

**§ 126-23. Special uses.**

The following special uses shall be permitted upon authorization of the Board of Appeals:

- A. Drive-in food service.
- B. Bowling alley.
- C. Auto wash.
- D. Gasoline station.
- E. Wind energy conversion systems.
- F. Dish antennas.
- G. Day-care center.

**ARTICLE X****P-D Planned Development District****§ 126-24. Legislative intent.**

The regulations hereinafter set forth in this Article are intended to provide a means for the development of large-scale residential, business, commercial, manufacturing, recreational, solar energy systems or mixed-use areas in a manner which will foster flexible and imaginative design concepts. These regulations are also intended to provide the village with adequate supervision and control over such projects through the Planning Board and the village, to ensure that the spirit and intent of this Zoning Law will be respected and preserved. No specific requirements are established with respect to minimum lot sizes within the district, lot coverage, building height, yard dimensions, off-street parking or density of development. Rather, within the overall context of the planned development concept, the Planning Board and Village Board should be guided by the requirements established for neighboring districts in determining reasonable requirements for comparable uses within a planned development district.

**§ 126-25. Planned development process; development proposals.**

- A. The planned development process consists of two (2) basic steps. First is the change of zoning district designation. Second is the review of the specific site plans for the area.
- B. Any change to a planned development district (P-D) shall be based on a specific development proposal. Although the designation for all planned development will be P-D, each district will reflect the type of use which was the basis for the zone change.

**§ 126-26. Establishment procedure.**

- A. Preapplication conference. Before submission of a preliminary application for approval of a planned development district, the developer shall meet with the Village Planning Board to determine the feasibility and suitability of the application prior to entering into binding commitments or incurring substantial expenses of site and plat preparation. **[Amended 9-11-1994 by L.L. No. 1-1994]**
- B. Application procedure. Application for the establishment of the planned development districts shall be made to the Village Board. Each application shall be accompanied by a fee as established by the Village Board. The Village Board shall refer the application and all application materials to the Village Planning Board within fifteen (15) days of receipt of the application.
- C. **[Amended 9-11-1994 by L.L. No. 1-1994]** Planning Board review. Within forty-five (45) days of the receipt of the completed application, the Planning Board shall recommend approval, approval with modification or disapproval of the application to the Village Board. Failure of the Planning Board to act within forty-five (45) days or such longer period as may be consented to shall be deemed to be a grant of approval of the plan as

submitted. Prior to issuing its recommendation to the Village Board, the Planning Board shall hold a public hearing on the proposal. Notice of the time and place of the public hearing shall be published and posted as required by law. In the event that approval subject to modifications is granted, the applicant may, within ten (10) days after receiving a copy of the Planning Board's decision, notify the Village Board, in writing, of his refusal to accept all such modifications, in which case the Planning Board shall be deemed to have denied approval of the application. In the event that the applicant does not notify the Village Board within said period of his refusal to accept all said modifications, approval of the application, subject to such modifications, shall stand as granted.

- (1) Submission requirements. Application to the Village Board must include a petition for the zone change. The applicant must provide proof of full legal and beneficial ownership of the property or proof of an option or contractual right to purchase the property. Two (2) complete copies of the preliminary plat shall be submitted, including:
  - (a) A completed short environmental assessment form (EAF) to comply with the provisions of the state environmental quality review process (SEQR).
  - (b) A mapped preliminary development plat of the property in question. Such a plat shall include all existing structures, roads and other improvements and shall indicate the circulation concept, general site location of all proposed structures, general parking scheme, the approximate acreage in each type of use and the amount, proposed use and location of all open space and recreation areas. This plat shall also indicate the location of all utilities and proposed expansions and/or any alternative concepts for

dealing with water supply, sewage disposal, stormwater drainage and electric service.

- (c) A demonstration by the applicant that alternative design concepts have been explored.
  - (d) A written description of the proposal, including the major planning assumptions and objectives, the probable effect on adjoining properties and the effect of the proposal on the overall Village Development Plan.
  - (e) A written description of the probable impacts on the natural systems of the village.
  - (f) A written description of the probable fiscal impacts, including a summary of new costs and revenues to the village as a result of the project.
  - (g) A description of any solar energy systems to be incorporated as part of the proposal.
- (2) Review criteria. In considering the application for the creation of a planned development district, the Planning Board may require such changes in the preliminary plats and specify such additional requirements as are deemed reasonably necessary to protect the established or permitted uses in the vicinity and to promote and protect the orderly growth and sound development of the community. In reaching its decision on the proposed development and changes, if any, in the preliminary plats, the Planning Board shall consider, among other things, the following:
- (a) The need for the proposed land use in the proposed location.
  - (b) The existing character of the neighborhood or area.
  - (c) The location of principal and accessory buildings on the site in relation to one another

and in relation to buildings and uses on properties adjoining the proposed district.

