SECTION 8
REVIEW PROCESS

8.1. PERMIT PROCESS

8.1.1 Objective

The Review Process exists to assure that development and redevelopment maintains the character of the community and its' environment, is in accordance with the Comprehensive Plan, and meets the requirements of this Code. The process should balance due diligence in the administration of the code with timely decisions regarding applications.

8.1.2 Applicability

A. Applicability

No Building/Use Permit may be issued by the Enforcement Officer unless the proposed development complies with all applicable sections of this Code, and all applicable approvals required by the Review Board and /or Zoning Board of Appeals have been granted. The following shall not occur prior to the issuing of a Building/Use Permit by the Enforcement Officer, except as such building or use may be specifically exempt (Section 1.7.5):

1. No building will be constructed, erected or relocated

2. No existing building will be expanded or added to in any way that would alter its exterior dimension

3. No use will be located, changed, introduced or expanded relative to the area occupied or involved by such use.

4. No site disturbance beyond the reasonable allowance for the purposes of surveying or soil testing the property

5. The erection or modification of any signs.

6. Any modifications of a conditional use including architectural modifications or a change of use to one which has different requirements in this Code.

7. Any land disturbance which requires a stormwater permit (Sec 4.5.2) with the exemptions noted in Sec 4.5.4

8. Tree removal other than that exempted by the code

8.1.3 Application Process

A. Initiation through Code Enforcement Officer

All development review is initiated with the Code Enforcement Office through the Building/Use Permit review process.

B. Submission Requirements

Required application materials, plans, data and subdivision plats to be submitted in accord with the procedures as outlined in the respective Local Laws constituting this Code shall be in accord with the requirements of Article 9, Section 334 of the Real Property Law, where applicable and shall be prepared according to the following; except as they may be specifically waived by the Review Board, the Chairperson of the Review Board, the Enforcement Officer, as is applicable, based on the procedure[s] under which the Application is to be considered. If the application is for a permitted use only subsection 8.1 applies. In the case of conditional use, or any case where review by the Review Board is required, both section 8.1 and section 8.2 apply.

An application for a Building/Use Permit shall be filed with the Enforcement Officer. The required application fees for all relevant development review processes shall be submitted with the application as well. The application shall include the following:

1. Accompanying Data:

    a. Building Use Permit Application and the required fee(s)

    b. Name and address of Applicant and any professional agents and/or consultants

    c. Authorization of owner if applicant is not the owner of the Real Property in question

    d. Description of materials and method of installation for any equipment or installation for which the Permit is being sought

    e. Results of any required on-site investigation, including percolation test[s], where applicable

2. Site Plan

    A minimum of two copies, no smaller than 8.5" x 11", drawn to scale, and such additional copies as the Enforcement Officer and/or the applicable Chairperson may specify that depicts at a minimum:

    a. Location map showing boundaries and dimensions of the parcel or tract of land, contiguous properties, Planning Districts and any easements and/or public rights-of-ways

b. Existing features of the site including existing land use, land and water areas, existing buildings and water and/or sewer systems on or immediately adjacent to the site, and surface drainage characteristics

c. The proposed location and arrangement of buildings or installations on the site, including setbacks from all property lines for all such buildings or installations

d. Sketch of any proposed building or structure, including exterior dimensions and elevations of front, side and rear views

e. Identify areas with slopes greater than 25 percent that may be disturbed by the development

3. Other Applicable Information

To include, where applicable:

a. Evidence of compliance with New York State Fire Prevention and Building Code, such as: signed and sealed survey, architectural and engineered drawings

b. Such additional information, data and analysis as may be necessary in the judgment of an Enforcement Officer

4. Additional Application Requirements

One copy of any and all sketched drawings, plans, blueprints submitted by the Applicant for and pertaining to the granting of a Building/Use Permit shall be filed with the North Elba Board of Assessors prior to the issuance of a Building/Use Permit.

8.1.4 Actions of the Enforcement Officer

A. Review by Enforcement Officer

The Enforcement Officer shall review the application and issue or refuse to issue the applied for Building/Use Permit, or advise the applicant of any required additional information or referral required within 10 days of receipt of the application. Notice of refusal to issue any Permit shall be given to the applicant in writing and shall state the reasons for said refusal. Approval of the application shall be indicated by the issuance of the Building/Use Permit as herein provided.

