

**VILLAGE OF OLD BROOKVILLE
LOCAL LAW 1 OF 2005**

**A Local Law to repeal Chapter 30, Section 30.63
of the Zoning Code of the Incorporated Village of Old Brookville
and to adopt a new Chapter 30, Section 30.63 relating to site plan
and special-use permit review by the planning board of the Village of Old Brookville**

BE IT ENACTED by the Board of Trustees of the Incorporated Village of Old Brookville as follows:

Section I. Chapter 30, Section 30.63 of the Zoning Code of the Incorporated Village of Old Brookville shall be repealed and a new Section 30.63 relating to site plan and special use permit review by the planning board shall be added to read as follows:

§ 30.63(1) Site Plan Review

A. Findings; legislative intent

1. The Board of Trustees of the Incorporated Village of Old Brookville, (hereinafter the "Board of Trustees"), hereby finds that in order to ensure that future land use, reuse, development and redevelopment and other construction activities within the Village of Old Brookville (hereinafter the "Village") will be planned and designed to have a harmonious relationship with the existing or permitted use of contiguous land and with surrounding neighborhoods and to conserve the values of property and encourage the most appropriate use of land and to protect and promote the rural nature of the Village, its open space and natural environs, the topographical features of the Village and its unique suburban characteristics and to otherwise promote the health, safety, welfare, comfort and convenience of its residents and the occupants and users of the subject land and buildings in particular, site plans for future land use, reuse, development and redevelopment and other construction activities proposed within the Village should be subject to review and approval by the Village of Old Brookville Planning Board (hereinafter the "Planning Board").

2. It is, therefore, the intent of the Board of Trustees, and the purpose of this chapter, to establish a procedure for site plan review for new land use, reuse, development, redevelopment and other construction activities proposed within the Village consistent with and pursuant to §7-725-a of the Village Law of the State of New York and to authorize the Planning Board to review and provide it with appropriate standards in its review of all site plans for compliance with certain site plan elements, which include, where appropriate, those relating to parking, means of access, traffic, screening, lighting, signs, landscaping, location and dimension of buildings, adjacent land uses and physical features meant to protect adjacent buildings and land uses, as well as any additional site plan elements specified herein.

B. Authority of the Planning Board

Pursuant to Village Law § 7-725-a, the Planning Board is hereby authorized to review and approve, approve with modifications or conditions, or disapprove site plans submitted in

accordance with the standards and procedures set forth in this section. Upon approval of a site plan, the Planning Board may impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed site plan. Thereupon, such imposed conditions and restrictions must be met before the issuance of any permits by the Board of Trustees, Building Inspector or any other applicable enforcement agent or officer of the Village.

C. Activities requiring site plan review; approval required.

The following applications for land use, reuse, development and redevelopment and construction activities within the Village shall require site plan review and approval by the Planning Board:

1. Every completed application for a building permit in any zoning district for the construction of any new building or structure within the Village or for the reconstruction, enlargement, modification or alteration of any existing building or structure within the Village including any additions thereto which would alter or increase the existing lot coverage of the building or structure or which would alter or increase the existing gross floor area of the existing building or structure or which requires any change in grade shall be referred by the Building Inspector to the Planning Board for site plan review and approval. The referral shall be made prior to the Building Inspector's review of the plans and drawings as required by the State Building Code and shall be made in conformity with this section. No building permit requiring site plan approval shall be issued by the Building Inspector or Board of Trustees unless it first has been approved by the Planning Board.
2. Every completed application for a building permit in any zoning district for the reconstruction of a building or structure damaged by fire or other incident, the cost of which equals or exceeds 50% of the replacement cost of the building or structure at the time the damage occurred.
3. Any application for a use variance or a special use permit.
4. Minor construction activities or minor modifications to an approved site plan or existing site defined as those which will have minimal impact with regard to any of the guidelines or standards of this section, may be approved by the Chairman of the Planning Board and either the Building Inspector or the Village Engineer without further compliance with this Section if they agree that the activity or modification is minor in nature. In such event, the approval of the Chairman and the Building Inspector or Village Engineer shall be evidenced by their signatures on the building permit.

