

ARTICLE 7

**PERMITTED USES; PERMITTED USES WITH PLANNING BOARD APPROVAL;
SPECIAL USE AND SITE PLAN REVIEW PROCEDURES**

The Town of Deerpark Planning Board is authorized, in accordance with Sections 274-a and 274-b of the New York State Town Law, to review and approve, approve with modifications or disapprove Special Uses and site plans connected therewith. Site plan review shall be required for all Special Use permits and such other uses as the Town Board may from time to time designate by local law. **All enumerated procedures and regulations set forth for this article shall also apply to site plans submitted for review and approval for all permitted uses with Planning Board approval.** The following procedures shall apply:

§ 7.1 Preliminary Site Plan

An applicant for a Special Use permit may submit a preliminary site plan for review and advice by the Planning Board. Such a preliminary site plan should provide locations and dimensions of the proposed use in relation to the property boundaries and adjacent uses. It should also indicate all accesses and improvements both existing and proposed and any site features which could have a bearing on the project including the general topography and existing ground cover. This preliminary plan shall be used by the Planning Board as a basis for advising the applicant regarding information it shall require on the site plan before it conducts a public hearing or takes any action with respect to the plan. The Planning Board shall give no approval or disapproval regarding any preliminary site plan but may use it to schedule a public hearing if sufficient data is available, determine if any provisions of this article should be waived or begin its review of the application under the New York State Environmental Quality Review Act (“SEQRA”).

§ 7.2 Application and Site Plan Required

The Planning Board shall be under no obligation to schedule a public hearing or take any action with respect to a Special Use permit application until formal application has been made on forms provided by the Board and a detailed site plan providing the following information has been submitted:

1. The location of all existing watercourses, wooded areas, rights-of-way, roads, structures, or any other significant man-made or natural feature, if such feature has an effect upon the use of said property.
2. The location, use, and floor or ground area of each proposed building, structure, or any other land use, including stormwater management, sewage disposal, and water supply systems.
3. The location of all significant landscaping and ground cover features, both existing and proposed, including detailed planting plans and a visual depiction or rendering of the final appearance of the property after all landscaping and other physical improvements are completed.
4. The location, dimensions, and capacity of any proposed roads, off-street parking areas or loading berths, including typical cross-sections for all paving or re-grading involved.
5. The location and treatment of proposed entrances and exits to public rights-of-way, including traffic signals, channelizations, acceleration and deceleration lanes, widenings or any other measure having an impact on traffic safety conditions.
6. The location and identification of proposed open spaces, parks or other recreation areas.
7. The location and design of buffer areas and screening devices to be maintained.

8. The location of trails, walkways, and all other areas proposed to be devoted to pedestrian use.
9. The location of public and private utilities, including maintenance facilities.
10. The specific locations of all signs existing and proposed, including a visual depiction of the latter.
11. Preliminary architectural plans for the proposed buildings or structures, indicating typical floor plans, elevations, height, and general design or architectural styling.
12. A completed SEQRA Environmental Assessment.
13. Any other information required by the Planning Board which is clearly necessary to ascertain compliance with the provisions of this law and limited to such information.

§ 7.3 Waivers

The Town of Deerpark Planning Board shall, pursuant to Section 274-a(5) of the 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 Special Use permits and 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:

1. No waiver shall result in allowing a use not permitted within the applicable Zoning District.
2. 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.
3. 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 re-grading or water supply data.
4. 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.
5. Nothing herein shall authorize the Planning Board to waive State Environmental Quality Review requirements.

§ 7.4 Hearing and Decision

The Planning Board shall fix a time, within sixty-two (62) days from the day the Board deems complete an application for a Special Use permit or site plan approval is made, for the hearing of any matter referred to under this section. It shall give public notice of such hearing at least five (5) days prior to it in a newspaper of general circulation in the Town and decide upon the application within sixty-two (62) days after such hearing. It shall not, however, grant approval before a decision has been made with respect to environmental impacts pursuant to SEQRA. 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 (5) business days after such decision is rendered.

§ 7.5 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 Special Use permit or site plan. Upon approval of said permit and/or 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 Section 274-a(6) of the New York State Town Law for new lots and residential units of any kind.

