

TOWN OF WAPPINGER
Local Law No. 1 of 2024

A LOCAL LAW REGULATING FOR AN INTERIM PERIOD, THE RECEIPT, PROCESSING,
AND APPROVAL OF APPLICATIONS FOR SUBDIVISIONS GREATER THAN THREE
LOTS AND APPLICATIONS FOR MULTI-FAMILY RESIDENTIAL DEVELOPMENT
WITHIN THE TOWN OF WAPPINGER.

Section I TITLE

 This Local Law shall be known and may be cited as the Interim Development Law of the
Town of Wappinger.

Section II LEGISLATIVE INTENT AND FINDINGS OF FACT

A. Background.

 The Town of Wappinger, Dutchess County, New York (the “Town”) is concerned about
land use and development trends in the county and region and the standards contained in the
Town’s current development regulations. The Town, simultaneously herewith, will be re-
evaluating and updating its comprehensive master plan which was last amended in 2010 and its
zoning code which contains multiple issues and contradictions that the Town believes are
necessary to fix. Additionally, the Town is concerned about its ability to supply potable water
from its existing water supply system to its existing residents and to new development projects and
has similar concerns about the capability to supply sewer service. The existing sewage treatment
plant located at 345 Sheafe Road, Wappinger Falls, New York 12590 requires significant upgrades
and is currently operating under a Consent Order of the New York State Department of
Environmental Conservation. For this purpose, the Town will need to conduct research, studies,
and surveys, informational meetings and public hearings which will lead to the creation and
adoption of a new comprehensive plan and amendments to the zoning code and subdivision
regulations of the Town to implement such plan.

B. Legislative Findings of Fact.

 The Town Board of the Town of Wappinger (the “Town Board”) does hereby find that,
pending the completion of the research, studies, surveys, informational meetings, public hearings
and other actions incident to proper consideration and decisions to update the comprehensive
master plan and revisions and make amendments of the Town Zoning Code and subdivision
regulations, appropriate measures must be taken for a reasonable interim period to protect the
public interest. The Town Board also finds that the further review and approval of significant new
development when an updated comprehensive plan may recommend changes in the existing
zoning code may destroy the integrity of the comprehensive plan and the amendments' basic
purposes, comprehensive aspects and intentions.

Section III SCOPE OF CONTROLS

During the effective period of this law and effective as provided herein:

The Planning Board shall not accept, review, or grant, nor shall any other board, department, or agency of the Town accept, review, or grant, any application for approval of a subdivisions creating greater than three lots (including the existing lot) and/or/or together with applications for or including new multi-family residential development, unless a complete application has been filed and a negative declaration and/or Final Environmental Impact Statement has been approved.

Section IV APPEALS PROVISIONS

A. The Town Board shall have the power to vary or modify the application of any provision of this Local Law upon its determination, in its absolute legislative discretion, that such variance or modification is consistent with the spirit of the intended master plan and prospective zoning code amendments upon which this local law is based and with the health, safety and general welfare of the Town, and upon finding that the application of the provisions of this local law to a specific property will cause undue economic hardship and that such hardship is unique to that specific property.

B. Upon receiving any application for such variance or modification, the Town Board shall refer such application to the Planning Board for a report of said Planning Board with respect to the effect of the prospective variance or modification upon the intended comprehensive plan. To expedite the appeal, the Town clerk shall forward, within forty-eight (48) hours after receipt of same, all applications for relief to the Planning Board for its report. Such report shall be returned by the Planning Board to the Town Board within thirty (30) days of such reference and shall be placed on the next agenda of the Town Board for a determination after expiration of said thirty-day period or receipt of a report from the Planning Board, whichever is earlier. The granting of an appeal for relief by the Town Board shall authorize and permit the Planning Board to accept, review, consider, and otherwise act.

C. In deciding on a proposed exemption or grant of relief from application of the moratorium, the Town Board may obtain and consider reports and information from any source it deems to be helpful with review of said application.

D. A grant of relief from application of the moratorium shall include a determination of unreasonable hardship upon the property owner (or if there are multiple property owners, a determination that each such owner shall suffer an unreasonable hardship) which is unique to the property owner(s), a finding that there are sufficient existing regulations to adequately govern the application for which a hardship waiver is being requested, and a finding that the grant of an exemption will be in harmony with, and will be consistent with the existing Town of Wappinger Zoning Ordinance and the recommendations of the Comprehensive Plan as such may exist.

