

NEW YORK STATE DEPARTMENT OF STATE
41 STATE STREET
ALBANY, NY 12231

Draft: 1-23-19

Local Law Filing

(Use this form to file a local law with the Secretary of State.)

Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

Town of WAPPINGER

Local Law No. _____ of the year 2019

A local law entitled "A Local Law for the Purpose of Amending Chapter 240, Zoning, of the Town Code with Respect to a Variety of Matters."

Be it enacted by the TOWN BOARD of the Town of WAPPINGER as follows:

TEXT COMMENCES ON NEXT PAGE

(If additional space is needed, attach pages the same size as this sheet, and number each.)

LOCAL LAW No. ___ OF THE YEAR 2019

BE IT ENACTED by the Town Board of the Town of Wappinger as follows:

Section 1. Title

This Local Law shall be known and cited as "Local Law No. ___ of 2019, for the Purpose of Amending Chapter 240, Zoning, of the Town Code with Respect to a Variety of Matters."

Section 2. Legislative Intent

The Town Board believes that it is reasonable and appropriate to update and amend Chapter 240, Zoning, of the Town Code with respect to a variety of matters. This local law is determined to be an exercise of the police powers of the Town to protect the public health, safety and welfare of its residents.

Section 3. Amendments to Chapter 240, Zoning

1. Section 240-43.C shall be amended to read as follows:

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C. Public hearing. The Town approving agency shall hold a public hearing on the special permit within 62 calendar days of the date of receipt of a complete submission. Public notice and notice to owners of property within the area shall be the same as that required for site plan approval, as set forth in § 240-107C of this chapter. Notwithstanding the above, in accordance with Section 274-b.5. of the New York State Town Law, the Planning Board may waive the public hearing on a special permit application where the Board finds that the proposed land use is relatively minor in intensity, finds that such public hearing is not requisite in the interest of the public health, safety or general welfare, and finds that such hearing is inappropriate to a particular special permit.

2. Section 240-91 shall be amended to read as follows:

§ 240-91 Application to Building Inspector.

Following site development plan approval and fulfillment of all applicable conditions by the applicant prerequisite to the Planning Board Chairman signing the resolution of site development plan approval a second time, application shall be made to the Building Inspector for a building permit and/or a certificate of occupancy.

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3. New Sections 240-106.C and D shall be added and shall read as follows:

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C. Public and common improvements.

- (1) All improvements shown on the approved site plan, such as but not limited to street signs, sidewalks, street lighting standards, curbs, gutters, street trees, water mains, fire alarm signal devices, sanitary sewers and storm drains shall be completed in a manner prescribed by the Town of Wappinger Zoning chapter or other applicable law, ordinance, local law, rule or regulation. The Planning Board shall ascertain whether or not all such improvements are to be completed prior to endorsement by the Planning Board Chairman of the site plan or, in the alternative, whether a performance bond or other security sufficient to cover the full cost of such improvements in an amount acceptable to the Town Engineer shall be submitted to the Town by the applicant or owner of the land being developed in lieu thereof of such improvement as prescribed in Town Law § 274-a.
- (2) Any such security must be provided pursuant to a written security agreement with the Town, approved by the Town Board and also approved by the Town Attorney as to form, sufficiency and manner of execution, and shall be limited to: (1) a performance bond issued by a bonding or surety company; (2) the deposit of funds in or a certificate of deposit issued by a bank or trust company located and authorized to do business in this state; (3) an irrevocable letter of credit from a bank located and authorized to do business in this state; (4) obligations of the United States of America; or (5) any obligations fully guaranteed as to interest and principal by the United States of America, having a market value at least equal to the full cost of such improvements. If not delivered to the Town, such security shall be held in a Town account at a bank or trust company.
- (3) No performance bond or other security tendered under the provisions hereof shall be deemed acceptable unless provision is made therein for the payment of a sum to be determined by the Town Board in the event of failure to complete said improvements, for compensation to the Town by the surety or other security of any attorney's fees incurred by the Town in the event legal proceedings are necessary to enforce the same, with a provision for increase in the sum stipulated for said security to be correlated to a cost of highway construction index as formulated by the Town of Wappinger, and authorization from a surety of the owner of applicant, in the event the surety bond is accepted, that all acts of the owner or applicant are deemed to be accepted by the surety and that no further notice to the surety is necessary with respect to any acts taken by its principal.