B. Issuance of a Temporary Permit

If the proposed project involves any excavation, site alteration or improvement requiring any disturbance of the soil of the property, the Enforcement Officer shall only issue a temporary Building/Use Permit authorizing:

1. Performance of such excavation, site alteration or improvement requiring disturbance of the soil

2. Other preparation for, but not construction of, all foundation work required for the project proposed

All excavation, site alteration or improvement, disturbance of the soil shall be in accord with a "Storm Water Management Permit" (see 5.4) if applicable. No other or additional work shall be authorized or performed under a temporary Building/Use Permit.

C. Issuance of a Permit

Upon the completion of preparation for all foundation work required for the project proposed, the applicant for the Building/Use Permit shall apply in writing to the Enforcement Officer for the issuance of the Building/Use Permit. Within 72 hours following receipt of such written notice and prior to the issuance of the Building/Use Permit it shall be the responsibility of the Enforcement Officer to make or cause to have made an on-site inspection of the property to measure and confirm that the proposed foundation location, as actually delineated on the ground, satisfies all setback requirements pertaining to the property and that it will be located and positioned in accordance with the site plan submitted by the applicant and the other requirements of the Code and as to any requirements set forth by the Review Board and/or the Board of Appeals.

The Enforcement Officer shall maintain a written record of his or her on-site inspection[s] specifying the date and the results of his or her measurements. It shall be the responsibility of the applicant to establish to the satisfaction of the Enforcement Officer the actual location of the boundary lines of the applicant's property at the time of said inspection. In the event it is determined that the applicant failed to comply with the requirements and conditions of the temporary Building/Use Permit and of this Code, no Building/Use Permit shall be issued.

D. Submission to Review Board

No building/use permit shall be issued by the Enforcement Officer without Review Board approval for any conditional use, change in the type or size of conditional use, site alteration or improvement which requires special review.

8.1.5 Duration of Validity * ** ***

A Building/Use Permit issued under this Code shall be valid for a period of three years from the date of issuance and shall thereafter be deemed null and void, unless the project for which the permit was issued has been completed within said three-year period. If the project is not completed within the three-year period, the owner must return the site to its original condition and the Enforcement Officer shall issue an order to that effect. If the owner does not comply with said order within 60 days of the date of said order, the Town Board or Village Board (as the case may be) shall be authorized to enter onto the site and to return the site to its original condition and in such case shall be entitled to recover the costs of removal and disposal from the owner of the property by commencing an action in a court of competent jurisdiction or by adding such costs to the next Town or Village Tax Bill (as the case may be), to the extent authorized by law. Upon application, the issuing agency may, for good cause shown, authorize a one-year extension of said three-year period.

* Town of North Elba Local Law 1 of the year 2011.
**Village of Lake Placid Local Law 1 of the year 2011.
***Local Law #2 of 2022 Town of North Elba
Local Law #2 of 2022 Village of Lake Placid

8.1.6 Certificates of Compliance and Occupancy, and Operating Permits

A. Applicability

1. No building or use requiring a permit shall be occupied, used or put into operation until a Certificate of Occupancy has been issued by the Enforcement Officer pursuant to the NYS Building Code.

2. A Certificate of Compliance to the Conditions of Approval as established by the Board of Review or the Board of Appeals, as applicable, has been issued by the applicable Board. Or the Code Enforcement Officer

B. Required Submissions

Application(s) for a Certificate of Compliance and a Certificate of Occupancy shall be made coincidental with any application for a Building/Use Permit. Such application shall be valid for the duration of the validity of the Permit.

C. Application and Fee Required

Upon completion of any building or use for which a Building/Use Permit and Certificate of Compliance/Certificate of Occupancy are required, it shall be the responsibility of the applicant to immediately notify, in writing, the Enforcement Officer and the Chairman of the applicable Board in writing, of such project completion. Upon notification to the Enforcement Officer of project completion, the following shall be submitted to supplement the Application:

1. The required written notice shall be on a form provided by the Building Department, such form (signed by the applicant) shall serve as certification by the Applicant that all improvements were carried out in accord with the approved Building/Use Permit or as is otherwise required according to the provisions of this Code.

2. The written notice must state any changes made in the course of construction.

3. Any other Certification as may be by applicable, including that from any professional consultant, third party inspector, building contractor, or other as required by the Enforcement Officer.

4. No Certificate of Compliance, Certificate of Occupancy, or Operating Permit shall be issued until all conditions of any Board approval are met and all fees are paid.

D. Notice of Determination

1. The Enforcement Officer shall cause to have made an inspection of each building for which a Certificate of Occupancy is required before issuing such Certificate.