§ 7.6 Referrals

The Planning Board is authorized to refer Special Use permit applications and site plans to other agencies, groups or professionals employed or used by the Town for review and comment and to charge the applicant fees for any reasonable expenses connected therewith. The Board shall, in particular, ensure that the requirements of Section 239-m of the General Municipal Law regarding review by the Orange County Planning Department are met. It shall also comply with all requirements of the New York State Environmental Quality Review Act.

§ 7.7 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 review by a proceeding under Article 78 of the Civil Practice Law and Rules.

§ 7.8 Effect of Site Plan Approval

The site plan as approved by the Planning Board shall be binding upon the applicant. Any changes from the approved plan shall require re-submission and re-approval by the Planning Board. The site plan shall remain effective, as an authorization to establish the use, for a maximum of two (2) years from the date of approval unless the Planning Board shall have granted an extension in writing. Absent such an extension the Special Use shall be deemed to have expired. **A permitted use, permitted with Planning Board approval, special use or accessory use which has been discontinued for a period of five (5) years or more shall also be deemed to have lapsed.**

§ 7.9 Renewal of Permits

The Planning Board may require, at the time it is initially granted, that any Special Use approval be renewed periodically. Such renewal shall be granted following public notice and hearing and may be withheld only upon a determination that the conditions attached to any previous approval have not been met. A period of sixty-two (62) days shall be granted the applicant in such cases to make remedies and bring the use into full compliance with the terms of the Special Use approval. Should the applicant fail to make such remedies, the Special Use approval shall be revoked and the use immediately discontinued.

§ 7.10 Conformity with Other Plans, Laws and Ordinances

The Planning Board, in reviewing the site plan, shall consider its conformity to the Town of Deerpark Comprehensive Plan and the various other plans, laws and ordinances of the Town. Conservation features, aesthetics, landscaping, and impact on surrounding development as well as on the entire town shall be part of the Planning Board review. Traffic flow, circulation, and parking shall be reviewed to ensure the safety of the public and of the users of the facility and to ensure that there is no unreasonable interference with traffic on surrounding streets. The Planning Board shall further consider the following:

1. **Building Design and Location:** Building design and location should be suitable for the use intended and compatible with natural and man-made surroundings. New buildings, for example, should generally be placed along the edges and not in the middle of open fields. They should also

be sited so as to not protrude above treetops or the crest lines of hills seen from public places and busy highways. Building color, materials, and design should be adapted to surroundings as opposed to adaptation of the site to the building or the building to an arbitrary national franchise concept.

2. **Large Commercial Buildings:** Commercial facades of more than one-hundred (100) feet in length should incorporate recesses and projections, such as windows, awnings, and arcades, along twenty (20%) percent of the façade length. Variations in rooflines should be added to reduce the massive scale of these structures and add interest. All facades of such a building that are visible from adjoining streets or properties should exhibit features comparable in character to the front so as to better integrate with the community. Where such facades face adjacent residential uses, earthen berms planted with evergreen trees should be provided. Loading docks and accessory facilities should be incorporated in the building design and screened with materials comparable in quality to the principal structure. Sidewalks should be integrated into a system of internal landscape defined pedestrian walkways breaking up all parking areas.
3. **Lighting and Signage:** Improvements made to the property should not detract from the character of the neighborhood by producing excessive lighting or unnecessary sign proliferation. Recessed lighting and landscaped ground signs are preferred.
4. **Parking and Accessory Buildings:** Parking areas should be placed in the rear whenever possible and provide for connections with adjoining lots. Accessory buildings should also be located in the rear with access from rear alleys. If placement in the rear is not possible, parking lots should be located to the side with screening from the street.
5. **Drainage Systems:** Storm drainage, flooding, and erosion and sedimentation controls should be employed to prevent injury to persons, water damage to property, and siltation to streams and other water bodies.
6. **Driveway and Road Construction:** Whenever feasible, existing roads onto or across properties should be retained and re-sued instead of building new, so as to minimize the use of present features such as stone walls and tree borders and avoid unnecessary destruction of landscape and tree canopy. Developers building new driveways or roads through wooded areas should reduce removal of tree canopy by restricting clearing and pavement width to the minimum required for safely accommodating anticipated traffic flows. All driveways and streets shall be subject to Town of Deerpark requirements and review by the Superintendent of Highways.
7. **Construction on Slopes:** The crossing of steep slopes with roads and driveways should be minimized and building which does not take place on slopes should be multi-storied with entrances at different levels as opposed as re-grading the site flat.
8. **Tree Borders:** New driveways onto principal thoroughfares should be minimized for both traffic safety and aesthetic purposes and interior access drives which preserve tree borders along highways should be used as an alternative. Developers who preserve tree borders should be permitted to recover density on the interior of their property through use of clustering.
9. **Development at Intersections:** Building sites at prominent intersections of new developments should be reserved for equally prominent buildings or features which will appropriately terminate the street vistas. All street corners should be defined with buildings, tree, or sidewalks.
10. **Street and Sidewalks:** Cul-de-sac and dead-end streets should be discouraged in favor of roads and drives which connect to existing streets on both ends. Streets within residentially developed areas should be accompanied by on-street parking and a sidewalk on at least one side of the street. Where the area is already served with sidewalks, sidewalk extensions should also be provided from new commercial development areas to adjacent residential areas and pedestrian access should be encouraged.