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(4) Any such performance bond or other security shall run for a term to be fixed by the Planning Board, but in no case for a longer term than three years, provided, however, that the term of such security may be extended by the Planning Board with consent of the parties thereto. If the Planning Board shall decide at any time during the term of the security that the extent of building development that has taken place in the subdivision is not sufficient to warrant all the improvements covered by such security, or if the Zoning Administrator and Town Engineer decide that the required improvements have been installed as provided in this section in sufficient amount to warrant reduction in the amount of said security, and upon approval by the Town Board, the Zoning Administrator and Town Engineer may modify the requirements for any or all such improvements, and the amount of such security shall thereupon be reduced by an appropriate amount so that the new amount will cover the cost in full of the amended list of improvements required by the Planning Board.

(5) In the event that any required improvements have not been installed as provided in this section within the term of such performance bond or other security, the Town Board may thereupon declare said security agreement to be in default and collect the sum remaining payable thereunder; and upon the receipt of the proceeds thereof, the Town shall install such improvements as are covered by such security and as commensurate with the extent of building development that has taken place in the subdivision but not exceeding in cost the amount of such proceeds.

D. No clearing, tree felling, grubbing, grading or construction work shall be approved or take place on the land being developed until all of the following occur:

(1) Fulfillment of all applicable conditions by the applicant prerequisite to the Planning Board Chairman signing the resolution of site development plan approval a second time.

(2) A bond or other performance guarantee in an amount as determined by the Town Engineer for the possible restoration of the land being developed is filed with the Town.

(3) A Notice of Intent (NOI) and a Storm Water Pollution Prevention Plan (SWPPP) have been approved by the Town, if applicable.

(4) Applicable inspection fees and sufficient escrow have been submitted by the applicant or owner to the Town.

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(5) Erosion and sedimentation, wetland protection, and tree protection measures, as applicable, have been implemented to the satisfaction of the Town Building Department.

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(6) The applicant shall attend a pre-construction meeting with the Town Building Department.

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3. A new Section 240-93.1 shall be added and shall read as follows:

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§ 240-93.1 Tree felling exception.

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Notwithstanding other provisions of this chapter to the contrary, the Planning Board may, by resolution, at its sole discretion, allow the felling of trees on a property prior to the approval of a site plan when the timing of such tree felling is deemed by the Board to be in the best interest of protecting the Indiana bat (*Myotis sodalis*). However, in this context, the removal of stumps shall not be permitted and the movement of felled trees on-site or off-site is prohibited. Further, if the Board approves said tree felling, all of the following shall occur prior to the cutting of any trees:

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A. The applicant shall submit a sufficiently detailed plan prepared by a design professional and acceptable to the Planning Board which shows the area proposed for the tree felling.

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B. A bond or other performance guarantee in an amount as determined by the Town Engineer for the possible restoration of the land being developed shall be filed with the Town.

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C. A Notice of Intent (NOI) and a Storm Water Pollution Prevention Plan (SWPPP) shall be approved by the Town, if applicable.

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D. Applicable inspection fees and sufficient escrow shall be submitted by the applicant to the Town.

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E. Tree protection (for the trees to be preserved on-site), erosion and sedimentation protection, and wetland protection measures, as applicable, shall be implemented to the satisfaction of the Town Building Department. No tree felling under this section shall take place in any regulated wetland or regulated adjacent buffer area.

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F. The applicant shall attend a pre-construction meeting with the Town Building Department.

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4. **Sections 240-86.H and I shall be amended to read as follows:**

H. Drainage. The proposed stormwater drainage system shall be adequate to properly drain the site, maximize groundwater recharge, prevent downstream flooding and prevent the degradation of water quality. Prior to the granting of site development plan approval, the applicant shall apply to the Town Board for any and all approvals relating to a drainage district(s) that may be required for the project.