2. Certificate of Occupancy and Certificate of Compliance shall be issued only if the building and/or use conform to the provisions of the NYS Building Code and the conditions as set forth by the Review Board or the Board of Appeals

3. Certificates of Occupancy and Compliance or written notification of refusal to issue Certificate[s] and the reasons therefore are to be sent to the applicants within ten 10 days from the date of the applicant's written notification of project completion.

8.2 REVIEW BOARD PROCESS

8.2.1 Applicability

The Review Board must approve all development activities which, based upon the provisions of this Code, require conditional use approval, site plan approval, or special review.

8.2.2 Sketch Plan Phase

A. Objective

The Applicant shall submit sketch plans for review and discussion with the Review Board. Sketch plan review is intended to benefit the applicant by identifying potential development constraints and the suitability of the proposed project in light of these constraints at an early stage of the process. The level of detail provided in the sketch plan may vary depending on the size and scale of the proposed development, and how it will be phased. Sketch plans shall include the entire proposed project, even if approval is to be requested for only an initial phase.

The Review Board shall notify the applicant of any inconsistencies with current zoning, possible design problems, and any other issues that need to be addressed in the preliminary plan submittal. The applicant shall not be considered to have completed sketch plan review until the applicant has submitted a sketch plan, or a revised sketch plan, that reasonably addresses the concerns of the Review Board.

B. Submissions Requirements

* 1. Site Plan - number of copies as determined by Code Enforcement Office:

   a. Location of proposed project, boundaries of the tract, contiguous properties, Zoning Districts and any easements

   b. Existing features, including existing land use, land and water areas and other important elements of the site

   c. General layout showing conceptual street and lot or building arrangements

2. Accompanying Data to include:

   a. Application

   b. The name and addresses of the owner, subdivider or developer and professional consultants

   c. Total acreage of tract

   d. Proposed timetable or stages for sale and/or development

   e. Type of project; e.g., sale of lots, buildings, condominiums

* Local Law #2 of 2022 Town of North Elba
Local Law #2 of 2022 Village of Lake Placid

f. Existing and proposed utilities and service facilities

g. Proposed number of lots, typical lot size, number of units, overall density

8.2.3 Preliminary Plan Phase

After completing the sketch plan review, the applicant shall submit a complete application for preliminary approval of the proposed project to the Review Board. If the application is not submitted within six months, a new sketch plan must be submitted for review. The application for preliminary approval shall contain those items set forth in this section.

A. Submissions

*Site Plan - A minimum number of copies as established by the Code Enforcement Office, at a scale established by the Code Enforcement Office upon initial review of the Sketch Plan, not generally to be less than 1" = 100', and to include:

1. Title, scale, north arrow and date

2. Tract boundaries and owners of record, including mailing addresses of adjoining property owners

3. Existing topographic data based on USGS or equivalent at a contour interval of no greater than 10 feet

4. Proposed grading plan

5. Soils information based upon on-site investigation, including backhoe test pits

6. Existing and proposed drainage patterns, including provision for collection and discharging surface drainage and runoff

7. Compliance with the Village/Town Storm Water Management [See Section 4.5]

8. Existing and proposed vegetation and tree cover, including proposed landscape plan

9. Existing land use and uses immediately adjacent to the parcel

10. Location and separation distances of any well or septic system on the site, or off-site within one hundred [100] feet to the boundaries of the parcel

11. Lot layout or building arrangement, including existing and proposed setbacks

12. Road layouts, including right-of-way[s] and improved surface widths and suggested road names

13. Location and description of utilities on and adjacent to the tract and proposed connection thereto, or alternate means of water supply, sewage disposal, electricity, telephone and other service facilities

14. Location, dimension and purpose of any and all easements

* Local Law #2 of 2022 Town of North Elba
Local Law #2 of 2022 Village of Lake Placid

15. Location, dimension and description of land or facilities to be dedicated or reserved for public use

16. The location and dimensions of all off-street parking areas, handicap parking areas, outdoor storage areas, service areas, pavements, curbs, bike-ways, sidewalks

17. The location and dimensions of proposed site amenities

18. Proposed lighting plan, including the location, height and specifications for all proposed lighting, and data regarding the lighting levels both within the site and at the site's boundaries

19. Proposed signage plan, including the location and dimensions of any existing or new signs

20. Location and proposed development of all buffer areas including indication of existing vegetative cover

21. Location of fire and emergency zones, including fire hydrants

22. Existing watercourses, wetlands and other water bodies

B. Accompanying Data - to include the following:

1. Application and required fee

2. A tabular summary of pertinent statistics including, but not limited to, the total site area, area to be developed; percentage of permeable and impervious area; number of lots; average size of lots; area of building in square feet; building heights; area lot coverage in square feet; indication of all setbacks; compliance with all parking requirements; area in recreation use; area in open space; length of road[s] to be created and other items as may be determined by the Review Board