- (d) The general circulation and open space pattern relative to the structures.
- (e) The traffic circulation features within the site and the amount, location and access to automobile parking areas.
- (f) The environmental factors on the environmental assessment form (EAF).
- (g) The quantity and quality of available solar energy at the site if solar equipment is being proposed.
- (h) The impacts of this development on the solar access of adjacent properties.

D. Planning Board action. Establishment of a planned development district is a rezoning action and may be subject to the state environmental quality review process (SEQR). Therefore, the Planning Board should make a two-part recommendation to the Village Board as part of this process.

- (1) First, the Planning Board should identify the type of action the zone change is according to the SEQR regulations. Depending on a number of factors, the zone change itself may be a Type I or an unlisted action. In making this determination, the Planning Board should consult Article 8 of the Environmental Conservation Law (New York). The Planning Board should review the environmental assessment form (EAF) submitted by the applicant and make a preliminary determination of environmental significance. **[Amended 9-11-1994 by L.L. No. 1-1994]**
  - (a) The Planning Board shall submit its recommendation as to the type of action, its comments on the EAF and its recommendation as to a

preliminary determination of environmental significance to the Village Board. The Village Board, after review and consideration of the EAF and the Planning Board's recommendation, shall issue its findings of fact as to the type of action proposed and its determination of environmental significance.

- (b) If it is determined that an environmental impact statement will be prepared for the proposal in question, all time frames and deadlines are delayed until a draft environmental impact statement has been filed. An application is not complete and, therefore, the review clock does not start until a determination of no significance has been made or until a draft environmental impact statement has been completed. When the draft environmental impact statement is completed, the time frame for Planning Board review begins [forty-five (45) days]. If another agency has determined that the proposal in question may have a significant effect on the environment, the Planning Board shall not issue a decision until a final environmental impact statement has been filed.
- (2) The second part of the recommendation is a decision on the zone change request itself. The decision of the Planning Board shall be in the form of a written resolution which shall include findings of fact and shall set forth the reasons for granting or denying tentative approval specifying with particularity in what respects the proposal contained in the application would or would not be in the public interest, including but not limited to findings of fact and conclusions on the following:
- (a) In what respects the plat is or is not consistent with the statement of purpose set forth in this

section. **[Amended 9-11-1994 by L.L. No. 1-1994]**

- (b) The extent to which the proposal departs from zoning and subdivision regulations otherwise applicable to the subject property, including but not limited to density, bulk and use and the reasons why such departures are or are not deemed to be in the public interest.
  - (c) The nature and extent of the common open space in the planned development district, the reliability of the proposals for maintenance and conversion of such open space and the adequacy or inadequacy of the amount and function of the open space in terms of the densities of residential uses and the types thereof where residential uses are proposed.
  - (d) The plat of the proposal and the manner in which such plat does nor does not make adequate provision for public services, control over vehicular traffic and the amenities of light and air and visual amenities.
  - (e) The relationship, beneficial or adverse, of the proposed planned development district upon the neighborhood in which it is proposed.
  - (f) In the case of a plat which proposes development over a period of years, the sufficiency of the terms and conditions proposed to protect the interests of the public and the residents of the district in the integrity of the plat. **[Amended 9-11-1994 by L.L. No. 1-1994]**
- E. The resolution required by this section shall be filed with the Village Clerk and shall be available during regular office hours for inspection by any person.
- F. Upon the filing of such resolution with the Village Clerk, the Village Board shall, within thirty (30) days, hold a

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public hearing on said proposal after giving the public notice required by law.

- G. The Village Board may thereafter amend this chapter so as to establish the proposed planned development district and define the boundaries thereof. Such action shall have the effect only of establishing a planned development district for the use proposed by the applicant. Such amendment of this chapter shall not constitute or imply a permit for construction or final approval of plats. **[Amended 9-11-1994 by L.L. No. 1-1994]**
- H. In the event that construction has not commenced within two (2) years from the date that the Zoning Map amendment establishing the planned development district became effective, the Planning Board may so notify the Village Board, and the Board may, on its own motion, institute a Zoning Map amendment to return the planned development district to its former classification pursuant to the provisions of this chapter.

**§ 126-27. Final development plat review. [Amended 9-11-1994 by L.L. No. 1-1994]**

Completion of the preliminary plat review and adoption of the Zoning Map amendment establishing the Planned Development District in no way implies approval to proceed with actual development of the project. Upon approval of the rezoning request, the applicant is required to follow the procedure outlined hereinafter.

