. Farm structures on existing farms;
3. New nonresidential buildings of less than 1,000 square feet of floor area;
4. Additions of less than 20% of the floor area of the original structure but not exceeding 500 square feet; and
5. Uses and structures which are lawfully in existence as of the date this article becomes effective.

B. Applicability. Approval of a site plan by the Planning Board is required for:

1. The development or redevelopment of any property requiring the issuance of a special use permit.
2. The development or redevelopment of any property or structure for a new nonresidential use that proposes a building, structure or disturbed area in excess of 1,000 square feet of cumulative gross floor area or a structure that will be used for two or more stores or offices. Accessory structures to residential uses that are 1,000 square feet or more shall also be subject to site plan review. [Amended 7-26-2021 by L.L. No. 12-2021]
3. The expansion of any existing use resulting in a building, structure or disturbed area in excess of 1,500 square feet of cumulative gross floor area.

4. The paving of nonresidential parking areas and associated driveways for purposes of reviewing stormwater facilities and to ensure adequate landscaping and screening.
5. The development or redevelopment of any property or structure for a new nonresidential use, in accordance with this chapter.
6. Accessory structures or uses which exceed the gross floor area of the principal structure shall require site plan approval.
7. Any existing use which would otherwise be subject to this section that has been discontinued for a period of two years or more shall be subject to site plan review before such use is resumed.
8. The creation or enlargement of a sludge lagoon or similar waste-holding facility related to any agricultural operation, agribusiness or similar use shall not be exempt from these regulations and shall require site plan approval by the Planning Board.

C. Effect of site plan approval.

1. No lot or parcel of land shall be used except in conformity with an approved site plan, when required. In all cases where this chapter requires approval of site plans by the Planning Board, no building permit shall be issued by the Code Enforcement Officer except upon authorization of and in conformity with the plans approved by the Planning Board.
2. No building permit shall be issued for any use or structure covered by this section until an approved site plan or approved amendment of any such plan has been secured by the applicant from the Planning Board and filed with the Code Enforcement Officer. If an approved site plan has not been updated within the last 10 years, and an applicant wishes to add any impervious surface to the subject site, a new, updated site plan shall be submitted to ensure that the site plan is still in compliance with the provisions of this chapter and any prior approvals.
3. No certificate of occupancy will be issued for any structure or use of land covered by this section unless the structure is completed or the land is developed or used in accordance with an approved site plan or approved amendment of any such plan.

D. Discretionary determinations.

1. **Religious uses are presumed to be beneficial to the community and therefore may not be unreasonably denied approval when mitigation(s) can reasonably protect against detrimental impacts of the project/proposal. The Planning Board has discretion to require mitigation where practicable, subject to the following responsibilities:**

- a. Clearly identify issues of concern;
- b. Provide a thorough analysis of the issues;
- c. Explain how required mitigations will ameliorate concerns; and
- d. Maintain a record of these issues, analysis and findings.

In its discretion the Planning Board has the authority to require the applicant to submit studies for the purpose of conducting analysis regarding potentially detrimental impacts of a proposed religious use and accept mitigations in lieu of absolute denial of either a portion(s) of a proposal or the entire application. Such authority does not permit approval of any projects that create fatal safety hazards that cannot be mitigated or that do not meet New York State Environmental Quality Review requirements, but merely grants discretion to ameliorate neighborhood inconveniences or nuisances. This discretion does not pre-empt the need for a variance when the application does not meet any element of this zoning law.

§ 310-7.3. Application procedure.

- A. Presubmission conference. Prior to the submission of a site plan, the applicant or his/her representative shall meet with the Code Enforcement Officer. The purpose of the conference shall be to discuss proposed uses or development in order to determine which of the site plan elements in this article shall be submitted to the Planning Board to determine conformity with the provisions and intent of this article. The Planning Board shall be under no obligation to schedule a public hearing or take any action with respect to a site plan application until a formal application has been made on forms provided by the Code Enforcement Officer and a detailed site plan in accordance with § 310-7.4 has been submitted.
- B. Site plan submission. Within six months following the presubmission conference, 12 copies of the site plan and any related information shall be submitted to the Code Enforcement Officer at least 15 days prior to the Planning Board meeting at which approval is requested. If not submitted within the six-month period, another presubmission conference shall be required.
- C. Code Enforcement Officer review. The Code Enforcement Officer shall indicate on each site plan or amendment whether or not the plan meets the requirements of all Zoning Chapter provisions, other than those of this article regarding site plan approval.
- D. Code Enforcement Officer transmittal. The Code Enforcement Officer shall retain one copy of the application and site plan and transmit the balance to the Secretary of the Planning Board at least 15 days prior to the Planning Board meeting at which approval is requested.
- E. County GML § 239 review. Where required by §§ 239-l and 239-m of the General Municipal Law, site plans shall be referred to the County Planning Board.