3. Description of existing and proposed utilities and service facilities, including documentation from on-site investigation, detailing type, size and arrangement for connection to any existing system

4. Capacity of water, sewer and electric systems proposed to be utilized and documentation from officials in charge of such utilities authorizing tie-in to such facilities

5. Drainage report demonstrating that the proposed drainage facilities are adequate to handle the runoff from 25 year storm and are in compliance with Stormwater Management provisions (Section 4.5)

6. Description and count of all trees to be removed within 25 feet of the edge of the improved travel surface of any roadways or other areas where the natural contour is to be altered, which are of four inch caliper or more as measured at breast height

7. Proposed restrictive covenants and legal provisions for the maintenance and operation of common facilities, and / or the preservation of permanently restricted open space land

8. A determination of jurisdiction from the Adirondack Park Agency

C. Additional Exhibits / Demonstrations

Any other data as may be required by the Review Board. This may include digital representations, simulations and other studies, exhibits or representations as necessary to be able to properly review the project, at the expense of the applicant.

D. Master Plan Requirement

The Review Board shall request a master plan for all phased developments and large-scale developments. Master plans shall contain the following information:

1. Water or water quality data, including the effect of proposed water use on surrounding wells and springs; maps indicating all wells, springs, rivers, streams, and other water drainage or sources within 1,000 feet of the development; potential contamination of area water supplies from existing and proposed septic fields, landfills, run-offs, and storm drainage, pesticide and fertilizer residues, and any other sources that may pollute such supplies

2. Demonstration of compliance with State of New York standards for air quality

3. Expected noise levels and times of occurrence

4. If applicable, a plan for providing recreation facilities

5. Effect of the development on wildlife, land resources, and timber

6. Effect of the development on electric generation, transmission, sub-transmission, and local distribution systems, including visual impacts

7. Impact on community facilities and municipal services

8. Impact on agricultural practices and lands

9. Energy use and conservation

10. Housing and the ability to address the needs of low- and moderate-income persons

11. Evaluation of the economic benefit of the development, including revitalization of village centers, job creation, and vocational or educational training opportunities and requirements

12. The effect of the development on transportation, including existing and planned public transportation facilities

8.2.4 Final Plan Phase

Within one year of receiving Preliminary Plan approval, the Applicant shall submit a complete application for approval of a Final Plan to the Review Board. The application must contain those items set forth in this Code, and shall conform to the layout shown on the Preliminary Plan, with any modifications recommended by the Review Board.

A. Site Plan

*A minimum number of copies in addition to the original, as established by the Code Enforcement Office, scale to be the same as for the Preliminary Plan unless otherwise approved, to include:

1. All information as required for Preliminary Plan Submittal

2. All drawings are to be appropriately signed and sealed by a licensed professional engineer, a licensed surveyor, a licensed architect, as applicable, and as otherwise required by Law

3. Tract boundary lines, right-of-way lines, easements and individual lot lines with accurate dimensions, bearings, radii, arcs and central angles of all curves and location and description of all monuments

4. Topographic data showing contours at a minimum of two foot intervals related to USGS or other permanent bench mark where natural contours are to be changed; otherwise at five foot intervals

5. Typical cross sections of roads, including pavement, shoulders, ditches, and bike paths, walks and cross section of drainage easements, as necessary

6. Profiles of road centerlines showing vertical curve data, slope of tangents and elevations of road intersection and other critical points

7. Profiles of storm and sanitary sewers, if any, showing diameter of pipe and distance between individual lines, manholes and catch basins

8. Preliminary drawings for buildings to be constructed, if any, including floor plans, exterior elevations and sections

9. Landscaping plan

10. Lighting plan

11. Site improvement plan

12. Final grading plan where natural contours are changed beyond the road and building area

* Local Law #2 or 2022 Town of North Elba
Local Law #2 of 2022 Village of Lake Placid

B. Accompanying Data - to include the following:

1. Application and the required fee

2. Information requests, if any, issued by the Adirondack Park Agency

3. All information as required for Preliminary Plan

4. Certificate of title showing that the Applicant is the landowner

5. Protective covenants in form for recording, including covenants governing the maintenance of un-deeded public space or reservations