D. Site plan guidelines and considerations.

In reviewing any application for site plan approval, the Planning Board shall be guided, as appropriate, by the following considerations:

1. The location, arrangement, size, design, and general site compatibility of buildings and structures.
2. The adequacy and arrangement of vehicular access and circulation, off-street parking,

loading, outdoor storage, pedestrian traffic and circulation. All driveways to a public or private street shall be so located to afford maximum safety and convenient ingress and egress to said roadway, to minimize conflict with the flow of traffic, and shall be designed to permit emergency vehicles and service vehicles such as delivery trucks, sanitation vehicles and the like to have reasonable access to, and space for, their intended functions.

3. The adequacy of stormwater and drainage facilities. Provision shall be made for the drainage of surface runoff waters in and from the premises so that flooding and erosion of the property and the property of others will be prevented, to the maximum extent practicable.
4. The adequacy of water supply, sewage disposal facilities, fire lanes and other emergency zones, and the provision of fire hydrants.
5. The adequacy, type and arrangement of trees, shrubs and other landscaping and natural screening constituting a visual and noise buffer between the applicant's and adjoining lands, including the maximum feasible retention of existing vegetation.
6. Protection of adjacent or neighboring properties against direct illumination and glare, noise, unsightliness and nuisances.
7. Materials and design of paving, lighting fixtures, retaining wall, bulkheads, fences, curbs, benches, etc. shall be of quality, appearance, easily maintained and indicative of their function.
8. The overall impact of the proposed development on the neighborhood and surrounding uses, including compatibility of architectural and design considerations.

E. Affirmative requirements

The Planning Board shall not approve a site plan application unless it finds affirmatively that if carried out it will not:

1. Be visually offensive or inappropriate by reason of poor quality of design, monotonous similarity, or striking visual discord in relation to other sites or surroundings;
2. Significantly alter the character, nature, and ambiance of the Village;
3. Be detrimental to the character of the neighborhood.
4. Prevent the most appropriate development and utilization of the site or of adjacent land;
5. Adversely affect the functioning, economic stability, prosperity, health, safety, and general welfare of the entire community.

F. General application requirements

The Planning Board is hereby authorized to establish such rules and regulations as it deems

reasonably necessary to carry out the provisions of this section setting forth the procedures and specifications for the submission of a complete site plan application consistent with the requirements of this section.

G. Public Hearing

The Planning Board shall schedule and conduct a public hearing on each site plan review application within 62 days of the date of the meeting at which an application in compliance with the requirements of this section was officially submitted to and found to be complete by the Planning Board.

H. Notice of Public Hearing

1. Public Notice of such hearing shall be given by publication in the Village's official newspaper at least 5 days prior to the date thereof. The Planning Board shall mail the notice of said hearing to the applicant at least 10 days before such hearing.
2. At least 10 days before such hearing the Planning Board shall mail notices thereof to the Nassau County Planning Commission as required by §239-m of the General Municipal Law, which notice shall be accompanied by a full statement of such proposed action, as defined in Subdivision I of §239-m of the General Municipal Law.
3. The Planning Board shall comply with the provisions of the State Environmental Quality Review Act under Article 8 of the Environmental Conservation Law and its implementing regulations.

I. Decision

1. Within 62 days after the public hearing portion of the review procedure is closed, the Planning Board shall act to approve, approve with modifications or conditions or disapprove the proposed site plan. The time period in which the Planning Board must render its decision may be extended by mutual consent of the applicant and the Planning Board. A copy of the Board's decision shall within five business days be filed in the offices of the Village Clerk and the Building Inspector and a copy thereof mailed to the applicant.
2. Within 60 days of the date of approval or approval with modifications or conditions, the applicant shall present to the Planning Board a corrected final site plan in reproducible form, including any modifications or conditions required by the Planning Board as a condition of its approval. Upon verification by the Planning Board and the Village Engineer that the Plan complies with the requirements of the Board's approval, the plan shall be endorsed by the Planning Board Chairman and filed with the Village Clerk and the Building Inspector.

