

CHAPTER 26 PLANNING BOARD

[HISTORY: Adopted by the Town Board of the Town of Cheektowaga 7-19-2004 by L.L. No. 4-2004. Amendments noted where applicable.]

GENERAL REFERENCES

Meeting and attendance requirements — See Ch. [27](#), Art. [1](#).

Environmental impact review — See Ch. [107](#).

Flood damage prevention — See Ch. [125](#).

Swimming pools — See Ch. [214](#).

Zoning — See Ch. [260](#).

§ 26-1 Establishment; membership; terms of office.

[Amended 12-21-2009 by L.L. No. 5-2009]

To assist in the administration of the Code of the Town of Cheektowaga and implementation of the Comprehensive Plan, a Planning Board is hereby established. The membership of the Planning Board, which presently consists of seven members, shall be decreased to five members upon the expiration of the terms of office of those present members of the Planning Board whose terms of office expire on December 31, 2009, and December 31, 2010. There is a vacancy in the position of one of the members whose term expires on December 31, 2011, and this position will remain vacant until after December 31, 2010. None of the Planning Board members shall hold any other public office in the Town or be members of the Town Board. The Town Board shall appoint one member as Chairperson. Efforts will be made to ensure that qualified members of the Planning Board represent a variety of ethnic, professional and civic groups in the Town. Terms of membership, presently seven years, shall become five years after the expiration of the existing terms of the members. Members of the Planning Board, appointed in accordance with the provisions of this Code as then in effect and in office when this section takes effect, shall continue to serve for the balance of the terms for which they were originally appointed.

§ 26-2 Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

ENFORCEMENT OFFICER

A representative of the Building Inspections Department of the Town of Cheektowaga.

PLANNING BOARD

The duly appointed Planning Board of the Town of Cheektowaga.

TOWN

The Town of Cheektowaga.

§ 26-3 Governing law.

The Planning Board of the Town of Cheektowaga shall be governed by the provisions of all applicable state statutes, local laws, ordinances and these rules.

§ 26-4 Training; responsibilities.

A.

Members of the Planning Board shall adhere to the training requirements of Chapter [27](#) of the Town Code.

B.

The Planning Board shall become familiar with all of the duly enacted ordinances and laws of the Town under which it may be expected to act, as well as all applicable state statutes.

C.

The Planning Board shall become familiar with the community goals, desires and policies as expressed in the Town's Comprehensive Plan; and, in rendering approvals, recommendations and reports, shall be guided by such plan.

§ 26-5 Attendance.

Members of the Planning Board shall adhere to the training requirements of Chapter [27](#) of the Town Code.

§ 26-6 **Officers; vacancies.**

A.

The officers of the Planning Board shall consist of a Chairperson, Acting Chairperson, and Recording Secretary.

B.

Chairperson. The Chairperson shall be designated by the Town Board or, on failure to do so, shall be elected by the Planning Board from its own members. He/She shall perform all the duties required by law, ordinance and these rules. He/She shall preside at all meetings of the Planning Board. The Chairperson shall decide on all points of order and procedure, subject to these rules, unless directed otherwise by a majority of the Planning Board. The Chairperson shall appoint any committees found necessary to carry out the business of the Planning Board. The Chairperson may administer oaths and compel the attendance of witnesses as necessary to carry out the business of the Planning Board. The Chairperson's signature shall be the official signature of the Planning Board and shall appear on all decisions as directed by the Planning Board.

C.

Acting Chairperson. An Acting Chairperson shall be designated by the Planning Board to serve in the absence of the Chairperson. He/She shall have all the powers of the Chairperson during his/her absence, disability or disqualification.

D.

Recording Secretary. A Recording Secretary shall be designated by the Planning Board. The Recording Secretary, subject to the direction of the Planning Board and the Chairperson, shall keep minutes of all Planning Board proceedings, showing the vote of each member upon every question, or if absent or failing to vote, indicating such fact, and shall also keep records of all Planning Board official actions. The Recording Secretary shall relay to the Town Board all actions of the Planning Board and the reasons therefor as expressed by the members of the Planning Board, as required by Chapter [260](#), Zoning. The Recording Secretary shall be responsible for calling special meetings of the Planning Board upon receiving a request from the Chairperson or by written request from any three members of the Planning Board.

E.