I. Water and sewage. The proposed systems for water supply and sewage disposal shall be adequate to serve the needs of all proposed uses on the site without adversely impacting off-site facilities, neighboring properties or uses. Prior to the granting of site development plan approval, the applicant shall apply to the Town Board for any and all approvals relating to water or sewer districts that may be required for the project.

5. **Section 240-52 shall be amended to read as follows:**

§ 240-52 Gasoline filling stations.

~~A. No gasoline filling station shall be within 1,000 feet of the boundary line of any residence district or of any school, church, park, playground, hospital, public library, institution for dependents or children or any place of public assembly designed for the simultaneous use of 100 persons or more, regardless of the district where either premises are located.~~

AB. Fuel pumps and storage tank inlets shall be set back at least 25 and 15 feet, respectively, from the perimeter property lines of the site. Further, fuel pumps and storage tank inlets shall be located and oriented in such a manner as to prevent the stacking of vehicles into any road right-of-way and the blocking of any point of site ingress or egress. For the purposes of this section, canopies over commercial fuel pumps and filling areas shall be permitted to extend into the minimum required front yard for the district in which the property is located, but in no case shall any canopy be located within five feet of any lot line.

BC. All automobile parts, partially dismantled motor vehicles or similar articles shall be stored within a building. All repair and service work, including car washing, but excluding emergency service and the sale of fuel and lubricants, shall be conducted entirely within either a building or, where deemed appropriate by the Planning Board due to such factors as the size of the property involved and/or its location, shall be conducted entirely within a fenced-in area in which such work is visually screened from all adjoining properties and roadways. In no case shall any vehicles awaiting service or repair work be stored outdoors for a period exceeding five days,

unless such vehicles are entirely located within a fenced-in area and are visually screened from all adjoining properties and roadways. Body work, major structural repair or painting shall not be permitted.

~~C.D.~~ Use of a building for any residence or sleeping quarters shall not be permitted.

~~E.~~ There shall be a minimum of 2,500 feet between gasoline filling stations.

6. A new Section 240-108.1 shall be added and shall read as follows:

§ 240-108.1 Zoning permit.

Although a building permit is not required, a zoning permit issued by the Zoning Administrator shall be required for the construction or installation of one-story detached structures associated with one- or two-family dwellings or multiple single-family dwellings (townhouses) without electric, heating or plumbing, which are used for tool and storage sheds, playhouses or similar uses, provided the gross floor area does not exceed 144 square feet (13.88 square meters).

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Section 4. Ratification, Readoption and Confirmation

Except as specifically modified by the amendments contained herein, the Code of the Town of Wappinger as adopted and amended from time to time thereafter is otherwise to remain in full force and effect and is otherwise ratified, readopted and confirmed.

Section 5. Numbering for Codification

It is the intention of the Town of Wappinger and it is hereby enacted that the provisions of this Local Law shall be included in the Code of the Town of Wappinger; that the sections and subsections of this Local Law may be re-numbered or re-lettered by the Codifier to accomplish such intention; that the Codifier shall make no substantive changes to this Local Law; that the word "Local Law" shall be changed to "Chapter," "Section" or other appropriate word as required for codification; and that any such rearranging of the numbering and editing shall not affect the validity of this Local Law or the provisions of the Code affected thereby.

Section 6. Separability

The provisions of this Local Law are separable and if any provision, clause, sentence, subsection, word or part thereof is held illegal, invalid or unconstitutional, or inapplicable to any person or circumstance, such illegality, invalidity, or unconstitutionality, or inapplicability, shall not affect or impair any of the remaining provisions, clauses, sentences, subsections, words or parts of this Local Law or their application to other persons or circumstances. It is hereby declared to be the legislative intent of the Town Board of the Town of Wappinger that this Local Law would have been

adopted if such illegal, invalid or unconstitutional provision, clause, sentence, subsection, word or part had not been included therein, and if such person or circumstance to which the Local Law or part thereof is held inapplicable had been specifically exempt therefrom.

Section 7. Effective Date

This Local Law shall take effect immediately upon filing with the Secretary of State as provided by the Municipal Home Rule Law.

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