11. Impact on the Neversink Aquifer: New Special Use applications and subdivisions of ten (10) lots or more shall be reviewed for impacts on the Neversink Aquifer (see Comprehensive Plan). Hydrogeologic studies may be required to evaluate impacts, condition approvals or determine the permitted density for such projects.

§ 7.11 Special Use Review Criteria

The Planning Board, in acting upon the site plan, shall also be approving, approving with modifications, or disapproving the Special Use permit application connected therewith taking into consideration not only the criteria contained above but also the following:

1. Whether the proposed use will result in an overconcentration of such uses in a particular area of the Town or is needed to address a deficiency of such uses. The Board shall, in this regard, consider the suitability of the site proposed for a particular use as compared to the suitability of other sites in the immediate area.
2. Whether the proposed use will have a detrimental or positive impact on adjacent properties or the health, safety, and welfare of the residents of the Town of Deerpark.
3. If the proposed use is one judged to present detrimental impacts, whether an approval could be conditioned in such a manner as to eliminate or substantially reduce those impacts.
4. Whether the use will have a positive or negative effect on the environment, job creation, the economy, housing availability, or open space preservation.
5. Whether the granting of an approval will cause an economic burden on community facilities or services, including but not limited to highways, sewage treatment facilities, water supplies, and firefighting capabilities. The applicant shall be responsible for providing such improvements or additional services as may be required to adequately serve the proposed use and any approval shall be so conditioned. The Town shall be authorized to demand fees in support of such services where they cannot be directly provided by the applicant. This shall specifically apply, but not be limited to, additional fees to support fire-district expenses.
6. Whether the site plan indicates the property will be developed and improved in a way which is consistent with that character which this law and the Town's Comprehensive Plan are intended to produce or protect, including appropriate landscaping and attention to aesthetics and natural feature preservation.

§ 7.12 Landscaping Standards Applicable to Special Uses

1. The Planning Board may, to assure an acceptable buffer between adjacent residential and non-residential uses and create a healthy, safe and aesthetically pleasing environment in the Town, require a landscape plan be prepared as part of any Special Use application. Such a plan may also be required whenever any non-residential use is proposed in any district so as to buffer parking areas and buildings from the highway, each other, and other uses. Where it is determined that a proposed Special Use would not have a significant impact on the natural environment, adjoining landowners, or the view from a public highway, these requirements may be appropriately modified by the Planning Board.
2. The landscape plan, if required, shall specify locations of all mature shade trees or other species of six (6) inch caliper or greater and indicate existing vegetation to be removed or preserved. It shall demonstrate how building materials, colors, and textures will be blended with the natural and man-made landscape. It shall also include visual depictions of the proposed landscape from the perspective of persons who will view the site from the highway or adjoining properties. Specific

locations, varieties, sizes, winter hardiness, and schedules for all proposed plantings shall, too, be provided as part of the plan.

3. The Planning Board, in reviewing a landscape plan, may employ the assistance of design professionals. The Planning Board shall also specifically consider the following before approving, approving with modifications, or disapproving the Special Use:
 - a. The plan should promote attractive development, preserve existing vegetation to the maximum extent possible, enhance the appearance of the property and complement the character of the surrounding area.
 - b. The plan should use landscaping to delineate or define vehicular and pedestrian ways and open space.
 - c. The plant material selected should be of complementary character to buildings, structures, and native plant species and be of sufficient size and quality to accomplish its intended purposes.
 - d. The plan should effectively buffer the activity from adjoining land uses as may be necessary and soften the impact of other site development as contrasted with the natural environment.
 - e. The plan should be realistic in terms of maintenance and use materials which, as a minimum, are winter hardy to Zone 4.