J. Extension of original jurisdiction

1. Until a certificate of occupancy or certificate of completion has been issued with respect

to each construction, reconstruction, alteration or improvement contained within an approved site plan, the Planning Board shall have continuing jurisdiction to review and act upon a site plan, including any and all amendments to the approved site plan.

2. The Planning Board shall review and act upon an application for an amendment to an approved site plan in the same manner as the review of an original site plan.
3. In the event that it is determined that unauthorized changes have been made to an approved site plan, the Planning Board may rescind its prior site plan approval in its entirety or in part.
4. Within two years after a certificate of occupancy or certificate of completion has been issued with respect to each construction, reconstruction, alteration or improvement contained within an approved site plan, the Planning Board may authorize the Village Engineer to perform an inspection of the subject site to confirm that the specifications contained in the approved site plan have been adhered to on a continuing basis. Regardless of whether inspections are performed or violations exist, the property owner is required to meet and maintain the specifications of the approved site plan unless and until a further application is approved by the Planning Board.

K. Security for performance and expiration

1. The Planning Board may condition site plan approval upon the applicant's submission to the Village Clerk of a cash deposit, performance bond or irrevocable letter of credit in an amount determined after recommendation from the Village Engineer, which amount shall be sufficient to ensure that all specifications of the approved site plan, and if required all public improvements, shall be completed, and to ensure against damage to the infrastructure, including public and private roads and drainage structures.
2. Any bond in any form as indicated in (1) above shall be in a form and substance acceptable to the Village Attorney, and any such bond shall not be accepted by the Village Clerk unless so approved by the Village Attorney.
3. Site plan approval shall automatically terminate and expire one year after the resolution granting approval is filed in the office of the Village Clerk, unless a permit has been issued thereon.
4. If no certificate of occupancy or completion has been issued within two years of issuance of a building permit, such permit shall automatically terminate and expire, and the Village is authorized to use the bond so posted towards the completion of the building permit thereto.

L. Waiver of requirements

Any requirement for site plan approval, approval with modifications or conditions or disapproval may be waived by the Planning Board upon finding that such requirement is not in the interest of the public health, safety or general welfare or is inappropriate to a particular site plan.

M. Fees and Deposits

An application for site plan review shall be accompanied by a fee and deposit in accordance with

the Village's General Fee and Deposit Law. The payment of any fee or deposit in connection with the application shall be a condition precedent to the acceptance of the application. No building permit shall be issued pursuant to the provisions of this Chapter until all charges which have been incurred by the Village in accordance with the Village's General Fee and Deposit Law and in the sole discretion of the Planning Board are necessary in connection with the review of a site plan are reimbursed to the Village by the applicant.

§ 30.63(2) Special Use Permit Review

A. Findings; legislative intent

1. The Board of Trustees of the Incorporated Village of Old Brookville, (hereinafter the "Board of Trustees"), hereby finds that certain uses of land within the Village are declared to possess such unique, special and/or individual characteristics, qualities and attributes that they have the potential to have undesirable consequences upon and adversely affect the neighborhood and the overall health, safety, welfare, comfort and convenience of the Village and its residents and that each such specific use should, therefore, be considered as an individual case.

2. It is, therefore, the intent of the Board of Trustees, and the purpose of this section, to establish a procedure for special use permit review and approval consistent with and pursuant to §7-725(b) of the Village Law of the State of New York and to authorize the Planning Board to review, and to provide it with appropriate standards in its review of, all special use permits.

B. Authority of the Planning Board

1. Pursuant to Village Law § 7-725-b, the Planning Board is hereby authorized to review and approve, approve with modifications or conditions, or disapprove special use permits submitted in accordance with the standards and procedures set forth in this section.

2. Upon approval of a special use permit, the Planning Board may impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed special use permit. Thereupon, such imposed conditions and restrictions must be met in connection with the issuance of any permits by the Board of Trustees, Building Inspector or any other applicable enforcement agent or officer of the Village.

C. Activities requiring a special use permit; approval required

Special use permits shall be required for all uses of land as set forth in section 30.31(B) of this Chapter.

