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Title: City of Newburgh Zoning Law, Section 300-52 Environmental Constraints
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Abstract

Consistent with the general purposes of the City of Newburgh Zoning Law, the Supplementary Regulations set forth environmental constraints to control potentially objectionable external aspects of all uses. The regulations require specific conditions for steep slopes (greater than 15%): adequate erosion control and drainage measures must be in place to prevent erosion and sedimentation; the cutting of natural vegetation must be minimized; safety hazards such as subsidence, road washouts, landslides, flooding, or avalanches must be prevented; and proper engineering review must be conducted by the City to ensure compliance.

Resource

ARTICLE VIII
Supplementary Regulations

§ 300-51. Environmental performance standards.

- A. Compliance with performance standards. No use shall hereafter be established, altered, moved or expanded unless it complies with the performance standards set forth in this section. Continued conformance with such standards, once applicable, shall be a requirement for the continuance of any certificate of occupancy.
- B. Purpose of performance standards. Consistent with the general purposes of this chapter, performance standards shall set specific controls on potentially objectionable external aspects of all uses in order to:
 - (1) Reduce to a reasonable minimum the dissemination of smoke, gas, dust, odor or other atmospheric pollution outside the building in which the use is conducted.
 - (2) Control noise and light perceptible beyond the boundaries of the site of the use.
 - (3) Limit the discharge of treated wastes and prohibit the discharge of untreated wastes into any watercourse.
 - (4) Limit the dissemination of vibration, heat or electromagnetic interference beyond the immediate site on which the use is located.
 - (5) Limit physical hazard by reason of fire, explosion, radiation or any similar cause.
 - (6) Regulate and control the generation and flow of vehicular traffic in order to prevent hazardous conditions, traffic congestion, and excessive noise in the streets.
- C. Noise. No noises shall be emitted in violation of Chapter 212 of the Code of the City of Newburgh. In addition, the following specific standards apply to noise:
 - (1) Sound levels shall be determined at the lot line of the lot from which the noise is emitted. Sound measurements shall be accomplished through a sound-level meter having an A-weighted filter and constructed in accordance with specifications of the American National Standards Institute or other generally accepted standard for the measurement of sound.
 - (2) No person, firm or corporation shall allow the emission of sound which, as measured at the lot lines, has a sound level in excess of:
 - (a) Sixty decibels on the A-weighted scale between the hours of 7:00 a.m. and 8:00 p.m.; and

- (b) Fifty decibels on the A-weighted scale between the hours of 8:00 p.m. and 7:00 a.m.
- (3) Sounds emitted at levels lower than those prohibited by Subsection C(2) above shall not be permitted if, because of the type or frequency of the noise emitted, such sounds are offensive, disruptive or in continual disharmony with the character of an adjoining or nearby residential neighborhood.
- (4) Exemptions. The following shall be exempt from the noise level regulations:
 - (a) Noises not directly under the control of the property user.
 - (b) Noises emanating from construction and maintenance activities between 8:00 a.m. and sunset, Monday through Friday.
 - (c) The noises of safety signals, warning devices, emergency pressure-relief valves or other emergency warning signals.
 - (d) Bells or chimes from a church or other place of worship.
- D. Exterior illumination and glare. No use shall produce glare so as to cause illumination beyond the boundaries of the property on which it is located in excess of 0.5 footcandle. All exterior lighting, including security lighting, in connection with all buildings, signs or other uses shall be directed away from adjoining streets and properties. The City Planning Board may require special efforts to reduce the impacts of exterior lighting, such as limiting hours of lighting, planting screening vegetation, or installing light shields to alleviate the impact of objectionable or offensive light and glare on neighboring residential properties and public thoroughfares.
- E. Review procedures. As a part of site plan review of potentially objectionable external aspects and therefore subject to these performance standards, the reviewing board may require the applicant, at his or her own expense, to provide such evidence as it deems necessary to determine whether the proposed use will comply with these standards.

§ 300-52. Environmental constraints.