- A. Concept review. Before proceeding with the final design for the area in question, the developer shall meet with the Planning Board and the Village Board to clarify any conditions that either Board has requested. This should promote an understanding by all parties before the preliminary concepts are changed to detailed designs and before the developer spends large amounts of money.

B. Planning Board review. Upon approval of the zone change, the applicant has one (1) year in which to submit a final plat to the Planning Board for review and recommendation to the Village Board. Within sixty (60) days of the receipt of the application, the Planning Board shall grant approval, approval with conditions or disapproval of the application.

(1) Submission requirements.

(a) Before final approval of the plat, the applicant must show evidence of full legal and beneficial ownership interest in the land.

(b) The final plat shall include, but not be limited to, the following:

[1] A completed long environmental assessment form (EAF) to comply with the provisions of the state environmental quality review process (SEQR).

[2] A mapped final development plat of the property in question. Such a plan shall be a certified survey showing all existing and proposed grades, existing and proposed structures, existing and proposed vegetation, the layout of all roadways, walkways and parking areas. Construction details for such areas described above shall also be submitted.

[3] A separate map showing all existing and proposed waterlines, sewer lines, electric lines, natural gas lines and other utility and service lines, refuse storage and disposal and fuel storage facilities and rights-of-way.

[4] If the project will involve construction of a new water supply and the infrastructure, new sewage treatment system, and/or new or alternative power systems, the design

and details of such proposals must be included.

- [5] A plat showing the treatment of stormwater runoff.
  - [6] The total number of acres in the site, the number and type of housing units, the gross and net residential densities, the approximate selling and/or rental prices of the units, the phasing plan and the approximate completion date of the entire project.
  - [7] The Planning Board may require any additional materials it deems necessary to adequately evaluate the proposed project.
- (2) Review criteria. The Planning Board may not in all cases have the expertise to review the detailed design and construction drawings. If it does not, the Planning Board may confer with the Village Engineer, the Department of Environmental Conservation (DEC), the County Health Department, the County Planning Department and other agencies to ensure that review of those areas outside the Board's scope are being attended. Any and all cost incurred by the Planning Board in the course of its review may be charged to the applicant. Within its own capabilities, the Board may use the following criteria as general guidelines:
- (a) The height and bulk of buildings and their relation to other structures in the vicinity.
  - (b) The proposed location, type and size of signs, vehicular and pedestrian circulation, loading zones and landscaping.
  - (c) The safeguards provided to prevent possible detrimental effects of the proposed use on adjacent properties and the neighborhood in general.

- (d) Storm drainage and sanitary waste disposal in and adjacent to the area.
  - (e) The compatibility of uses proposed for such districts where a combination of uses are proposed.
  - (f) The provisions of adequate and sufficient public utilities.
  - (g) The criteria cited for review of the planned development district rezoning process.
  - (h) The environmental factors on the environmental assessment form (EAF).
- (3) Minimum required improvements.
- (a) Prior to the granting of final approval, the applicant shall furnish the village with an agreement supported by a bond for the installation of all improvements listed and described in this section. The agreement shall specify the manner and the time frame in which the physical site improvements shall be made according to the approved plats. The amount of the bond required shall be based upon the estimated cost of the improvements covered by the agreement, which shall be determined by a review of the submitted plats by the Village Engineer. The amount of the bond shall be equivalent to one hundred fifteen percent (115%) of the estimated cost of the improvements. The additional fifteen percent (15%) is to cover any engineering costs, contingencies and inflationary factors which may be necessary should the improvements not be completed by the developer within the time frame specified. The following types of bonds will be accepted as surety by the Village of New Hartford:

- [1] Corporate bonds. The surety will be furnished by an insurance company with an attorney-in-fact recorded in the land records of the Village of New Hartford and will guarantee the full amount of the bond.
- [2] Noncorporate bonds. These bonds are supported by a security in one (1) of the following forms:
  - [a] Cash escrow. The face amount of the bond will be submitted to the Village Board and deposited in an acceptable banking institution by the Village Clerk.
  - [b] United States Treasury and federal agency securities and cash deposits in the developer's name, controlled by the Village Clerk, by means of a lien or power of attorney in an acceptable banking institution may be accepted subject to the approval of the Village Board.
  - [c] Letters of credit. This security, furnished by a bank or savings institution, shall be written in such a manner as to extend six (6) months beyond the agreement completion date. The letters of credit shall contain the condition of automatic renewal providing that the letter of credit will automatically be extended for additional periods of six (6) months unless the Village Board is notified, in writing, at least thirty (30) days in advance of the letter's expiration date, that the bank does not intend such letter of credit or unless the Village Board notifies the bank that the letter

of credit can be released to the developer.