Vacancies. Should any vacancy on the Planning Board occur for any reason, the Recording Secretary shall give immediate notice thereof to the Town Clerk for the Town Board for the designation of a replacement. Should such a vacancy occur among the officers of the Planning Board subject to election by the Planning Board, such office shall be filled by election, for the unexpired term, at the next meeting of the Planning Board. Should the office of Chairperson become vacant, the Recording Secretary shall add such fact to the notice required in this section. The Acting Chairperson shall handle the duties of the Chairperson until such time as the Town Board shall appoint a new Chairperson.

§ 26-7 **Meetings.**

A.

Regular meetings. The regular meetings of the Planning Board shall be held on the second Thursday of each month at 7:00 p.m. in the Council Chambers, Town Hall, 3301 Broadway, Cheektowaga, New York; or at such other time as may be determined by the Chairperson of the Planning Board.

[Amended 11-5-2007 by L.L. No. 6-2007]

B.

Annual meeting. The annual organizational meeting of the Planning Board shall be the first regular meeting of the year.

C.

Special meetings. Special meetings of the Planning Board may be called by the Chairperson. At least 72 hours' written notice of the time, place and business of the meeting shall be given each member of the Planning Board and the news media. The Chairperson shall call a special meeting within 10 days of receipt of a request from any three members of the Planning Board, which request shall specify the matters to be considered at such special meeting.

D.

Cancellation of meetings. Whenever there is no business to be conducted at a regular meeting, the Chairperson may dispense with such meeting by written notice to all members not less than 48 hours prior to the time set for such meeting.

§ 26-8 **Proceedings and rules of order.**

A.

The order of business at regular meetings shall be as follows:

(1)

Roll call;

(2)

Reading and approval of minutes of preceding meeting;

(3)

Public hearing (when scheduled);

(4)

Action on held-over matters;

(5)

New business;

(6)

Adjournment.

B.

New business. No new matter will be considered unless the completed appropriate application for said matter is received by the enforcement officer on behalf of the Planning Board on the form provided for that purpose at least 30 days prior to the Planning Board meeting.

C.

Meeting agenda. The enforcement officer shall be responsible, at the direction of the Planning Board, for providing any applicant with the proper forms and for instructing the parties concerned on the proper manner for completing and filing said forms. All information required thereon shall be complete before an application is considered filed. The Chairperson shall review all applications received by the enforcement officer for completeness. If the application is in proper form for consideration, he/she shall place it upon the next meeting agenda, which agenda he/she shall mail to all Planning Board members at least seven days prior to the meeting. In order to be placed on the agenda, such application must have been sent to the Erie County Department of Planning and at least 30 days shall have elapsed to give the Erie County Department of Planning adequate time to comment on same. He/She shall also notify the applicant that the matter has been placed on said agenda. If said application is incomplete, he/she shall return it to the applicant within five days of receipt with instructions as to remedying the same. The Chairperson shall then report to the Planning Board, at the next meeting, as to all incomplete applications not on the agenda.

D.

Enforcement officer. At each meeting of the Planning Board, the enforcement officer shall, if the Chairperson deems necessary, provide the Planning Board with a written summary of the comments received on an application.

E.

Fees. The applicant shall, when a public hearing is required, pay the charge for the publication of the notice of public hearing in the official newspaper.

F.

Executive meetings. All meetings will comply with the requirements of the Open Meetings Law (§ 105 of the Public Officers Law of the State of New York).

G.

The Planning Board may, by resolution, adopt rules of procedure for its meetings. Such rules shall comply with the Open Meetings Law.

H.

Any member of the Planning Board shall be allowed to cast an "Aye" or "Nay" vote. Any member of the Planning Board who believes he/she has a conflict of interest on any matter on the Planning Board agenda shall voluntarily excuse himself/herself from discussion and voting on the matter.

I.

All resolutions brought before the Planning Board shall be submitted to the Recording Secretary, in writing, and all communications to the Planning Board or its officers shall be filed with the Recording Secretary.

§ 26-9

Hearings.

A.

Time of hearing. If a public hearing is required, the Planning Board shall schedule a hearing of all applications within the time permitted by the applicable ordinance, law or regulation giving jurisdiction to the Planning Board in the matter but not later than 62 days after the filing of the completed application.

B.

Notice of hearing. The Planning Board shall give notice of the meeting at least five business days prior to the date thereof by publication in the official newspaper. The Planning Board shall mail notices of the meeting to the parties and to the members of the Town Board and, if required by §§ 239-l, 239-m and 239-n of the General Municipal Law, to the Erie County Planning Board.

