

LOCAL LAW #1 of 2017

**AMENDMENT #1 TO
The TOWN OF LORRAINE DEVELOPMENT LAW
DATED APRIL 24, 2014**

THE TOWN OF LORRAINE, JEFFERSON COUNTY, NEW YORK

The Development Law of the Town of Lorraine, Jefferson County, New York, as adopted on April 24, 2014, shall be amended by the addition/removal of the following:

**Add...
Preamble**

This Ordinance, in conjunction with the "Comprehensive Plan for the Town of Lorraine" (the "Comprehensive Plan"), is designed to protect the health, welfare, and safety of the Town's citizens while encouraging growth through the logical, orderly development of the land within the Town, while maintaining the character of the Town and long-term growth objectives as laid out in the Comprehensive Plan.

It is intended that this will be accomplished through the following actions:

1. This Ordinance supersedes all commercial, industrial, and private agreements affecting any aspect of this Law, except as specified in this Ordinance.
2. To promote and encourage future development in the Town that will not adversely affect the health, welfare, or well-being of its residents or adversely impact the lands in the Town and their natural resources.
3. Provide a flexible system of land-use regulation that enables the Town to grow while preserving its unique features, natural resources, natural character, historical sites, agricultural importance, rural character, and appeal as a destination for vacationers and seasonal residents, tourism, and recreation.
4. Minimize the adverse environmental impacts of development, especially in visually and environmentally sensitive areas such as scenic view sheds, stream corridors, wetlands, floodplains and active farmlands.
5. Ensure adequate services to Town residents.
6. Preserve and enhance real property values and protect private property rights and enjoyment of landowners.
7. Regulate commercial, industrial, and other non-residential uses in a manner that is sensitive to the community and provide freedom for economic use of the land, provided that such uses are not harmful to neighboring property values, health, welfare and safety of the residents and are in compliance with the provisions of the Comprehensive Plan.
8. Provide a variety of housing opportunities in an effort to encourage affordable housing.

9. Protect residences from nuisances, odors, noise, light pollution, and other unsightly obtrusive and offensive land uses and activities.

10. Encourage the use of alternative energy systems that are not in conflict with any of the other purposes stated in this Section.

Remove...
Section 230 (table)

Wind Power Generating Facilities	N	S, SUP	S, SUP
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Add...
Section 230 (table)

SUP= Special Use Permit required

Small Wind Energy Conversion System	N	S	S
Wind Energy Conversion System	N	S,SUP	N
Wind Measurement Test Tower	N	S,SUP	S,SUP

Add...
Section 240

Reference Article 8 Structures Taller Than General District Regulations

Article 2 District Regulations

Add...
Section 250
Maximum Building Height

Permitted uses for the respective districts shall be a maximum of thirty-five (35) feet in height as measured from the ground.

The maximum height for permitted and site plan review uses is thirty five (35) feet as measured from the ground.

The maximum height for a tall structure is two hundred and fifty (250) feet as measured from the ground.

Note:

- (1) A garage, carport or other accessory structure that is connected to a dwelling becomes a part of the principal building and shall maintain the specified setbacks thereof.
- (2) Private garages, not exceeding 12 feet in height, sited on more than 15 degree slopes, may be located no closer than 20 feet to the property line.
- (3) Churches exempted

(4) Barns, silos, and similar agriculture storage structures are exempted.

(5) When more than one principal building or structure is proposed for a single parcel or lot, each structure must comply with the dimensional requirements of this Ordinance.

Article 5 Site Plan

Add...

To title "and Special Permit Reviews"

Entire Section 5 add...

"special use permit" following any reference to "site plan".

Section 505 Authority

Add...

A. after Town Law Section 274-a add "and 274-b"

B. **Applicability.** Uses requiring a special use permit shall be controlled by the regulations in this article in addition to the regulations which apply in each district or for specific uses. No development permit or certificate of compliance shall be issued for any use or structure requiring a special use permit until approval has been granted by the Planning Board.

Add...

Section 507 Special Use Permits

A. **Authority.** Pursuant to authority delegated in accordance with Section 274-b of the Town Law of the State of New York, the Town Board hereby authorizes the Planning Board to grant special use permits as set forth in this law.

B. **Applicability.** Uses requiring a special use permit shall be controlled by the regulations in this article in addition to the regulations which apply in each district or for specific uses. No zoning permit or certificate of compliance shall be issued for any use or structure requiring a special use permit until approval has been granted by the Planning Board.

Section 515 Application

Add...

22. pursuant to 6 NYCRR Part 617, where required;

Add...

Section 570. Conditions on Approval.

In its approval, the Planning Board shall have the authority to impose such reasonable conditions and restrictions on the issuance of a zoning permit for the application as are directly related to and incidental to a proposed site plan. Upon approval of the project, any such conditions must be met in connection with the issuance of permits by the Enforcement Officer of the Town.

Add...

Section 580. Area Variance.

Notwithstanding any provisions of law to the contrary, where a proposed project contains one or more dimensional or physical features which do not comply with the zoning law, application may be made to the Zoning Board of Appeals for an area variance after a decision or determination of the Enforcement Officer.

Add...

Section 590 Expiration of Site Plan Reviews and Special Use Permits.