6. Offers of cession dedicating streets, easements, open space and other facilities. Approval of the applicable Highway Superintendent shall be provided for all roads proposed to be deeded to the Village or Town

7. Copies of agreements showing the manner in which areas reserved by the subdivider are to be maintained

8. Sufficient building dimensions and data to assure that applicable provisions of the NYS Building Construction Code and Multiple Residence Law will be complied with, as applicable

9. Detailed drawings and specifications for water supply, storm water disposal, sanitary sewage disposal and any other required facilities, services or installation[s]. Approval from the appropriate public official in charge of any public water, sewer or electric supply system shall be provided

10. Preliminary approval by the NYS Department of Health or Department of Environmental Conservation, as applicable, of water and sewer or other facilities

11. All offers of cession, deeds, abstracts and easements for any street, sewer, water or other facilities, as approved by the applicable Village or Town Attorney

12. Evidence of approval from the New York State Department of Transportation or the Essex County Department of Public Works, as appropriate, for curb cuts onto public streets or any other proposed traffic improvements

8.2.5 Notice of Determination

A. Process

The process for consideration of any Final Plan shall be as follows:

1. The Clerk of the Review Board and the Chairman of the Review Board shall determine whether a final plan application is sufficient to be placed on the Review Board agenda.

2. The Review Board shall determine when an application is complete.

3. The Review Board may within its discretion schedule and hold a public hearing on any complete application for a Conditional Use within 45 days from the date of acceptance of the complete application by the Review Board, or at an earlier stage at the discretion of the Review Board. * **

4. The Review Board shall conduct the required review under the State Environmental Quality Review Act (SEQR), including classification of the action, coordination with other agencies as appropriate and the preparation of a negative or positive declaration. If a positive declaration is prepared, the Review Board shall follow the procedures of the State Environmental Quality Review Act before acting on the conditional use.

5. The Review Board shall render its decision within 60 days following the date of the close of the public hearing, or the completion of the SEQR process, whichever comes later (either the issuance of a negative declaration, a conditional negative declaration or in the case of a positive declaration, the SEQR findings.) Notwithstanding the foregoing, the time within which the Review Board must act may be extended by mutual consent of the applicant and the Board. Notification of the Board's decision will be given in writing to the applicant and a copy shall be filed in the Building Office and in the Offices of the Village and Town Clerk[s].

6. The Review Board shall approve, approve with stipulated conditions or modification or disapprove the Application based upon its Finding of Facts and shall render is decision within 60 days from the date of the acceptance of a complete Application if no Public Hearing is held; or within 60 days of the close of the Public Hearing, if such Hearing is held, except as such time may be extended by mutual written agreement between the applicant and the Review Board.

7. The Review Board shall draft Findings of Facts pertaining to the Application.

8. The Review Board shall set forth the Conditions of approval for the Conditional use permit.

9. The decision of the Review Board may include, among its provisions, a requirement that the Applicant reimburse the Village and/or the Town, as applicable, for reasonable and necessary costs incurred by the Review Board for private consultation fees and other extraordinary expense in connection the review of the Application. Such reimbursable costs shall be in addition to the normally required fee. Maximum amounts for such reimbursable costs, by size of the project, shall be in accordance with a fee schedule established and/or amended from time to time by resolution of the Village and Town Boards. The Review Board also has the discretion to require the Applicant make a retainer payment against said costs at any stage in the review process. Any resolution of approval shall require the payment of any such costs prior to the issuance of a Building/Use Permit.

10. Notification of the Review Board decision to authorize or deny the Permit and the reasons therefore will be given in writing to an Enforcement Officer and a copy furnished to the Applicant.

* Town of North Elba Local Law 1 of the year 2013
**Village of Lake Placid Local Law 1 of the year 2013

The Enforcement Officer shall issue or deny the Permit in accord with the direction of the Review Board.

B. Conditions of Approval

In approving an application the Review Board may impose, in addition to the regulations and standards expressly specified by this Code, other reasonable conditions found necessary to protect the best interests of the surrounding property, the neighborhood, or the Town as a whole. These conditions may include, but are not limited to, the following:

1. Increasing the required lot size or yard dimensions in order to protect adjacent properties

2. Limiting the coverage or height of buildings or altered location because of obstruction of view or reduction of light or air to nearby properties

3. Controlling the location and number of vehicular access points to the property

4. Increasing/decreasing road width

5. Increasing the number of off-street parking or loading spaces required

6. Limiting the number, location, and size of signs

7. Requiring suitable landscaping where necessary to reduce noise and glare and to maintain the property of a character in keeping with the surrounding area

