

TOWN OF WINDHAM
LOCAL LAW #5 OF 2022
LOCAL LAW IMPOSING A TEMPORARY TOWN-WIDE SIX-MONTH
MORATORIUM ON SITE PLAN REVIEW

Be it enacted by the Town Board of the Town of Windham as follows:

Section 1. Title.

This Local Law shall be referred to as the “Local Law Imposing a Town-Wide Temporary Six-Month Moratorium.”

Section 2. Purpose and Intent.

Pursuant to the statutory powers vested in the Town of Windham by the Municipal Home Rule Law of the State of New York, to regulate and control land use, and to protect the health, safety and welfare of its residents, the Town Board hereby declares a temporary six (6) month town-wide moratorium on the review and/or approval of any new or existing Site Plan Approval Applications.

The Town Board adopted a Comprehensive Plan in early 2022 (hereinafter the “Plan”) which specifically set forth goals and desires for the Town. Some of the goals and policies of the Plan have been implemented and realized, while several others are still in progress. The Town Board hereby determines that the Plan must be updated and implemented.

The Town Board has previously appointed a committee to review, draft and recommend, among other things, new land use laws including strengthening the Site Plan Review Law and review the possibility of implementing zoning, for adoption by the Town Board. The land use regulations will focus on the importance of protecting, revitalizing and maintaining the Town and encourage smart development which would be an integral part of the Town’s economic growth centered around tourism, recreational uses and local businesses.

The Town Board finds and determines that based upon recent activities, applications and/or inquiries currently before the Town relating to commercial and other activities and based upon the opinion of the Town Engineer such applications and/or inquiries, if approved, could have a deleterious effect on Town’s aforementioned efforts.

The Town Board further finds and determines that it needs the period of time covered by the moratorium imposed herein in order to carefully complete the enactment of the necessary land use revisions, including but not limited to, drafting proposed amendments to existing Town Local Laws, schedule and hold the required public hearing on either amendments to existing Local Laws or the enactment of new Local Laws, perform the appropriate environmental reviews thereof, comply with applicable provisions of law, adopt the Local Law(s), and file the same with the Secretary of State of the State of New York.

Section 3. Scope of Controls.

A. During the effective period of this Local Law, the Town Board and/or any other municipal body, including but not limited to the Planning Board and the Building Department, shall not begin to review new applications for or grant any approvals relating to a Site Plan Approval within the Town.

B. No new applications for a Site Plan Review in the Town shall be considered by any board, officer or agency of the Town while the moratorium imposed by this Local Law is in effect.

C. The Town Board reserves the right to direct the Town Building Inspector/Code Enforcement Officer/Zoning Enforcement Officer to revoke or rescind any Building Permits or Certificates of Occupancy issued in violation of this Local Law.

D. Definitions. For the purposes of this local law, all terms utilized herein shall be defined in accordance with the Town of Windham Site Plan Law.

E. Exceptions. The provisions of this local law shall not be applicable to i) Site Plan Review applications that have been filed with the Planning Board at the time of the enactment of this local law; and ii) Site Plan Review for single family residences within the Town.

Section 4. Term.

The moratorium imposed by this Local Law shall be in effect for a period of six (6) months from the effective date of this Local Law. The Town Board reserves the right to enact subsequent short-term periodic moratoria in the future, in the event it determines that such subsequent local laws or extensions are necessary and in the public's interest. The Board reserves the right to terminate this moratorium prior to the end of the six (6) month period in the event that the new land use laws and/or revisions are enacted before such expiration.

Section 5. Hardship.

A. Should any owner of property affected by this Local Law suffer an unnecessary hardship in the way of carrying out the strict letter of this Local Law, then the owner of said property may apply to the Town Board of the Town in writing for a variance from strict compliance with this Local Law upon submission of proof of such unnecessary hardship for a legally operating use. For the purposes of this Local Law, unnecessary hardship shall not be the mere delay in being permitted to make an application or waiting for a decision on the application for a variance, special use permit, special permit, site plan, subdivision, or other permit during the period of the moratorium imposed by this Local Law.

B. Procedure. Upon submission of a written application to the Town Clerk by the property owner seeking a variance from this Local Law, the Town Board shall, within thirty (30) days of receipt of said application, schedule a Public Hearing on said application upon five (5) days' written notice in the official newspaper of the Town. At said Public Hearing, the property owner and any other parties wishing to present evidence with regard to the application shall have an opportunity to be heard, and the Town Board shall, within fifteen (15) days of the close of said Public Hearing, render its decision either granting or denying the application for a variance from the strict requirements of this Local Law. If the Town Board determines that a property owner will suffer an unnecessary hardship if this Local Law is strictly applied to a particular property, then the Town Board shall grant a variance of the application of this Local Law to a particular property, then the Town Board shall grant a variance of the application of this Local Law to the minimum extent necessary to provide the property owner relief from strict compliance with this Local Law.

C. Supersession. This variance section and the process and procedure of this Local Law supersede the New York State Town Law §§267, 267-a and 267-b in accordance with the powers granted in and pursuant to the provisions of §10 of the Municipal Home Rule Law and §10 of the Statute of Local Governments. It is the intent of the Town Board pursuant to §10 of the Municipal Home Rule Law, to supersede the

provisions of the Town Law set forth above relating to the reviewing body and process and procedure governing the granting of variances.

Section 6. Penalties.

Any person, firm or corporation that shall establish or develop any new use which is defined by the Town of Windham Site Plan Review Law in violation of the provisions of this Local Law shall be subject to:

- A. Such penalties as may otherwise be provided for in the Town's Site Plan Review Law and by applicable state and local laws, ordinances, rules, regulations of the Town for violations; and
- B. Injunctive relief in favor of the Town to cease any and all such actions which conflict with this Local Law.

Section 7. Validity.

The invalidity of any provision of this Local Law shall not affect the validity of any other provision of this Local Law which can be given effect without such invalid provision.

Section 8. Effective Date.

This Local Law shall take effect immediately when it is filed in the Office of the Secretary of State in accordance with section 27 of the Municipal Home Rule Law.