- F. Notification of neighboring municipalities. Pursuant to General Municipal Law § 239-*nn*, for a site plan permit review under this article involving property located within 500 feet of an adjacent municipality, notice of any public hearing shall be given by mail or electronic transmission to the clerk of the adjacent municipality not less than 10 days prior to the date of said hearing.
- G. Public hearing. The Planning Board may conduct a public hearing on the site plan if considered desirable by a majority of its members. Such hearing shall be held within 62 days of the receipt of a complete application for site plan review and shall be advertised in the Town's official newspaper at least five days before the public hearing. It shall be the responsibility of the applicant to notify neighbors within 300 feet of his or her property by certified mail at least ten days before the public hearing.
- H. Property violations. If a violation notice has been or is issued to the subject property, the Code Enforcement Officer, with written approval from the Planning Board Chairperson, may prohibit and/or remove the application from the Planning Board meeting agenda until such violation(s) are remedied, unless the purpose of the application is to remedy such violation(s). [Added 11-14-2022 by L.L. No. 12-2022]

§ 310-7.4. Site plan elements.

The applicant shall have a site plan prepared by a civil engineer, surveyor, landscape architect, architect, or other qualified professional to prepare site plans. The site plan shall include those elements listed herein which are appropriate to the proposed development or use as required by the Planning Board in the presubmission conference. The application shall be accompanied by a detailed statement describing the proposal.

- A. Legal data.
 - 1. Section, block and lot, number of the property from the latest tax records.
 - 2. A legend that describes all symbols provided on the plans.
 - 3. The name and address of the applicant and owner of record and legal relationship between applicant and owner if different.
 - 4. The name and address of the person, firm or organization preparing the map.
 - 5. The date, North point and written and graphic scale.
 - 6. Area map taken from, and at the same scale as, the Town of Fallsburg Zoning Map. Existing zoning district boundaries within 500 feet of the property shall be shown on the area map.
 - 7. Certified survey in a scale of one inch equals 50 feet or larger or information to define precisely the boundaries of the property. All distances shall be in feet and tenths of a

foot. All angles shall be given to the nearest 10 seconds or closer. The error of closure shall not exceed one in 10,000.

8. The locations, names and existing widths of adjacent streets and curb lines
9. The locations and owners of all adjoining lands, as shown on the latest tax records, including section, block and lot number.
10. Applicant's entire holdings. The applicant and/or the owner of record shall show his entire contiguous holdings on said map.
11. The location, width and purpose of all existing and proposed easements, setbacks, reservations and areas dedicated to public use within or adjoining the property.
12. A complete schedule of existing deed restrictions of record or covenants applying to the property.
13. A blank square of 3.5 inches, in the lower-right-hand corner, situated above the title block, to be used for the Planning Board Chair's signature.

B. Natural features, including those features set forth in § 310-5.4. Soil mapping units and hydric soils shall be shown.

1. Existing contours with intervals of two feet or less, referred to a datum satisfactory to the Planning Board, in the area of the site which is satisfactory to the Planning Board.
2. Approximate boundaries of any areas subject to flooding or stormwater overflows.
3. Location of existing watercourses, marshes, wooded areas, rock outcrops, isolated trees with a diameter of eight inches or more measured three feet above the base of the trunk and other significant existing features. Freshwater wetlands under the jurisdiction of the Army Corps of Engineers and/or the New York State Department of Environmental Conservation shall be delineated.

C. Existing structures and utilities.

1. Location of uses and outlines of structures, drawn to scale, on the subject premises and adjacent properties within 100 feet of the subject property's lot lines.
2. Paved areas, sidewalks and vehicular access between the site and public streets.
3. Locations, dimensions, grades and flow direction of existing sewers, culverts and waterlines, as well as other underground and aboveground utilities within and adjacent to the property.
4. Other existing development, including fences, landscaping and screening.