8. Specifying a specific time limit or phased schedule for construction, alteration, or enlargement of a structure to house a conditional use

9. Requiring that any future enlargement or alteration of the use be reviewed by the Review Board to permit the specifying of new conditions

10. Requiring the installation, operation, and maintenance of devices or methods that, in the opinion of the Joint Review Board, may prevent or reduce fumes, gas, dust, smoke, odor, noise, vibration, or similar nuisance

11. Modification of the proposed design and/or location of structures and service areas of the proposed conditional use to ensure its compatibility with the area affected

8.2.6 Duration of Approval * **

A. The Applicant shall substantially commence construction of an approved project within three years of the date of the Approval. The time limit may be extended by one year by the Review Board for good cause shown. Failure to substantially commence construction within the specified time period shall required re-submittal and re-approval of the application. A resubmitted application may be modified with respect to both the submission and the decision of the Review Board.

* Town of North Elba Local Law 1 of the the year 2011
** Village of Lake Placid Local Law 1 of the year 2011

B. Conditions of Approval shall run with the land and the project, not with the owner of such project.

8.2.7 As-Built Drawings

As-built drawings shall be filed upon completion of any underground installations or any facility or improvements, other than a roadway or recreation area, to be offered for cession to the Village and/or the Town.

8.2.8 Review Considerations

The Review Board will review the complete application to determine whether the proposed use or structure conforms to the site plan review standards set forth below. It shall be the objective of the reviewing body to take into account whether or not the proposed use or project satisfies, to an appropriate degree, the objectives of the Joint Comprehensive Plan and this Code relative to the factors outlined below, and based on their findings and on additional development considerations of this Code, to render their determination accordingly. Additional development considerations shall include conformance with other applicable standards of this code.

In reviewing site plans, the Board shall consider and impose appropriate safeguards, modifications and conditions with respect to the following standards:

A. General Standards

The proposed use or project shall be reviewed to determine:

1. Compliance with all applicable dimensional standards of this Code.

2. Site layout and design: The relationship of the proposal to the existing land use make-up and character of areas immediately adjacent to and/or likely to be impacted by the proposal. The relationship of any principal and accessory building[s] and the proposed site to one another, structures and uses in the vicinity as well as to the natural features of the site. The overall sensitivity of the proposed project to the neighborhood and the site.

3. Traffic, parking, loading, and service areas: The amount of traffic to be generated and the provisions for adequately handling such volumes, as well as traffic circulation features within the site, including the amount of, location of, and access to automobile parking and any service areas. The applicant must be able to reasonably demonstrate that parking, loading, and service areas are adequate, functional, safe and pose minimal off-site impacts.

4. Access: Provisions made for adequate and safe pedestrian and vehicular access to and from the site.

5. Landscaping and screening: Site plans shall incorporate landscaping and screening which preserves and incorporates existing vegetation, is suited to existing site conditions, enhances development and features unique to the site, and serves to

buffer or screen incompatible features from neighboring properties or public rights-of-way.

6. Utilities and infrastructure: The provision for satisfactory accommodation of all utilities including surface runoff, water supply, sanitary sewage disposal, and any others that may be anticipated or necessary. Site plans shall indicate what measures will be taken to minimize soil disturbance during and after construction.

7. Open space: The provision for open space and any appropriate recreational facilities in the proposed project, including adequate assurances for their maintenance and continuation.

8. Financial: The financial ability of the applicant and/or developer to undertake and complete the project.

B. Environmental Standards

The recognition and satisfactory accommodation of important natural and physical limitations and opportunities of the site will be determined for likely impact. All of these elements shall be provided in the application and submitted as a separate Unified Conservation Plan, which satisfies the conditions and affectively integrates the following standards so as to protect the environmental and aesthetic values of the property:

1. Ground and Surface Water Characteristics: Including water quality, supply, recharge, flow and runoff patterns, water table, siltation, sedimentation and lake eutrophication

2. Landforms, Elevation and Slope: Including aesthetics, slippage, erosion, fragile ecosystems, drainage patterns and slopes greater than or equal to 25 percent.