- A. Wetlands in lot area calculations. In computing minimum lot sizes pursuant to the Dimensional Table,¹ the area of wetlands shall be subtracted from the total acreage in the lot area calculations.
- B. Steep slopes.
 - (1) For any subdivision, special use permit, site plan, building permit, zoning permit, or variance that involves the disturbance of slopes greater than 15%, conditions shall be attached to ensure that:

1. Editor's Note: See § 300-32, Density dimensional regulations.

- (a) Adequate erosion control and drainage measures will be in place so that erosion and sedimentation do not occur during or after construction, as determined by the Planning Board.
 - (b) Cutting of trees, shrubs, and other natural vegetation will be minimized, as determined by the Planning Board.
 - (c) Safety hazards will not be created due to excessive road or driveway grades or due to potential subsidence, road washouts, landslides, flooding or avalanches, as determined by the Planning Board.
 - (d) Proper engineering review of plans and construction activities will be conducted by the City to ensure compliance with this section, paid for by escrow deposits paid by the applicant.
 - (e) No certificate of occupancy will be granted until all erosion control and drainage measures required pursuant to this section have been satisfactorily completed.
- (2) Note: There will be no building allowed within 100 feet of a waterbody within the Waterbody Protection Overlay District according to the procedural requirements outlined in § 300-46.
 - (3) Slope determinations shall be made based upon the topographic information required for a particular approval, along with such other topographic information as a reviewing board or official shall reasonably require or the applicant shall offer. In cases of uncertainty or dispute, a qualified professional retained by the City, at the applicant's expense, shall determine the location of regulated slopes.
- C. Not more than 50% of any land within easements or rights-of-way for overhead utilities (69 KV or greater) or within a designated street line shall be counted as part of any minimum lot area requirement. No building, structure, yard, or land proposed for prolonged habitual human occupancy shall be located within such easement; however, a road may traverse the easement.
- D. In calculating minimum lot area or allowable density, or dwelling unit count subject to § 300-33, the portion(s) of the lot that include the following shall be subtracted from the total lot area prior to the calculation of the size subject to the 50% allowable build area:
- (1) Ponds, streams, rivers, lakes;
 - (2) Delineated wetlands;
 - (3) Lands having slopes greater than 20%;
 - (4) Areas within the Federal Emergency Management Agency designated one-hundred- and five-hundred-year floodplains and floodways;

- (5) Areas within the WPO;
- (6) Ridgelines;
- (7) Scenic viewsheds;
- (8) Ecologically sensitive areas and other environmentally sensitive features determined by the City Planning Board.

§ 300-53. Screening and buffering in nonresidential districts with respect to lots in C, IND and PO Districts.

- A. There shall be a landscaped buffer strip along each boundary which adjoins a lot in the residential districts or an existing dwelling in any district. This strip shall be at least seven feet in width and shall contain screening or plantings in the center of the strip not less than four feet in width and six feet in height at the time of occupancy of such lot. This planting strip shall be maintained by the owner or occupant and shall be maintained as a dense screen on a year-round basis.
- B. At least 50% of the plantings shall consist of evergreens.
- C. At the discretion of the City Planning Board, a solid wall or fence of at least six feet in height may be substituted for such a landscaped buffer strip.

§ 300-54. Parking and storage of tractors, trailers and buses.

- A. No person shall park, keep, or store, or permit the parking, keeping, or storing on any lot within the residential districts of any "tractor," "tractor-trailer combination," "semitrailer," or "bus" as defined in the Vehicle and Traffic Law of the State of New York.
- B. This section shall not be construed as permitting the continuation of any such storage, parking, garaging, or keeping as a nonconforming use, by a business lawfully in operation as of the effective date of this chapter.
- C. The outside storage of not more than one unoccupied recreational vehicle or boat and trailer not exceeding 35 feet in length is permitted within lots in the residential districts.

§ 300-55. Outdoor swimming pools.

- A. All swimming pools must meet the requirements of the New York State Building Code and must be operated and maintained in compliance with the New York Sanitary Code.
- B. No swimming pool shall be filled or used until the Building Inspector certifies that the swimming pool meets all necessary requirements and that the owner has presented evidence of liability insurance of not less than \$100,000.

§ 300-56. Preservation of public rights-of-way.

- A. Notwithstanding any other provision contained herein, the rights of the City to open, grade, pave and complete for public use the severable streets and roads laid out pursuant to the authority of the Laws of 1867, Chapter 674, and set forth in the Commissioner's Report of the Streets and Roads in the City of Newburgh, dated February 11, 1868, shall be preserved and maintained.
- B. Notwithstanding any other provision contained herein and for the purpose of ensuring a connection between the shore of said City and the navigable waters of the Hudson River and enabling the authorities of the City to extend all streets terminating at the river into the waters of the Hudson River, all estate, title and interest to all such lands under water of the river in front of said streets shall be vested in the City for the use and purpose of public streets and highways forever.
- C. Notwithstanding any other provision contained herein, all existing public rights-of-way and easements, including but not limited to rights of travel on City streets and access to the Hudson River, shall be preserved and maintained.
- D. Notwithstanding any other provision contained herein, all rights granted to the City of Newburgh by the Charter of the City of Newburgh and the laws of the State of New York to extend existing City streets to the Hudson River shall remain in force and effect.
- E. Notwithstanding any other provision contained herein, all rights granted to the City of Newburgh by the Charter of the City of Newburgh and the laws of the State of New York to extend Front Street shall remain in force and effect.