D. Special use permit guidelines and considerations.

In reviewing any application for a special use permit, the Planning Board shall be guided as appropriate, by the following considerations:

1. That the location and size of the use, the nature and intensity of the operations involved in or conducted in connection with it, the size of the site in relation to it and

the location of the site with respect to streets giving access to it shall be such that it will be in harmony with the appropriate and orderly development of the neighborhood in which it is proposed to be located and shall accord with and promote the purposes set forth in §7-704 of the Village Law.

2. That the granting of the special use permit will be in harmony with the long range, comprehensive, master or general plan of development of the Village.
3. That the proposed use is of such character, size, location, design and site layout as to be appropriate to and in harmony with the surrounding properties, the neighborhood and the Village.
4. The compatibility of the proposed use with adjoining land uses and with other proposed development, having particular reference to its probable effect on the value of other land and to the adequacy of features intended to promote public health, safety and welfare and the general purposes of this Chapter.
5. That the proposed use is or will be necessary or desirable to the neighborhood or Village in that it will provide a service, facility or convenience or otherwise contribute to the proper growth and development of the community and to its general welfare.
6. That the proposed use shall not be hazardous, inconvenient, conflicting or incongruous to the surroundings, neighborhood or Village by reason of excessive traffic, assembly of persons or vehicles, proximity to normal travel routes or congregation of children or pedestrians.
7. That the location and size of the use, the nature and intensity of the operations involved in or conducted in connection with it, its site layout and its relation to streets giving access to it will not be hazardous or inconvenient to the residential character of the neighborhood or conflict with the orderly flow of traffic effect on normal traffic patterns on the residential streets and satisfactory and safe methods of ingress and egress are provided.
8. That the design and location of loading and parking facilities is safe, suitable and adequate.
9. That the proposed use, site layout, location, size, heights, signs, walls, fences, landscaping and operations in connection with it will not hinder or discourage the appropriate use and development of adjacent uses or impair the value thereof.
10. That the proposed use, site layout, location, size, height, signs, walls, fences, landscaping and operations in connection with it will not be more objectionable to nearby properties by reason of noise, traffic, vibration, excessive light, smoke, gas, fumes, odor or other similar atmospheric pollutants or other similar factors of impact than would be the operations and impacts of any permitted uses in the same zoning district not requiring a special use permit.
11. That the location and size of the use, the nature and intensity of the operations in or

conducted in connection with it, its site layout and its relation to streets giving access to it will be such that vehicular traffic will not be more hazardous than the normal traffic of the district, taking into account such factors as street intersections, traffic flow, sight distances and pedestrian traffic.

E. General application requirements

The Planning Board is hereby authorized to establish such rules and regulations as it deems reasonably necessary to carry out the provisions of this section setting forth the procedures and specifications for the submission of a complete special use permit application consistent with the requirements of this section.

F. Public Hearing

The Planning Board shall schedule and conduct a public hearing on each special use permit review application within 62 days of the date of the meeting at which an application in compliance with the requirements of this section was officially submitted to and found to be complete by the Planning Board.

G. Notice of Public Hearing

1. Public Notice of such hearing shall be given by publication in the Village's official newspaper at least 5 days prior to the date thereof. The Planning Board shall mail the notice of said hearing to the applicant at least 10 days before such hearing.
2. At least 10 days before such hearing the Planning Board shall mail notices thereof to the Nassau County Planning Commission as required by §239-m of the General Municipal Law, which notice shall be accompanied by a full statement of such proposed action, as defined in subdivision I of §239-m of the General Municipal Law.
3. The Planning Board shall comply with the provisions of the State Environmental Quality Review Act under Article 8 of the Environmental Conservation Law and its implementing regulations.

H. Decision

1. Within 62 days after the public hearing portion of the review procedure is closed, the Planning Board shall act to approve, approve with modifications or conditions or disapprove the proposed special use permit. The time period in which the Planning Board must render its decision may be extended by mutual consent of the applicant and the Planning Board. A copy of the Board's decision shall within five business days be filed in the offices of the Village Clerk and the Building Inspector and a copy thereof mailed to the applicant.
2. Within 60 days of the date of approval or approval with modifications or conditions, the applicant shall present to the Planning Board a corrected final special use permit in reproducible form, including any modifications or conditions required by the Planning Board as a condition of its approval. Upon verification by the Planning Board and the Village Engineer that the permit complies with the requirements of the Board's approval, the permit shall be endorsed by the Planning Board Chairman and filed with the Village Clerk and the Building Inspector.