D. Proposed development.

1. The location of proposed buildings or structural improvements.
2. All pertinent zoning setback and yard dimension lines.
3. Copies of single-line building floor plans and building elevations, with exterior finish material specifications, color samples, and descriptions of all roof, wall and exterior details, for projects reviewed by either the Planning Board or Architectural Review Board.
4. The location and design of all uses not requiring structures, such as off-street parking and loading areas, fencing, benches, recreation facilities, and garbage dumpster locations.
5. The computation for the required number of parking spaces in accordance with the regulations contained in Article VIII.
6. The location, direction, power, design, and time of use for any proposed outdoor lighting or public address systems. Isolux curves may be required.
7. The location and plans for any outdoor signs.
8. The location and arrangement of proposed means of access and egress, including sidewalks, driveways, or other paved areas, and profiles indicating grading and cross sections showing the width of roadway, location and width of sidewalks and location and size of water and sewer lines.
9. An outline of any proposed deed restrictions or covenants.
10. Any contemplated public improvements on or adjoining the property.
11. If the site plan only indicates a first stage, a supplementary plan shall indicate ultimate development.
12. A list of all required federal, state and county permits.
13. Bulk table, identifying nonconforming items or those needing a variance.

E. Proposed grading, drainage and utility plan.

1. Existing and proposed contours at a maximum two-foot vertical interval extended 100 feet beyond the property boundaries.

2. Location and types, sizes and slopes, where pertinent, of existing and proposed waterlines, water wells, valves and hydrants, storm and sanitary sewer lines, individual sewage disposal systems, electric lines, telephone lines, gas and other utility lines, and utility poles. Typical cover should be indicated over all proposed underground utility lines.
3. Existing and proposed stormwater drainage and underdrain systems, including location, size and slopes of all pipes and swales, including invert and top elevations at each manhole, inlet, headwall or other appurtenant drainage structure; base width, side slope, inverts, and lining of each swale (riprap, concrete, grass, etc.); and inverts of underdrain systems at bends and outlets. Roof drains and footing runoff shall be directed to an existing storm drainage system in the street, if possible, and not directed to adjacent properties. Underground detention of percolation systems may be required.

F. Soil erosion and sediment control plan: required where it is applicable.

G. Landscaping plan: in accordance with §§ 310-5.10 and 310-8.5.

H. Stormwater management plan. The Planning Board may require the applicant to submit a stormwater management plan to mitigate the potential effects in the increase of stormwater runoff as well as to mitigate potential water quality impacts. The Planning Board may require an applicant to install appropriate water quality protection devices. The stormwater management plan for any major residential subdivision or nonresidential project shall contain an operation and maintenance plan prepared by the applicant and approved by the Town Engineer. The operation and maintenance plan shall establish responsibilities for the continued operation and maintenance of all common stormwater management improvements, which shall include all stormwater management improvements designed to serve more than a single lot or dwelling. All such facilities associated with the approved subdivision plan shall be owned and maintained by a homeowners' association (HOA) or such other entity as may be approved by the Town Board. Any stormwater pollution prevention plan required in accordance with New York State Department of Environmental Conservation (NYSDEC) regulations governing permits for stormwater discharges shall be submitted to the Planning Board. All stormwater plans shall comply with NYSDEC Standards for Erosion and Sediment Control and the New York State Stormwater Management Design Guidelines.

- I. Environmental assessment form (EAF). Copies of environmental assessments or permit applications and a completed EAF pursuant to SEQRA.
- J. Cost-benefit analysis. A cost benefit analysis or similar study, where required by the Planning Board, to review the estimated municipal costs, services and prospective revenues which would be generated by the proposed use.
- K. Traffic study. Where required by the Planning Board, a traffic and circulation study projecting the effects of the proposed use on the existing and probable future traffic and access in the vicinity of the proposed use shall be provided in accordance with § 310-8.4.

- L. Revision dates. All site plans that are submitted to the Planning Board which have been revised shall have the revision number noted in a triangle along with a brief summary of the elements revised and the dates of the revisions.
- M. Additional information. Any other information deemed by the Planning Board necessary to determine conformity of the site plan with the intent and regulations of this chapter.

§ 310-7.5. Waivers.

The Town of Fallsburg Planning Board shall, pursuant to § 274-a(5) of New York State Town Law, have the right to waive, when reasonable, any of the procedural requirements of this article for the approval, approval with modifications or disapproval of site plans submitted for approval. This waiver authority may be exercised in the event any such requirements are found not to be requisite in the interest of the public health, safety, or general welfare or are inappropriate to a particular site plan. Any such waiver shall be subject to the following conditions:

- A. No waiver shall result in allowing a use not permitted within the applicable zoning district.
- B. No waiver shall be given with respect to standards outside the scope of this article which would otherwise require a variance from the Zoning Board of Appeals.
- C. Waivers shall be limited to those situations where the full application of the requirements contained herein would generate unnecessary data and create unnecessary costs with regard to deciding the matter at hand, due to the scope or nature of the project involved. The proposed enclosure of a deck or a simple change of use with no significant structural modifications in the case of a commercial property, for example, might not require typical cross-sections for proposed regrading or water supply data.
- D. An applicant for site plan approval who desires to seek a waiver of certain of the above-referenced requirements pertaining to such applications shall submit a preliminary site plan as provided above. The Planning Board shall review the preliminary site plan, advise the applicant as to potential problems and concerns and determine if any additional site plan information is required. The Planning Board shall consider such site plan as adequate when, in its judgment, the information submitted is sufficient to make a determination of compliance with the development standards contained herein and the intent of site plan review criteria found below.
- E. Nothing herein shall authorize the Planning Board to waive state environmental quality review requirements.

§ 310-7.6. State Environmental Quality Review Act (SEQRA).

The Planning Board shall, in particular, ensure that the requirements of SEQRA are followed. The Planning Board shall not grant approval before a decision has been made with respect to the environmental impacts pursuant to SEQRA.

§ 310-7.7. Review fees. [Amended 12-18-2023 by L.L. No. 12-2023]

The Planning Board may secure the advice or assistance of one or more professional consultants in connection with the review of any application under this chapter. The fee for the services of such professional consultants shall be borne by the applicant, in accordance with the procedures set forth in Chapter 135, Article IV.

§ 310-7.8. Hearings and decision.

The Planning Board shall set a time, within 62 days from the time the Board deems complete an application for site plan approval is made, for a hearing of any matter referred under this article. The Planning Board may hold further public hearings if necessitated by the nature or length of the approval process or if major changes occur in a project after the original hearing. Property owners within 300 feet of the project property line shall be notified of the public hearing by certified mail by the applicant. The applicant shall mail notice of said hearing at least 10 days before said hearing. The Code Enforcement Officer shall give public notice of said hearing, at least five days prior to it, in a newspaper of general circulation in the Town and decide upon the application within 62 days after the close of such hearing. The time period in which the Planning Board must render its decision can be extended by mutual written consent of the applicant and the Planning Board. Notwithstanding the above, site plan approval shall not be granted until the provisions of the New York State Environmental Quality Review Act¹ have been met. In its decision, the Planning Board may approve, approve with modifications or disapprove the site plan.

- A. Approval. Upon approval of the site plan, and payment by the applicant of all fees and reimbursable costs due the Town, the Chairman of the Planning Board shall endorse the approval on a copy of the site plan. A copy of the written statement of approval shall be mailed to the applicant and a copy filed with the Code Enforcement Officer. The signature of the applicant and the owner of the property, if different, shall be placed on the site plan prior to the signature of the Planning Board Chairman or his designee.
- B. Approval with conditions. The Planning Board shall have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed site plan. Upon approval of said plan, any such conditions shall be met prior to the actual issuance of permits by the Town. These conditions may include requirements of the applicant to provide parkland or to provide fees in lieu thereof pursuant to § 274-a(6) of the New York State Town Law for new lots and residential units of any kind. After adequate demonstration to the Planning Board that all conditions have been met, 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 site plan. A copy of the written statement of approval shall be mailed to the applicant and a copy filed with the Code Enforcement Officer. The signature of the applicant and the owner of the property, if different, shall be placed on the site plan prior to the signature of the Planning Board Chairman or his designee.

¹ Editor's Note: See NY Envir Conser § 8-0101 et seq. accordance with the time frames set forth in § 310-11.1H have expired, the approval shall be null and void. [Amended 7-13-2020 by L.L. No. 7-2020]

C. Disapproval. Upon disapproval of the site plan, a copy of the decision of the Planning Board shall be filed with the Code Enforcement Officer and a copy thereof shall be mailed to the applicant by certified mail, return receipt requested, along with the Planning Board's reasons for disapproval. Planning Board disapproval shall include written findings upon any site plan element found contrary to the provisions or intent of this chapter. The decision of the Planning Board shall be filed in the office of the Town Clerk and a copy thereof mailed to the applicant within five business days after such decision is rendered.

§ 310-7.9. Appeals.

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 for a review by a proceeding under Article 78 of the Civil Practice Law and Rules. Such proceedings shall be instituted within 30 days after the filing of a decision in the office of the Town Clerk.

§ 310-7.10. Amendments to approved site plans.

Amendments to an approved site plan shall be acted upon in the same manner as the approval of the original plan.

§ 310-7.11. Expiration of approval.