- [d] Set-aside letters. This security will be furnished by the developer's lender. It shall be written to the Village Board, executed and agreed to by the developer and the lender and shall be for the full amount of the bond. Three (3) draws will be permitted during the life of the bonds, and the draws shall not be allowed more often than quarterly. There shall be a fee as set forth from time to time by resolution of the Board of Trustees for each draw. The amount of the funds available shall never be less than fifty percent (50%) of the original bond amount.
- (b) After the Village Engineer has completed the review of the final development plat, established the estimated cost of constructing the required improvements and reviewed the amount of time estimated by the developer to complete these improvements, a package of documents, including copies of the agreement and bond, the Engineer's estimate of the cost of the physical improvements and a statement of the amount of bond required, is forwarded to the developer for his review and execution.
- (c) Upon approval of the agreement between the developer and the village, a file is established which is continually updated by the Planning Board and maintained by the Village Clerk until all construction is completed.
- (d) When a developer enters into an agreement with the village, it is understood that all the necessary physical improvements must be completed within the time frame specified

within the agreement. If all the noted improvements are not completed within this period and no extension has been obtained or a replacement agreement and bond have not been submitted and approved with a new expiration date, the agreement is considered to be in default. The developer can make a formal request to the Village Board for an initial extension of the expiration date for a maximum period of six (6) months, if, on inspection by the Village Engineer approximately sixty (60) days prior to the expiration of an agreement, the indication is that the balance of the work cannot be completed within the remaining sixty (60) days. The developer shall indicate all reasons and conditions which have inhibited him from completing the required improvements. The developer must also have all sureties consent to the request, including corporate surety companies. All signatures must be notarized. Each extension shall be subject to an extension fee as set forth from time to time by resolution of the Board of Trustees.

- (e) Where appropriate, the developer may make application for a replacement agreement and bond. A new bond, which cannot be less than fifty percent (50%) of the face amount of the original bond, shall be estimated by the Village Engineer. A new bond package is then prepared and handled in the same manner as the original agreement and bond. The developer is required to pay a processing fee as set forth from time to time by resolution of the Board of Trustees.
- (f) In the event that the developer does in fact default on his agreement, the Village Engineer shall refer the matter to the Village Attorney. In response, the Village Attorney shall take the

appropriate legal action to ensure a timely completion of the improvements.

- (g) Upon the completion of one hundred percent (100%) of the physical improvements outlined in the agreements, the developer can initiate the process of bond release by submitting a letter to the Village Engineer stating that he has completed the project and wishes to be released from his agreement. Before the bond is released, a review of all aspects of the agreement and its associated improvements shall be undertaken by the Village Engineer. If, after the review is completed, the Village Engineer finds that all improvements have been completed in a satisfactory manner, he shall so inform the Village Board, who will authorize the Village Clerk to release the agreement and bond.

C. Planning Board action.

- (1) First, the Planning Board should identify the type of action the proposed development is according to the state environmental quality review regulations (SEQR). Depending on the size, location and other factors, it may be a Type I or an unlisted action. To make a decision, the Planning Board should consult Article 8 of the Environmental Conservation Law (New York). The Planning Board should also review the environmental assessment form (EAF) submitted as part of the application. The action type and related procedure will dictate the next steps, if any, to be taken to comply with the SEQR regulations.
- (2) If it is determined that an environmental impact statement will be prepared for the proposal in question, all time frames and deadlines are delayed until a draft environmental impact statement is filed. An application is not complete and, therefore,

the review clock does not start until a determination of no significance has been made or until a draft environmental impact statement has been completed. When the draft environmental impact statement is completed, the time frame for Planning Board review begins [sixty (60) days]. If another agency has determined that the proposal in question may have a significant effect on the environment, the Planning Board shall not issue a decision until a final environmental impact statement has been filed.

- (3) When compliance with SEQR is complete and within the established sixty-day review period, the Planning Board shall either grant such approval subject to specified conditions or deny final approval and forthwith file its decision with the Village Clerk and notify the applicant thereof. Thereupon, within ninety (90) days, the applicant shall file with the County Clerk the final plat of any subdivision proposed and shall make application for a building permit or permits in accordance with the proposal as finally approved.
- D. No building permit shall be granted for the construction of any building or structure other than as approved by the Planning Board, and no improvement shall be constructed at variance with the proposal as finally approved except upon resubmission and approval of the Planning Board.
- E. The applicant may appeal to the Village Board a decision of the Planning Board denying final approval or granting final approval subject to conditions with which the applicant is unwilling to comply. Such action shall be taken within thirty (30) days of the filing with the Village Clerk of the decision of the Planning Board.