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State:	New York
Jurisdiction Type:	Municipal
Municipality:	Town of Erwin
Year (adopted, written, etc.):	2003
Community Type – applicable to:	Suburban; Rural
Title:	Town of Erwin Viewshed Protection Overlay District
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Abstract

This law provides a very detailed set of regulations with the primary purpose of protecting the viewshed and natural beauty of the town.

Resource

§ 130-38.1 Viewshed Protection Overlay (VP-O) District. (Added 12-16-03)

A. Statement of Purpose.

It is the purpose of this overlay district to protect the aesthetic, scenic, and ecological character and nature of the higher elevation areas of the Town of Erwin. Ridgelines and hilltops are exceptional aesthetic and ecological resources, and ensuring that tree lines are uninterrupted and ridgetops are free (to the maximum extent practicable) from manmade structures will prevent the degradation of the rural character and scenic beauty of the Town. The Viewshed Protection Overlay (VP-O) District provides standards for regulating the numbers, height, design, placement, and impacts of any structure proposed to be located from an elevation of 1,000 feet above mean sea level to the delineated ridgelines and hilltops, and down 200 ft in elevation on the other side of the ridgelines and hill tops, as depicted on the Town of Erwin Environmental Resources Overlay Map, that have the potential of being visible from an Aesthetic Resource of Local and/or Statewide Significance, as defined and listed in § 130-90 of this Chapter, in order to minimize structural intrusions upon the visual landscape, to preserve ecological integrity, and maintain the rural and scenic character of the Town.

B. Boundaries of the Viewshed Protection Overlay District.

The VP-O District shall include all areas from an elevation of 1,000 feet above mean sea level to the delineated ridgelines and hilltops, as depicted on the Town of Erwin Environmental Resources Overlay Map located at the end of this Section.

C. Exemptions.

1. Any proposed development within the VP-O District which will not be visible from any designated Aesthetic Resource of Local and/or Statewide Significance due to intervening topography or landforms, except vegetation, as demonstrated by the Applicant through a line of sight profile or computer-simulated visual impact analysis, the results of which to be approved by the Planning Board, shall be exempt from the specific requirements of the VP-O District.

D. General Provisions.

1. Any proposed new construction, development, or improvements within the VP-O District shall require a Special Use Permit pursuant to the requirements of Article IX, and if applicable, Article X and § 130-89 of this Chapter. In addition to those requirements, the following standards and procedures set forth in this section shall also apply.

2. Should an applicant request a variance from the regulations in this Section, the proposed action will be considered a Type I Action.

E. Standards

In preparing its decision concerning any application for development subject to the jurisdiction of this Section, the Planning Board shall consider the requirements detailed in Article IX, and if applicable, Article X and § 130-89 of this Chapter and other applicable requirements of this Chapter, as well as the following Standards:

1. Clearing for Preliminary Site Planning and Surveying. Vegetation removal and thinning to facilitate preliminary site planning and surveying needs shall be kept to a minimum, and shall be restricted to: one unimproved access path no wider than eight (8) feet per lot; parcel boundaries for surveying needs; and selective patches for soil testing or other ground investigations. Said selective patches shall have a minimum separation distance of ten (10) feet. At no time shall any vegetation four (4) or more inches DBH and/or any vegetation four (4) or more feet in height be removed from the site

prior to approval by the Planning Board. All clearing undertaken prior to application submission shall be depicted on the required Special Use Permit application materials.

2. Site Clearing for Construction – The Building Envelope.

a) Clearing of any form of vegetation for the construction of the proposed principal building as defined by this Chapter shall be limited to a distance of forty (40) feet beyond the proposed foundation/footprint.

b) Twenty (20) feet of clearing beyond the foundation/footprint shall be allowed for the construction of any detached accessory building.

c) Five (5) feet of clearing beyond the foundation/footprint for all structures having one hundred (100) square feet in floor area or less shall be permitted.

d) All vegetation beyond the allowed clearing area shall be protected from encroachment by tree fences.

e) When a NYS Licensed Engineer determines that the above vegetative clearing allowances are insufficient to allow for safe construction of a proposed structure, limited additional clearing may be allowed providing that any additional clearing is in compliance with the four requirements set forth below under “Additional Clearing.”

3. Additional Clearing.

a) When construction *is completed* and additional clearing of vegetation is desired, or if additional clearing is necessary to allow for safe construction as demonstrated by a NYS Licensed Engineer, a tree-by-tree inventory shall be prepared by a NYS Licensed Forester or NYS Licensed Landscape Architect showing the location, type, and DBH of every tree four (4) or more inches DBH lying outside the permitted building envelope described above, and within the boundary in which clearing or trimming is proposed. Said inventory should be made a part of any submission for final project approval. Such a plan shall also assure that:

i. A moderate forest density remain in place sufficient enough to screen the proposed structure from any

designated Aesthetic Resource of Local and/or Statewide Significance.

ii. No tree root areas are filled above the natural grade.