C.

Form of notice. Such notice shall state the name of the applicant, the location of the property involved, the general nature of the application involved, and the date, time and place of the hearing sought.

D.

Proceedings. The order of business at a hearing shall be as follows:

(1)

Roll call;

(2)

The Chairperson shall give a statement of the case;

(3)

The Chairperson shall read all correspondence and reports received thereon;

(4)

The applicant shall present his/her case;

(5)

Those in favor shall present their arguments;

(6)

Those opposed shall present their arguments;

(7)

Rebuttal by both sides;

(8)

Adjournment of hearing.

E.

General rules. Any party may appear in person or by agent or by attorney;

F.

The Chairperson, or, in his absence, the Acting Chairperson, may administer oaths.

§ 26-10 Voting.

A.

Quorum. A quorum shall consist of a majority of the members of the Planning Board.

B.

No hearing or meeting of the Planning Board shall be held, nor any action taken, in the absence of a quorum; however, those members present shall be entitled to request the Chairperson to call a special meeting for a subsequent date. All subsequent hearings shall be republished in accordance with the requirements of the applicable law.

C.

Voting. All matters shall be decided by roll call vote. Decisions on any matter before the Planning Board shall require the affirmative vote of a majority of the Planning Board unless otherwise specified herein.

D.

A tie vote or favorable vote by a lesser number than the required majority shall be considered a rejection of the application under consideration.

E.

No member of the Planning Board shall sit in hearing or vote on any matter in which he is personally or financially interested. Said member shall not be counted in establishing the quorum for such matter.

F.

No member shall vote on the determination of any matter requiring public hearing unless he has attended the public hearing thereon; however, where such member has familiarized himself with such matter by reading the record, he/she shall be qualified to vote.

§ 26-11 **Duties, powers and authority.**

A.

Zoning referrals.

(1)

All matters requiring referral as specified by an ordinance or local law shall be so referred to the Planning Board for its recommendation. Within a reasonable time after receipt of a full statement of such referred matter, the Planning Board shall report its recommendations. If the Planning Board fails to respond within the prescribed time, the referring board or agency may act without such report.

(2)

Prior to taking action on any matter which would cause change in the regulations or use of land or buildings on real property as specified in § 239-n of the General Municipal Law, the Planning Board shall make referrals to the Erie County Department of Planning having jurisdiction in accordance with §§ 239-l, 239-m and 239-n of the General Municipal Law. Within 30 days after receipt of a full statement of such referred matter, the Erie County Department of Planning to which referral is made shall report its recommendations thereon to the Planning Board, accompanied by a full statement of the reasons for such recommendations. If such planning agency disapproves the proposal, or recommends modification thereof, the Planning Board shall not act contrary to such disapproval or recommendation except by a vote of a majority plus one of all the members thereof and after adoption of a resolution fully setting forth the reasons for such contrary action. The Chairperson shall read the report of the county planning agency at the public hearing on the matter under review. If such planning agency fails to report within such period of 30 days or such longer period as may have been agreed upon by it and the referring agency, the Planning Board may act without such report. However, if the Planning Board receives the report of the county planning agency after 30 days, but prior to final action by the Planning Board, then the Planning Board shall not act contrary to the recommendation by the county planning agency, except by a vote of a majority plus one of all of the members thereof.

B.

Powers and authorities. The Planning Board shall have full power and authority to make such investigations, maps, reports and recommendations relating to the planning and development of the Town or other matters as referred to said Board by the Town Board or this Code. The Planning Board shall have the power to act on any matter on which the Planning Board is required or authorized to act by the provisions of the Town Code or any actions of the Town Board.

(1)

Site plan. Pursuant to the provisions of Chapter 260 of the Town Code (Zoning), the Planning Board shall review all requests for site plan approval and shall offer a recommendation to the Town Board.

(2)

Rezoning and special permit requests. Pursuant to the provisions of Chapter 260 of the Town Code (Zoning), the Planning Board shall review all requests for rezonings and special permits and shall offer a recommendation to the Town Board.

(3)

Realty subdivisions. Pursuant to the provisions of Chapter 260 of the Town Code (Zoning), the Planning Board shall review all requests for realty subdivisions and offer a recommendation to the Town Board.

(4)

Aesthetics. The Planning Board shall review the aesthetics of each site plan before it and shall offer a recommendation to the Town Board concerning same.