§ 300-57. Public utilities.

Nothing in this chapter shall restrict the construction or use of underground or overhead distribution conduits of public utilities operating under the laws of the State of New York. Public utility buildings and electrical substations are permitted in all zoning districts; however, they are only permitted in a residential district when the location within such district is necessary for the direct furnishing of service to customers and provided that no offices, warehouses, construction, repair shops or garage facilities are included, and provided that a special use permit is obtained from the City Planning Board. Nothing herein shall be construed to allow cellular or personal communication facilities in accordance with this section.

§ 300-58. Mobile homes.

No mobile home shall be permitted in any district in the City of Newburgh, except as an office by a contractor during construction, upon issuance of a permit by the Building Inspector and payment of the appropriate fee.

§ 300-59. Animal care facilities.

- A. The City Planning Board will determine the maximum number and type of animals to be boarded based on site conditions, ability of the proposed facility to provide a safe and sanitary environment for the animals and their caretakers, and the ability to mitigate any potential noise, odor, or community character impact.
- B. The City Planning Board may consider the number and size of animals to be sheltered and impose reasonable conditions to protect neighbors, aesthetic impact and animal safety in order to ensure the health, safety and general welfare of the community.
- C. All boarding of pets shall be indoors.
- D. If stored outside, no animal waste or substance which produces a noxious or offensive odor or dust shall be stored or permitted to accumulate within 200 feet of any lot line, 100 feet of any street, wetland, lake or stream. The storage area, whether inside or outside shall not attract or harbor vermin, rodents, flies or other animals and shall be subject to the approval of the City Planning Board. If the Building Inspector or other Code Enforcement Officer determines that a problem does exist, he or she shall so notify the owner in writing, and the owner must commence steps to rectify the situation within a timely fashion but not to exceed 30 days. If the problem is not rectified in a satisfactory manner, the Building Inspector or other Code Enforcement Officer may commence criminal proceedings against the owner or other person(s) responsible for such violation(s), and, upon a conviction thereof, such owner or other responsible person shall be liable for any and all fines and/or penalties applicable to violations of this chapter. If the situation is not rectified within 30 days from the date upon which the violation should have been rectified, the Building Inspector or Code Enforcement Officer may commence any and all appropriate proceedings for revocation of the special use permit.

§ 300-60. Adult uses.

- A. Location. No adult use shall be located within 500 feet of:
 - (1) Any dwelling unit, provided that as of the effective date of this chapter said dwelling existed.
 - (2) Any lot within the residential districts and the Broadway Corridor, Downtown Neighborhood, Waterfront Gateway or the Planned Waterfront District zoning districts.
 - (3) Another adult use.
 - (4) Any school, church, house of worship, park, playground, or playing field.
- B. No more than one adult use as defined in this chapter shall be located on any lot.
- C. Termination of use; extension.

- (1) In all districts, a nonconforming adult use shall terminate within one year after the effective date of this chapter or from such later date that the adult establishment becomes nonconforming, except that such use may be continued for a limited period of time by the Zoning Board of Appeals, provided that:
 - (a) An application is made by the owner of such use to the Zoning Board of Appeals at least 120 days prior to the date on which such use must terminate;
 - (b) The applicant has made, prior to the nonconformity, substantial financial expenditures related to the nonconforming use;
 - (c) The applicant has not recovered substantially all of the financial expenditures related to the nonconforming use; and
 - (d) The period for which such use may be permitted to continue is the minimum period sufficient for the applicant to recover substantially all of the financial expenditures incurred related to the nonconforming use.
- (2) For the purposes of this section, "financial expenditure" shall mean the capital outlay made by the applicant to establish the adult use, exclusive of the fair market value of the building in which the use is located and exclusive of any improvements unrelated to the nonconforming adult use.

§ 300-61. Local Waterfront Revitalization Program.

In addition to the requirements set forth in this Chapter 300 of the Code of the City of Newburgh, the City of Newburgh Local Waterfront Revitalization Program adopted May 14, 2001, as it may be amended from time to time, shall apply to all properties located within the City of Newburgh Local Waterfront Revitalization Program boundaries, and compliance with the City of Newburgh Waterfront Consistency Review Law, Chapter 159, Article III, of the Newburgh City Code, is required. A copy of the City of Newburgh Local Waterfront Revitalization Program is available in the office of the Newburgh City Clerk.

§ 300-62. through § 300-65. (Reserved)