E. An application for relief from the prohibitions of the moratorium shall be accompanied by a fee as set forth by resolution of the Town Board, together with the applicant's written undertaking, in a form to be approved by the Attorney for the Town, to pay all of the expenses of the Town Board and any agent or consultant retained by the Town Board to evaluate

and consider the merits of such application, including but not limited to any fees incurred by the Town for services provided by the Attorney for the Town.

Section V PENALTIES

A. Any person, firm, entity, or corporation that shall violate any of the provisions of this local law shall be subject to penalties as otherwise provided by law or ordinance of the Town of Wappinger for violation of provisions of Chapter 240 of the Town Code (Zoning).

B. Additionally, failure to comply with any of the provisions of this Local Law shall be an unclassified misdemeanor as contemplated by Article 10 and Section 80.05 of the New York State Penal Law, and, upon conviction thereof, shall be punishable by a fine of not more than One Thousand Dollars (\$1,000) or imprisonment for not more than 10 days, or both for the first offense. Any subsequent offense within a three-month period shall be punishable by a fine of not more than Two Thousand Dollars (\$2,000) or imprisonment for a period of not more than 30 days, or both. For purposes of this Clause A., each day that a violation of this Local Law exists shall constitute a separate and distinct offense.

C. Compliance with this Local Law may also be compelled and violations restrained by order or by injunction of a court of competent jurisdiction, in an action brought on behalf of the Town by the Town Board.

D. In the event the Town is required to take legal action to enforce this Local Law, the violator will be responsible for any and all costs incurred by the Town relative thereto, including attorney's fees, and such amount shall be determined and assessed by the court. If such expense is not paid in full within 30 days from the date it is determined and assessed by the Court, such expense shall be charged to the property(ies) within the Town on which the violation occurred, by including such expense in the next annual Town tax levy against such property, and such expense shall be a lien upon such property until paid.

Section VI APPLICATION

This law shall apply to subdivisions greater than three lots (including the lot to be subdivided) and new multi-family residential developments within the Town of Wappinger.

Section VII VALIDITY

The invalidity of any word, section, clause, paragraph, sentence, part or provision of this local law shall not affect the validity of any other part of this local law which shall be given effect without such invalid part or parts.

Section VIII EXEMPTION

This local law shall not apply to the following:

- (1) subdivisions that create less than three parcels including the existing parcel;

(2) to the premises which are the subject of the case *In the Matter of the Application of Mid-Hudson Development Corp. and Mid-Hudson Holdings, LLC v. The Town of Wappinger and the Town of Wappinger Town Board*, Index Number 2023-51732;

(3) to the premises which are the subject of the case *In the Matter of the Application of Dakota Partners, Inc., Diamond Properties LLC and DP 123 v. The Town of Wappinger Zoning Board of Appeals*, Index No. 2024-50198;

(4) to the premises which are the subject of the case *Downey Energy and Northeast 40, LLC v. Town of Wappinger, Planning Board of the Town of Wappinger, Bruce Flower, Ralph Marinaccio, Robert Ceru, Markos Peratikos, Paul Freno, Nicholas Maselli, The Town Board of the Town of Wappinger and 'John Does and Jane Does 1-15'*, Index Number 2022-51174;

(5) to the premises which are the subject of the case *In the Matter of the Application of Cedar Hills LLC v. The Town of Wappinger, Town of Wappinger Town Board and Town of Wappinger Town Clerk*, Index No. 2024-50539;

(5) those projects currently before the Boards of the Town of Wappinger that have a Negative Declaration under SEQRA or an approved Final Environmental Impact Statement; and

(6) the issuance of building permits.

Section IX REPEAL OF OTHER LAWS

A. To the extent that any provisions of this local law are in conflict with or are construed as inconsistent with the provisions of the New York State Town Law or any local ordinance, law, or regulation, this local law supersedes, amends, and takes precedence over the Town Law and such local ordinances, laws or regulations, pursuant to the Town's municipal home rule powers pursuant to Municipal Home Rule Law § 10 and § 22 to supersede any inconsistent authority.