(5)

Architectural character/scale of buildings/building mass.

(a)

To encourage good qualities of exterior design and appearance and to relate such design and appearance to the site and its surroundings; to encourage building design and appearance which are appropriate to the site and its surroundings; and to prevent

such designs and appearance as are unnecessarily offensive to visual sensibilities, the Planning Board has the authority to recommend changes to the architectural design of buildings, the type of exterior building materials to be incorporated, the percentage of glass within wall faces, the color of buildings and other architectural features of individual buildings or building groups to promote interesting building designs within the Town and create places with character. Such recommendations can include changes to "franchise architecture" or architecture which is prototypical of a corporation or business. In acting on any recommendation to a proposed project with respect to architectural review, the Planning Board shall take into consideration the following:

[1]

The natural features of the site and its surroundings, exterior design and the appearance of existing structures and the character of the district and its peculiar suitability for particular purposes, with a view to conserving the values of property and encouraging the most appropriate use of land;

[2]

The building, if erected or altered, would be in harmony with the purpose of this chapter; would not be visually offensive or inappropriate by reason of poor quality of exterior design, excessive similarity or striking visual discord in relation to the site surroundings; would not impair the use, enjoyment and desirability or reduce the values of properties in the area; would not be detrimental to the character of the neighborhood; would not prevent the most appropriate development and utilization of the site or of adjacent lands; and would not adversely affect the functioning, economic stability, prosperity, health, safety and general welfare of the community;

[3]

Excessive similarity or striking dissimilarity to another structure or structures located or proposed to be located on the same street or within 150 feet of the site which would, if erected, provoke one or more of the following effects:

[a]

Substantially identical or striking dissimilarity of facade (disregarding color);

[b]

Substantially identical or striking dissimilarity of size and arrangement of either doors, windows, porticoes, porches or other opening breaks or extensions in the facade, including reverse arrangements;

[c]

Visual offensiveness or other poor qualities of exterior design with respect to signs, harmony or discord of colors, or incompatibility of the proper structure with the terrain on which it is to be located, such as divergences of the height or levels of any part of the structure from the finished grade level.

(b)

In recommending approval of any architectural design, the Planning Board may recommend appropriate conditions and safeguards. The Town Board shall also base its decision whether to accept the Planning Board's recommendations on the above criteria.

(c)

Pursuant to this section, the Planning Board may assign certain of its members to an architectural review subcommittee, which shall be responsible for reviewing the architectural design of buildings and to report back to the whole Planning Board as to its recommendations.

§ 26-12 Determinations.

A.

Time of determinations. Determinations by the Planning Board shall be made within the time permitted by the applicable ordinance, law or regulation giving jurisdiction to the Planning Board on the matter but not later than 62 days from the date of receipt of the completed application, unless such time be further extended by the applicant.

B.

Form of determination. The final determination on any matter before the Planning Board shall be made by written order signed by the Chairperson.

C.

Basis for determination. The Planning Board, in reaching said determination, shall be guided by standards specified in the applicable ordinance, law or regulation, as well as by community goals and policies as specified in the Town's Comprehensive Plan.

D.

Findings. The findings of the Planning Board may be based on evidence submitted or the personal knowledge of the Planning Board to show that:

(1)

It has made an intelligent review of the question.

(2)

It has considered all of the information or evidence.

(3)

It has heard all parties in question.

(4)

Any intimate knowledge it has of the subject under question has been taken into account.

(5)

It has made a personal inspection of the parcel in question and from this examination certain findings were ascertained.

E.

Compliance with State Environmental Quality Review Act. The Planning Board shall comply with the provisions of the State Environmental Quality Review Act under Article 8 of the Environmental Conservation Law and its implementing regulations as codified in 6 NYCRR 617.

F.

Conflicts with other laws or regulations. In reviewing any application on any matter, the standards in any applicable local law or ordinance or state statute shall take precedence over the standards of these rules whenever a conflict occurs. In all other instances, the more restrictive rule shall apply.

G.

Filing of determinations. Determinations of the Planning Board shall be immediately filed in the office of the Town Clerk and shall be a public record. The date of filing of each decision shall be entered in the official records and minutes of the Planning Board.

§ 26-13

Use of experts.

The Planning Board may, with the prior approval of the Town Board, have the power and authority to employ experts and to pay for their services and such other expenses as may be necessary and proper, not exceeding in all the appropriation, if any, that may be made for such Planning Board.