3. Soil and Subsurface Characteristics: Including absorption qualities, erosion, depth-to-bedrock and mineral resources;

4. Forest and Vegetative Cover: Including commercial forestlands, visual factors and screening, exposure to erosion and wind-throw, wildlife habitat and rare plant communities;

5. Air Quality: Including levels of pollution, prevailing wind directions, natural buffers, abatement devices;

6. Noise Levels: Including standards promulgated by the Department of Environmental Conservation and the Environmental Protection Agency under the Noise Control Act of 1972, as well as provision for natural buffers and relationship to surrounding uses;

7. Scenic Views and Visual Considerations: Including scenic vistas, travel corridors, relationship between natural and built features and screening;

8. Critical Resource Areas: Including plant and animal habitats, proximity of/to State Forest Preserve Lands, travel and river corridors, flood hazard areas, APA determined wetlands elevations of two thousand (2000) feet or more, or identified as part of an overlay district;

9. Fish and Wildlife: Including native habitat, population levels and travel corridors;

10. Open Space: Including land and/or water not improved by a building, structure, street, road or parking area, or containing only such improvements as are complementary, necessary or appropriate to the use and enjoyment of the open area.

C. Municipal Service Standards

Applicants should contact the municipality early in their planning to learn the extent to which municipal services can serve their project. Before granting a permit, the reviewing body shall find that the proposed use or development will not place an unreasonable burden on the ability of the local governments to provide municipal or governmental services with regard to the following:

1. Village/Town Sewer and Water Systems: including capacity for service and responsibility for connections and maintenance;

2. Health Services: including availability, distance, capacity and arrangement;

3. Public School System: Including initial and projected enrollment relative to school plant capacity and any schedule for expansion, as well as school bus routes;

4. Village/Town Recreation Facilities and Services: including location, capacity and contribution;

5. Fire/Police Protection: including requirements, distance, existing equipment and any special considerations;

6. Village/Town Highway Systems: including assumption of responsibility, traffic flow, access/egress, storm water runoff containment and relationship to future extensions or connections;

7. Tax Base: Including contribution to and likely burden on the Village and Town, School District[s] and Special Districts;

8. Additional Information: Any additional information requested by the Review Board, which it deems necessary to make an adequate decision.

8.3 APPEALS PROCESS

8.3.1 Applicability

The Board of Appeals shall have all the powers and duties prescribed by Law and by this Code and may reverse, affirm, or modify wholly or partly any order, requirement, decision or determination appealed from and shall make such order, requirement, decision or determination as in its opinion ought to be made. The Board shall have all the powers of the officer from whom the appeal is taken. In particular, the powers of the Board of Appeals are following:

A. Interpretation

To decide any question involving the interpretation of any provision of this Code, including the determination of the exact location of any Zoning District boundary if there is uncertainty with respect thereto, or any determination made in the administration or application of this Code. Such interpretation shall be considered and rendered by the Board only upon application or appeal following and based upon a determination made by the Enforcement Officer.

B. Variances.

To decide variances in accordance with the procedure and criteria set forth in section 8.3.2 of this Land Use Code

8.3.2 Standards for Granting Variances

Any variances to this Code shall be granted by the Zoning Board of Appeals in accordance with the following standards and procedures. In granting a variance, the Zoning Board of Appeals may impose conditions to protect the best interest of the surrounding property, the neighborhood, the Village and the Town as a whole.

A. Area Variances.

1. The Zoning Board of Appeals shall have the power, upon an appeal from a decision or determination of the Enforcement Officer to grant area variances from the area or dimensional requirements of this Code.

2. In making its determination, the Zoning Board of Appeals shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant/decision. In making such determination the Board shall also consider:

    a. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area Variance;

    b. Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance;

    c. Whether the requested area variance is substantial;

    d. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and

    e. Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Board, but shall not necessarily preclude the granting of the variance.

3. The Zoning Board of Appeals, in granting area variances, shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

B. Use Variances.

1. The Zoning Board of Appeals, on appeal from the decision or determination of the Enforcement Officer, shall have the power to grant use variances, authorizing a use of the land which otherwise would not be allowed or would be prohibited by the terms of this Code.

2. No such use variance shall be granted by the Zoning Board of Appeals without a showing by the applicant that the regulations and restrictions of this Code have caused unnecessary hardship. In order to prove such unnecessary hardship the applicant shall demonstrate to the Board of Appeals that;

   a. Under the use restrictions of this Code the applicant cannot realize a reasonable return provided that lack of return is substantial as demonstrated by competent financial evidence.

   b. That the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood;

   c. That the requested use variance, if granted, will not alter the essential character of the neighborhood; and

   d. That the alleged hardship has not been self-created.