I. Extension of original jurisdiction

1. Until a certificate of occupancy or certificate of completion has been issued with respect to the special use permit, the Planning Board shall have continuing jurisdiction to review and act upon a special use permit, including any and all amendments to the approved special use permit.
2. The Planning Board shall review and act upon an application for an amendment to an approved special use permit in the same manner as the review of an original special use permit application.
3. In the event that it is determined that unauthorized changes have been made to an approved special use permit, the Planning Board may rescind its prior special use permit approval in its entirety or in part.
4. Within two years after a certificate of occupancy or certificate of completion has been issued with respect to a special use permit, the Planning Board may authorize the Village Engineer to perform an inspection of the subject site to confirm that the specifications contained in the approved special use permit have been adhered to on a continuing basis. Regardless of whether inspections are performed or violations exist, the property owner is required to meet and maintain the specifications of the approved special use permit unless and until a further special use permit is approved by the Planning Board.

J. Security for performance and expiration

1. The Planning Board may condition special use permit approval upon the applicant's submission to the Village Clerk of a cash deposit, performance bond or irrevocable letter of credit in an amount determined after recommendation from the Village Engineer, which amount shall be sufficient to ensure that all specifications of the approved special use permit, and if required all public improvements, shall be completed, and to ensure against damage to the infrastructure, including public and private roads and drainage structures.
2. Any bond in any form as indicated in (1) above shall be in a form and substance acceptable to the Village Attorney, and any such bond shall not be accepted by the Village Clerk unless so approved by the Village Attorney.
3. Special use permit approval shall automatically terminate and expire one year after the resolution granting approval is filed in the office of the Village Clerk, unless a building permit has been issued thereon.
4. If no certificate of occupancy or completion has been issued within two years of issuance of a building permit, such permit shall automatically terminate and expire, and the Village is authorized to use the bond so posted towards the completion of the building permit thereto.

K. Waiver of requirements

Any requirement for special use permit review and approval or approval with modifications or conditions may be waived by the Planning Board upon finding that such requirement is not in the

interest of the public health, safety or general welfare or is inappropriate to a particular special use permit.

L. Fee and Deposit

An application for a special use permit review shall be accompanied by a fee and deposit in accordance with the Village's General Fee and Deposit Law. The payment of any fee or deposit in connection with the application shall be a condition precedent to the acceptance of the application. No special use permit shall be issued pursuant to the provisions of this section until all charges which have been incurred by the Village in accordance with the Village's General Fee and Deposit Law and which in the sole discretion of the Planning Board are necessary in connection with the review of a special use permit application are reimbursed to the Village by the applicant.

M. Penalties for offenses.

For any and every violation of the provisions of this section, the owner, general agent, contractor of a building, premises or site, and lessee or tenant of an entire building or entire premises, where such violation has been committed or shall exist, and the general agent, architect, builder, contractor or any other persons who knowingly commits, takes part or assists in any such violation or who maintains any building or premises in which such violation shall exist, shall be liable for a fine net exceeding \$350 or imprisonment for a period not to exceed six month, or both, for conviction of a first offense; for conviction of a second offense, both of which were committed within a period of five years, punishable by a fine of not less than \$350 nor more than \$700 or imprisonment for a period not to exceed six months, or both; and upon conviction for a third or subsequent offense, all of which were committed within a period of five years, punishable by a fine of not less than \$700 nor more than \$1,000 or imprisonment for a period not to exceed six months, or both. Such penalties shall be collected as provided by law. Each week's continued violations shall constitute a separate, additional violation.

Section II. This local law shall take effect immediately upon filing with the New York Secretary of State. This local law shall not apply to site plans and special use permits for which building permits have issued prior to the effective date of this local law.