B. Pursuant to the same powers, and without limiting the generality of the foregoing, this local law, during the duration of time that this law is in effect, supersedes the following:

(1) The provisions contained in Article 8 of the Environmental Conservation Law (known as the State Environmental Quality Review Act) and the regulations thereunder to the extent that such provisions require that an agency determine the environmental significance of an application within certain specified timeframes;

(2) The provisions of Town Law § 267 and § 267-a through c, pertaining to the variance authority of the board of zoning and appeals.

(3) The provisions of Town Law, Article 16, Section 276(5)(d)(iii):

Decision. The planning board shall approve, with or without modification, or disapprove such

preliminary plat as follows:

(1) If the planning board determines that the preparation of an environmental impact statement on the preliminary plat is not required such board shall make its decision within sixty-two days after the close of the public hearing; or

(2) If the planning board determines that an environmental impact statement is required, and a public hearing is held on the draft environmental impact statement, the final environmental impact statement shall be filed within forty-five days following the close of such public hearing in accordance with the provisions of the state environmental quality review act. If no public hearing is held on the draft environmental impact statement, the final environmental impact statement shall be filed within forty-five days following the close of the public hearing on the preliminary plat. Within thirty days of the filing of such final environmental impact statement, the planning board shall issue findings on the final environmental impact statement and make its decision on the preliminary plat.

(4) The provisions of Town Law, Article 16, Section 276(5)(e)(iii):

Decision. The planning board shall by resolution approve with or without modification or disapprove the preliminary plat as follows:

(1) If the preparation of an environmental impact statement on the preliminary plat is not required, the planning board shall make its decision within sixty-two days after the close of the public hearing on the preliminary plat.

(2) If an environmental impact statement is required, the planning board shall make its own findings and its decision on the preliminary plat within sixty-two days after the close of the public hearing on such preliminary plat or within thirty days of the adoption of findings by the lead agency, whichever period is longer.

- (5) The provisions of Town Law, Article 16, Section 276(8):

Default approval of preliminary or final plat. The time periods prescribed herein within which a planning board must take action on a preliminary plat or a final plat are specifically intended to provide the planning board and the public adequate time for review and to minimize delays in the processing of subdivision applications. Such periods may be extended only by mutual consent of the owner and the planning board. In the event a planning board fails to take action on a preliminary plat or a final plat within the time prescribed therefor after completion of all requirements under the state environmental quality review act, or within such extended period as may have been established by the mutual consent of the owner and the planning board, such preliminary or final plat shall be deemed granted approval. The certificate of the town clerk as to the date of submission of the preliminary or final plat and the failure of the planning board to take action within the prescribed time shall be issued on demand and shall be sufficient in lieu of written endorsement or other evidence of approval herein required.

- (6) Any other additional inconsistent provisions of Town Law, Article 16, including but not necessarily limited to, Sections 264, 265, 274-a, 276, 277, 278, and 279.

Section X. DEFAULT APPROVAL

Notwithstanding any provision of Town Law to the contrary, and specifically based upon the supersession of the Town Law Sections 276(5)(d), 276(5)(e) and 276(8) recited in Section IX(B)(3), (4), and (5) above, during the period that this local law, or any extension thereof, is in effect, in reviewing subdivision applications as may be permitted by this local law, the failure of the planning board to take action upon any application for approval of a preliminary or final subdivision plat application shall not be deemed an approval of such application and the town clerk shall not issue a certificate of approval therefor.

Section XI. VALIDITY AND SEVERABILITY

If any part or provision of this local law or the application thereof to any person or circumstance be adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part or provision or application directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this local law or the application thereof to other persons or circumstance, and the Town Board of the Town of Wappinger hereby declares that it would have passed this local law

or the remainder thereof had such invalid application or invalid provision been apparent.

Section XII. EFFECTIVE DATE

This local law shall take effect immediately, as provided by law, and shall remain in force for a consecutive period of eighteen (18) months from its effective date, unless extended by local law adopted after public hearing upon no less than ten (10) days' notice published in the official newspaper of the Town of Wappinger.

Dated March 11, 2024

BY THE ORDER OF THE TOWN BOARD
OF THE TOWN OF WAPPINGER