A. All final and/or conditional final site plan approvals shall be valid for a period not to exceed eighteen-months (18). If the eighteen-month (18) period expires, and no substantial construction has been initiated or if any building permits which have been issued in accordance with the time frames set forth in § 310-11.1H have expired, the approval shall be null and void. **[Amended 7-13-2020 by L.L. No. 7-2020]**

1. The mere issuance of a building permit shall not extend the above-stated eighteen month period.
2. Prior to the expiration of the eighteen-month (18) period, the applicant may petition the Planning Board in writing for two separate six-month extensions of final approval if the application in question is in compliance with all current zoning laws.
3. Vested rights to a site plan shall be based on the following:
 - i. reliance on a legally issued permit;
 - ii. the landowner effects substantial changes and incurs substantial expenses to further the development; and
 - iii. the landowner's actions relying on the valid permit(s) are so substantial that the municipal action results in serious loss rendering the improvements essentially valueless.

- B. Before the final Chairperson signature may be granted on any project, all approvals from all pertinent departments and agencies, in writing, must be submitted to the Town.
[Amended 7-13-2020 by L.L. No. 7-2020]
- C. In the event an applicant, consultants or representatives for site plan review do not appear before the Planning Board in conjunction with its application for a period of one year for purposes of advancing the application process, the Planning Board shall cause a letter to be written to the applicant, the consultant(s) or its representative, at the address appearing on the site plan application, by certified mail, return receipt requested, requiring the applicant, its consultants and/or representatives to appear before the Planning Board at a regularly scheduled meeting to be set by the Planning Board to show cause as to why the application should not be deemed abandoned. In the event the applicant fails to appear before the Planning Board, or upon appearing before the Planning Board fails to show good reason for not advancing the application process, the Planning Board, in its discretion, may declare the site plan application to be abandoned. In the event the application is deemed abandoned and the applicant still desires to seek approval of its site plan, the applicant must make a new application for site plan approval and pay all required application fees.
- D. In the event a conditionally approved site plan or special permit application exhausts the two, six-month extensions as per Town Code § 310-7.11A, the applicant, its consultant(s), or its representative shall appear before the Planning Board at a regularly scheduled meeting to show cause as to why the conditional approval should be further extended in accordance with this Subsection D. In the event the applicant appearing before the Planning Board fails to show good cause for not advancing the project to satisfy the resolution conditions or does not provide evidence that third-party permits and approvals have been diligently pursued, the Planning Board in its discretion may deny the request for extension under this Subsection D, and the applicant shall file a new site plan application and pay all required application fees. Should the Planning Board determine, in its sole discretion, that the applicant has diligently pursued completion of all conditions of the resolution and/or any third-party permits and approvals, the Planning Board may grant up to two, six-month extensions.
- E. Site maintenance. It shall be a continuing obligation and requirement to maintain a property in conformity with the approved site plan. Failure to do so shall constitute a violation of this Zoning Chapter.

§ 310-7.12. Field changes.

During construction, the Code Enforcement Officer or Town Engineer may authorize or require, at the Inspector's determination or upon request of the applicant, minor adjustments to the approved site plan when such amendments are necessary due to unforeseen site conditions first discovered during actual construction. Minor adjustments shall be consistent with the spirit and intent of the approved site plan. Approval of such adjustment with the reasons therefor shall be submitted in writing to the Planning Board and a copy of said reasons filed with the site plan. The Code Enforcement Officer or Town Engineer may require that said modifications be reviewed and approved by the Planning Board.

§ 310-7.13. Site plan inspection and maintenance.

It shall be the duty of every property owner to maintain property in conformity with the approved site plan. Failure to do so shall constitute a violation of this chapter. The Code Enforcement Officer shall be responsible for the overall inspection of site improvements and the maintenance thereof.

§ 310-7.14. Performance bond or other surety.

As an alternative to the installation of required infrastructure and improvements, prior to approval by the Planning Board, a performance bond or other security sufficient to cover the cost of the same, as estimated by the Planning Board or a Town department or official designated to make such estimate, where such department estimate is deemed acceptable by the Planning Board, shall be furnished to the Town by the owner. Such security shall be provided to the Town pursuant to the provisions contained in § 277(9) of the New York State Town Law.

§ 310-7.15. Further regulations by Planning Board.

The Planning Board may, after a public hearing, adopt such further rules and regulations as it deems reasonably necessary to carry out the provisions of this article.

§ 310-7.16. Integration of procedures.

Whenever the circumstances of proposed development require compliance with this article and with any other local law, ordinance or requirement of the Town, the Planning Board shall attempt to integrate, as appropriate, site plan review as required by this article with the procedural and submission requirements for such other compliance.