3. The Zoning Board of Appeals, in the granting of use variances, shall grant the minimum variance that it shall deem necessary and adequate to address the unnecessary hardship proven by the applicant, and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

8.3.3 Procedure

The Zoning Board of Appeals shall act in strict accordance with the procedures specified by Law and by this Code in accord with the following:

A. Application

1. All appeals and applications made to the Zoning Board of Appeals shall be in writing and in the form prescribed by the Board. Every appeal or application shall refer to the specific provisions of the Code involved for which the interpretation is requested or the details of the variance applied for and the grounds claimed that the variance should be granted. The information supplied by the applicant shall also include a legal description of the property, a map showing the property, plan and elevations necessary to show the proposed variance, and other drawings or information reasonably considered necessary by the Zoning Board of Appeals to develop an understanding of the proposed use and its relationship to surrounding properties.

2. Such appeal shall be taken within 30 days of the date of notification of the determination which is being appealed by filing with the Board a request for interpretation or appeal specifying the grounds thereof. Upon such application, the Enforcement Officer shall transmit to the Board all the papers constituting the record upon which the action appealed was taken

B. Stay

An appeal stays all proceedings in furtherance of the action appealed unless the Enforcement Officer from whom the appeal is taken certifies to the Joint Board of Appeals after the notice of appeal shall have been filed that by reason of acts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property. In such case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board or by a court of record on application, and on notice to the Enforcement Officer from whom the appeal is taken and due cause shown.

C. Public Hearing

The Zoning Board of Appeals shall hold a public hearing in consideration of a request for any variance or request for interpretation* ** in accordance with the applicable provisions of law.

D. Referrals

1. Prior to the date of any public hearing required by law on an appeal to the Zoning Board of Appeals, the Board may, at its discretion, transmit to the Review Board a copy of said appeal, together with notice of the aforesaid public hearing and may request that the Review Board submit to the Zoning Board of Appeals its advisory opinion on said appeal. The Review Board may submit a report of such advisory opinion prior to the date of said public hearing.

* Village of Lake Placid Local Law 1 of 2017
** Town of North Elba Local Law 1 of 2017

2. In addition, where any application for a variance involves lands within 500 feet of an adjoining municipality, State or County property or right-of-way, the Appeal shall be referred to the Essex County Planning Board.

E. Decision

1. The Zoning Board of Appeals shall grant; grant with conditions or deny the application within 62 days of the close of any Public Hearing. The decision of the Board shall be in writing and shall contain each of the findings specified in this Article, and the factual basis for each finding from the record of the hearing which shall support the decision of the Board.

2. The Board shall, in the granting of both use variances and area variances, have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed use of the property or the period of time such variance shall be in effect. Such conditions shall be consistent with minimizing any adverse impact such variance may have on the neighborhood or community.

3. The decision of the Zoning Board of Appeals may include, among its provisions, a requirement that the applicant reimburse the Village and/or the Town, as applicable, for reasonable and necessary costs incurred by the Zoning Board of Appeals for private consultation fees or other extraordinary expense in connection with the review of the application. Such reimbursable costs shall be in addition to the normally required fee. Maximum amounts for such reimbursable costs, by size of project, shall be in accordance with a schedule established and/or amended from time to time by joint resolution of the Village and Town Board. The Zoning Board of Appeals shall also have the discretion to require that the applicant make a retainer payment against said costs at any stage in the review process. Any resolution of approval shall require the payment of any such costs prior to the issuance of a Building/Use Permit.

F. Duration *

A Variance issued under this Code shall be valid for a period of three years from the date of issuance and shall thereafter be deemed null and void, unless the project for which the variance was granted has been substantially commenced within said three-year period. Upon Application, the Board of Appeals, may, for good cause shown, authorize a one-year extension of said three-year period.

G. Notification

1. The Zoning Board of Appeals shall notify the applicant[s], the Enforcement Officer, the Village and Town Clerks and the Review Board of the action taken on any application before the Board.

** 2. The applicant or his/her authorized representative shall be notified in writing within five days of the date of determination.

* Town of North Elba Local Law 1 of the the year 2011
Village of Lake Placid Local Law 1 of the year 2011

**Local Law #2 of 2022 Town of North Elba
Local Law #2 of 2022 Village of Lake Placid

H. Court Appeal

1. Any person or persons, jointly or severally aggrieved by any decision of the Joint Board Of Appeals, may apply for review by a proceeding under Article 78 of the Civil Practice Law and Rules, provided such proceeding is instituted within 30 days after the filing of the Board's decision in the offices of the Village and Town Clerk's.

2. Costs shall not be allowed against the Town unless it appears to the Court that the Town or its representative acted with gross negligence or in bad faith or with malice in making the decision appealed from.