Consideration and determination of the adequacy of the above plan requirements are at the Planning Board's discretion.

4. Landscaping Guidelines: The following minimum specifications are suggested guidelines that the Planning Board may apply when new landscaping is required:
 - a. The minimum branching height for all shade trees should be six (6) feet.
 - b. Shade trees should have a minimum caliper of **two (2")** inches (measured 4 feet above grade) and be at least **eight (8')** feet in height when planted.
 - c. Evergreen trees should be a minimum of six (6) feet in height when planted.
 - d. Shrubs should be a minimum of twenty-four (24") inches in height when planted. Hedges shall form a continuous visual screen within two (2) years after planting.
 - e. A buffer screen at least fifteen (15) feet in width along any residential lot line should be provided. It shall include, at a minimum, an opaque wooden stockade fence six (6) feet in height and one (1) evergreen tree for every **twenty-five (25)** linear feet of property line. An additional row of evergreens meeting these standards, and offset such that each row serves to place trees between the gaps of the other, should be permitted as a substitute for the stockade fence.
 - f. A landscape strip at least **ten (10)** feet in width, that includes at least one (1) deciduous tree for every **fifty (50)** linear feet of perimeter lot line should be required for any non-residential use. Such deciduous trees should also be accompanied by smaller shrubs and ground cover as may be required to effectively separate and buffer the activity from the highway but still allow for visibility of the use. The width of this buffer may be reduced along the rear and side lot lines for good cause, but not along the front lot line.

- g. All lot area (except where existing vegetation is preserved) should be landscaped with grass, ground cover, shrubs, or other appropriate cover.
 - h. The preservation of mature shade trees should be required unless there is no alternative but to remove them. These may be used to meet requirements of this section provided the Building Inspector or Planning Board, as the case may be, determines the purpose of this section is achieved.
5. A performance guarantee in a form acceptable to the Town Attorney in the amount of one-hundred-twenty-five (125%) percent of the cost of materials and installation may be required to assure that all landscaping survives in a healthy condition for one (1) full year. The Building Inspector or Planning Board, as the case may be, shall determine the amount of the guarantee and consider financial impacts of this requirement on the project. The Building Inspector shall have the right to enter upon the property to inspect the landscaping and, after notifying the owner of any deficiencies, to require that the guarantee be used to pay for the replacement of any dead, dying, diseased, stunned, or infested plant materials.
6. All applicable requirements of these landscaping regulations imposed by the Planning Board shall be fully met prior to the Building Inspector granting a Certificate of Occupancy for a new building or use subject to these regulations.

§ 7.13 Bonding of Site Improvements for Special Uses,
Permitted Uses with Planning Board Approval and Subdivisions

1. **Supersession of Statutory Provisions:** This section shall, pursuant to the supersession authority granted by the Municipal Home Rule Law, supersede, in its application to the Town of Deerpark, the provisions of §§ 274-a, 276, and 277 of the Town Law of the State of New York relating to the limitation upon the authority of a town to require the posting of a performance bond or other form of security in connection with the approval of a land subdivision plat, to extend such authority to Planning Board approvals of commercial and residential site plans in accordance with the provisions of § 274-a of the Town Law.
2. **Legislative Intent:** In order to ensure that once a project has been started it shall not be abandoned, partially completed, or left in a state which will cause erosion of the soil, improper drainage, or any other condition which will result in the deterioration or devaluation of the surrounding land or neighborhood, and in order to ensure that while under construction, the workmanship and materials used shall promote the long life of the project and the health, safety, and welfare of the future users of the subject premises and surrounding areas, the Town Board of the Town of Deerpark has determined it to be a proper exercise of authority conferred upon it by the laws of the State of New York to require the posting of adequate security for the performance of necessary site improvements contemplated in connection with a residential or commercial site development.
3. **Procedure:**
- a. Prior to or contemporaneously with the grant of final site plan approval for a particular project, the Planning Board, is considering the recommendation of the engineering authorities available to it, shall establish the amount of performance security to cover the full cost of the required site improvements as shown on such final site plan as enumerated in Subsection D hereof. The Planning Board shall make a referral of the matter regarding the establishment of the amount of performance security of a particular project to the Town Board, which referral shall include its recommendation as to the amount of such performance security. The performance security shall become effective only if and when the Town Board shall have approved it as to form, sufficiency of surety, and manner of execution.