iii. Trimming is conducted in a manner (a) sufficient only to allow a filtered view from the property towards a public vantage point, (b) that will not result in the visibility of any proposed structure on the lot from any designated Aesthetic Resource of Local and/or Statewide Significance, and (c) that assures continued health of each tree left standing.

iv. Clearing shall, in no case, render any ground area on the lot $\frac{1}{4}$ of an acre or greater visible from any designated Aesthetic Resource of Local and/or Statewide Significance.

b) When additional clearing of vegetation is desired, or if additional clearing is necessary to allow for safe construction as demonstrated by a NYS Licensed Engineer, the result of which will be the visibility of the proposed structure(s) from any designated Aesthetic Resource of Local and/or Statewide Significance, the Applicant shall be required to utilize any combination of the mitigation measures outlined in § 130-90 "Town of Erwin Visual Impact Mitigation Strategies" as deemed necessary by the Planning Board to mitigate the adverse visual impact(s) to the maximum extent practicable.

Note: The above cutting restrictions shall not prohibit the removal of diseased vegetation or of rotten or damage trees or of other vegetation that presents safety or health hazards.

4. Lot Siting. All structures, access roads, buffers, setbacks, fences, and all other facility appurtenances shall be located on one lot and shall not straddle a boundary line.

5. Setbacks. The proposed yard setbacks from the property line must be no less than 1.5 times the height of the proposed structure or the setback requirements of this Chapter, whichever are greater.

6. Signage. No signage is permitted which will be visible above the existing tree canopy. In addition, the following signs are prohibited: signs which are visible from more than two hundred (200) feet off-site, larger than nine (9) square feet, or more than

twelve (12) feet off the ground.

7. Height.

a) If the lot *does not* contain a sufficient number of trees greater than four (4) inches DBH within fifty (50) feet of Article VIII Overlay Districts Page 73 the proposed building and any accessory building or element, *that are not* capable of completely screening the proposed building(s) from any designated Aesthetic Resource of Local and/or Statewide Significance after clearing the maximum vegetation allowed during construction as outlined above, the height of the proposed structure and any accessory element shall not extend more than twenty-five (25) feet above ground level.

b) If the property *does* contain a sufficient number of trees greater than four (4) inches DBH within fifty (50) feet of the proposed building and any accessory building or element *which is* capable of completely screening the proposed building(s) from any designated Aesthetic Resource of Local and/or Statewide Significance after clearing the maximum vegetation allowed during construction as outlined above, the height of the proposed building(s) and any accessory element shall not exceed five

(5) feet above the existing tree canopy's average height, and at no time shall the height exceed thirty (30) feet above ground level, whichever is more restrictive.

c) At no time shall any proposed structure or any appurtenances affixed thereto exceed the ridgeline, and as a result have no vegetation as a backdrop as seen from any designated Aesthetic Resource of Local and/or Statewide Significance.

Note: The height of any structure or accessory elements attached thereto shall be measured from the lowest natural or manmade grade (whichever is lowest) to the top of the structure or the top of the uppermost fixture or appurtenance affixed thereto, whichever is highest.

8. Rooflines. Rooflines and roof surfaces shall be specified in the building design and shall, insofar as possible, reflect the natural slope of the terrain.

9. Colors and Exterior Finishes.

a) No reflective finishes shall be used on exterior surfaces including, but without limitation, the exterior surfaces of roofs, all projections above roofs, retaining walls, doors, trim fences, pipes, or equipment (see below with respect to windows).

b) Siding shall be of the following: painted or stained wood, timbers, logs, natural stone masonry, synthetic stucco, or non-reflective vinyl (unpainted).

c) Colors shall be muted and “earth tone,” representative of those found in the surrounding environment. White or other light colors are prohibited.

d) The following colors shall also be prohibited: fluorescent colors of any kind, orange, teal, yellow, blue, purple, pink, and any other color or combination thereof not normally found on a year-round basis in the surrounding natural environment.

e) Exterior colors, textures, and materials, including roofing materials, must be described in the plans and specifications, including their location on the completed structure.

f) Large unbroken expanses of similar-colored or similar textured walls or foundations shall be avoided. The use of natural materials and plantings to shield foundations is strongly recommended.

10. Windows.

a) It is recommended that large, uninterrupted expanses of glass and repetitive bands of windows be avoided in favor of combinations of smaller windows.

b) Windows must be of high performance, tinted, nonmirrored, low-reflectivity glass.

c) Metal window panels shall be painted to decrease the potential for reflection.

11. Lighting (Primarily for Residential Uses).

a) All exterior lighting must subtly illuminate functional areas

only.

b) The maximum allowed total exterior lumens will be 80,000 for any lot.

c) Attached and unattached lighting fixtures must be hooded and angled at 45 degrees towards the ground. No light may escape from above the horizontal plane, and at no time shall the light source be visible.

d) Floodlights shall be hooded, have motion detectors, and illuminate functional areas only, such as garage doors, storage areas, walks, and drives.

e) Fixtures on buildings shall not be located above the eave line or above the top of the parapet wall, nor in any case 21 feet above the lowest grade elevation (natural or manmade).

f) It is recommended that bulbs rated 75 watts or less, preferably warm colored, be used for continuously lit areas.

g) No landscaping lighting, continuously illuminated floodlights, continuously illuminated light bulbs over 75 watts, or exposed bulbs shall be used.

F. Mitigation Techniques and Procedures.

1. Mitigation when the existing vegetation does not allow the screening of the proposed structures from any designated Aesthetic Resource of Local and/or Statewide Significance: A mix of vegetation matching both in species and density, indigenous to the area and within good soil shall be planted such that, within five years, they can reasonably be expected to screen all new proposed buildings from said public vantage point(s). All planted vegetation shall be no smaller than four (4) inches DBH and no less than eight

(8) feet in height at the time of planting. All vegetation shall be planted in a manner representative of natural conditions and shall not have the appearance of a suburban style hedgerow.

2. Mitigation when the proposed structure cannot be fully screened from any designated Aesthetic Resource of Local and/or Statewide Significance by the planting of additional vegetation: When the use of additional vegetation will not fully screen proposed structures, the mitigation strategies and procedures outlined in § 130-92

“Town of Erwin Visual Impact Mitigation Strategies” shall be utilized. These mitigation strategies include: design and siting, screening, relocation, camouflage, low profile, downsizing, alternate technologies, non-specular materials, lighting, maintenance/decommissioning, and offsets.

3. The use of earth berms not in character with the immediate natural surroundings to screen a structure shall be prohibited.

G. Application Procedures for Viewshed Protection Overlay District Special Use Permits.

When applying for a Special Use Permit for development within the VP-O District, the Applicant shall follow all procedures and shall submit all forms, plans, documentation, and fees required by Article IX, and, if applicable, Article X and other applicable Sections of this Chapter.

1. Submittal Requirements. An application for development within the VP-O District shall be complete and in a form acceptable to the Planning Board and shall contain the following:

a) A SEQR Full Environmental Assessment Form (Parts I, II, III).

b) For residential subdivisions, a full build plan of the site including building envelopes, lot lines, clearing limits (in accordance with subsection D(1) through (3) of this Section), and accessory structures.

c) A visual analysis, the methodology of which to be approved by the Planning Board prior to the commencement of the analysis. Acceptable visual analysis techniques shall include line-of-site profiles and computer simulated visual impact assessments.

d) Identification of all proposed mitigation measures in accordance with subsection E “Mitigation Techniques and Procedures” of this section and § 130-90 of this Chapter.

e) Additional information as requested by the Planning Board and/or the Town Code Enforcement Officer.

2. Alterations. All modifications to a structure shall require that the Applicant submit a new Special Use Permit Application to the Planning Board.

3. Duration of Special Use Permits. If construction of either a residential or non-residential use does not begin within one (1) year of the date of issuance of the Special Use Permit, the permit shall expire.

4. Renewal of Special Use Permits.

a) Renewal must not be unreasonably withheld if the Applicant is in conformance with the original approval and all conditions are attached thereto.

b) No fewer than sixty (60) days prior to the expiration of a Special Use Permit, the holder of the Special Use Permit must submit to the Code Enforcement Officer a Renewal Application for Special Use Permit. If the holder fails to submit the application within the sixty (60) day period, and has not arranged with the Code Enforcement Officer for an extension of the sixty (60) day period, the Special Use Permit will expire. The renewal application shall contain the following:

i. A current, updated buildout plan.

ii. A Special Use Permit Renewal Application.

iii. Clear and convincing proof of the continued necessity for the structure.

iv. Other materials or information deemed necessary by the Code Enforcement Officer.

c) Within forty-five (45) days of the submission of a completed application and a determination by the Code Enforcement Officer that the application is technically sufficient, the Code Enforcement Officer shall act to renew or revoke the Special Use Permit. A copy of the Code Enforcement Officer's decision shall be filed in the office of the Town Clerk, Code Enforcement Officer, and mailed to the Applicant.

5. Structure Removal. If a Special Use Permit has been revoked per Article IX of this Chapter or has expired, all non-residential structures and improvements shall be removed.

6. Copies of all Permits issued for proposed projects subject to the

requirements of this Section and all approved Site Plan maps and Subdivision Plats (if applicable) shall have the following language:

“This Permit is binding on the (Applicant and Owners), and all present and future owners or lessees of the project site and all contractors undertaking all or a portion of the project. Copies of this permit and the site plan map/subdivision plats referred to herein shall be furnished by both applicants to all contractors prior to undertaking the project, and to all subsequent owners or lessees of the project site prior to sale or lease. All deeds conveying all or a portion of the lands subject to this permit shall contain references to this permit as follows “The lands conveyed are subject to Town of Erwin Special Use Permit (.....) issued (.....), the terms and conditions of which are binding upon the heirs, successors and assigns of the grantors and all subsequent grantees.”