- b. The performance security shall be in the amount approved by the Town Board in the form of a performance bond issued by a surety company licensed in the State of New York; a letter of credit issued by a federally or state-chartered financial institution; or a savings passbook, money market account or certificate of deposit naming the Town of Deerpark as joint tenant.
 - c. Such performance security, if in the form of a performance bond or letter of credit, shall run for a term to be fixed by the Planning Board, but in no event for a term longer than three (3) years; provided, however, that the term of such security may be extended by the Planning Board with the consent of the parties thereto. In the event that such security is in the form of a letter of credit, such a letter of credit shall contain a provision requiring automatic renewal thereof unless, not less than thirty (30) days prior to its expiration, the Town of Deerpark is given written notice of the issuing institution's intention not to renew such letter of credit.
 - d. The performance security in the full amount established by the Town Board shall be posted with the Town Clerk upon grant of final site plan approval. No building permits shall be issued for and no site preparation work shall be commenced on the subject premises unless and until the necessary performance security has been posted.
 - e. A duly designated official of the town shall inspect the improvements during construction to assure their satisfactory completion. An inspection fee of ten (10%) percent of the performance bond amount shall be posted by the applicant to cover the cost of required inspections and a administration fee of ten (10%) percent of the performance bond shall be posted by the applicant to cover administration costs.
 - f. During the course of construction, the performance security may be reduced, in the sole discretion of the Town Board upon the recommendation of the Planning Board, to an amount certified by the Town Engineer or the town's consulting engineer to be the probable cost of completion of the remainder of the required site improvements, but in no event shall such amount be reduced to less than fifty (50%) percent of the original amount of the performance security.
 - g. The performance security shall be released or reduced only by the Town Board and only upon recommendation of the Planning Board after certification by the Town Engineer or the town's consulting engineer that all or parts of the required site improvements have been completed in conformance with the approved final site plan and all applicable regulations.
4. Site Improvements Subject to Bonding: The following items are considered essential to the principles stated above and shall be included in the amount of the performance security to be set:
- a. Site grading, including replacement of topsoil and seeding, and including necessary structural features such as retaining walls and ground cover.
 - b. Drainage, including waterways, conduits and all necessary appurtenances and structures.
 - c. Water and sewer systems, including all wells, conduits, structures and appurtenances as may be required by those government agencies having final jurisdiction for approval of those systems.
 - d. Foundation course, pavement, curbs, and sidewalks for all roads, drives, parking areas, and walkways.
 - e. Lighting, including all necessary wiring, structures, and appurtenances.

- f. Landscaping, including all shrubs, trees, and screening as may be required to ensure that the final site condition meets with the planning and zoning concepts expressed in the Comprehensive Plan of the Town of Deerpark and this chapter, as well as all drainage and soil erosion measures required to protect the site.
 - g. The Planning Board shall have the discretion to require only a restoration bond be posted, should it be deemed sufficient to protect the Town's interest. In the event a restoration bond is posted, the inspection fee to be deposited by the applicant shall be five (5%) percent of the full performance bond amount otherwise required by this section.
5. Phased Projects: In the event that a particular site plan is to be constructed in sections or phases, the Planning Board, in its sole discretion, taking into consideration the importance of the entirety of the site improvements on the section or phase to be constructed, may recommend to the Town Board that the performance security be posted for only so much of the project as is going to be constructed in a particular phase or section; provided, however, that no building permits shall be issued for and site work shall be conducted on any future phase or section unless and until the required performance security is established for such future phase or section and properly posted in accordance with the provisions of this section.
6. Default: In the event that any required site improvements have not been installed as provided in this section within the term of the performance security, the Town Board may thereupon declare said performance security to be in default and collect the sum remaining payable thereunder, and, upon receipt of the proceeds thereof, the town shall install such improvements as are covered by such security and are commensurate with the extent of building development that has taken place on the site. In the event that no building has taken place but site preparation has taken place, the proceeds of the security shall be used, to the extent practicable, to restore the site to its original state and avoid erosion and adverse drainage conditions.