Site plan review decisions and special use permits shall expire twelve months from the date of issue unless substantial progress has been made towards carrying out the terms of Planning Board decision. The applicant shall have two years to complete the project upon the terms of the Planning Board decision, or all work shall cease at the site. An extension may be allowed by the Planning Board upon proof of necessity submitted by the applicant due to conditions unusual or beyond the control of the applicant.

Add...

Section 595 Site Plan Review Extensions

A. Extension.

1. An applicant can apply for an extension of site plan approval to the Planning Board only if he/she has filed for, obtained, and holds a valid and active building permit from the Jefferson County Fire Prevention and Building Codes Department for the original site plan approval and has obtained said building permit a minimum of 60 days prior to application for an initial extension.
2. Said application for extension must be received a minimum of five days yet not more than 90 days prior to the termination date of the current site plan approval.
3. Applicants may request up to two extensions from the original site plan approval, each with a maximum term of one year dating from the anniversary of the original site plan approval.
4. At its discretion, the Planning Board may grant an extension of site plan approval for a period of less than one year.
5. Property owners shall have displayed, at the discretion of the Planning Board, a good-faith effort to commence activities associated with the original site plan approval, and shall provide, in writing, to the Planning Board a statement explaining the reasons or influences preventing the commencement of activities.

6. At its discretion, the Planning Board may hold a public hearing on the application for extension within 14 days of the date of application. If a public hearing is to be held, it shall be advertised in a newspaper of general circulation in the Town at least five days before its scheduled date.
7. The Planning Board must make and notice a decision on an application for extension of site plan approval within 30 days of receipt of the date of application.
8. All approved site plan approval extensions shall commence from the anniversary date of said approval and shall not be construed as administratively extended during the application process for extension.

B. Maintenance of Property

1. Property owners having received two or more formal notices or summons from the Development Enforcement Officer during the most current period of an approved site plan pertaining to any violation of the Town of Lorraine code shall not be eligible for a future extension of site plan approval.

Add to title of Article 6

Article 6. SITE PLAN REVIEW and SPECIAL USE PERMIT DESIGN STANDARDS

Art. 6, Section 605

Add...

4. Uses subject to special use permits are generally appropriate in the zoning district in which they are allowed, but may not be suitable for a particular parcel of property within the district. The purpose of special use permit review is to allow the Planning Board to assess the use for its suitability for the specific site on which it is proposed.

5. The Planning Board shall have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed special use permit.

6. In considering and acting on special use permits, the Planning Board shall consider the following:

- A. That the proposed use is consistent with the Comprehensive Plan of the Town of Lorraine and that the public health, safety, welfare, and comfort and convenience of the public in general are safeguarded.
- B. That the public facilities to service the proposed use, including water supply, sewage disposal, drainage facilities, road and pedestrian facilities, solid waste facilities, and any other utilities and public services are adequate for the intended level of use.
- C. That the proposed use is of a character, scale and intensity of use compatible with the surrounding neighborhood, will not conflict with neighboring uses, and will not impair the value of neighboring properties.
- D. That the proposed use shall not have a deleterious effect on the site or the surrounding neighborhood with regard to: natural resources; aesthetic resources; scenic, historic or archaeological sites or structures; or the quality of air or water.

E. That the proposed use shall not cause undue noise, vibration, odor, glare, light, smoke, dust, fumes, unsightliness or electrical disturbance, nor pose a danger to or impair the use and enjoyment of existing neighboring properties and uses, including regional facilities, such as airports, and U.S. Department of Defense facilities and radar installations, or to the general neighborhood due to hazardous or volatile substances.

7. In every case where a special use permit is required by this Ordinance, such special use shall be granted by majority vote of the Planning Board following a public hearing held upon five days, notice published in the Town's officially designated newspaper. Such public hearing must be held within 62 days of the application for the special use permit application.

8. Written notice shall be provided to all adjacent property owners and all neighboring property owners within a 500 foot radius of any portion of the applicant's property. Additionally, for structures taller than district regulations permit, applications, written notice of the application shall be provided to neighboring property owners in a radius of ten times (10x) the proposed structure's maximum height by applicant upon filing of the application.

Remove...

Article 8 Telecommunication Facilities shall be removed in its entirety and replaced with the following text:

Add...

ARTICLE 8. STRUCTURES TALLER THAN GENERAL DISTRICT REGULATIONS

Structures taller than height limits outlined in each district's regulations in Article 2 may be allowed by Special Use Permit by the Planning Board and conform to a maximum height of two hundred fifty feet (250'), unless otherwise specified in this Article.

Parcel boundary and structural setbacks of the underlying district are unchanged unless explicitly defined in this Article.

A. Enabling Authority:

The Planning Board is hereby authorized to review and approve, approve with modifications or disapprove special use permits consistent with the Town's current Comprehensive Plan and Town Law 274-a and 274-b in relation to site plan reviews and special use permits.

B. Legislative Intent:

The residents of the Town of Lorraine have expressed a strong desire to maintain a small Town atmosphere and the rural and agricultural landscape of the Town. Sound land use planning dictates that all that is possible be done to preserve the aesthetic quality of the Town.

The Town of Lorraine recognizes the increased demand for alternative energy power generation, telecommunication facilities, and infrastructure that may benefit from occasional area variance(s) to the general height restrictions defined in Article 2. The intent of this Article is to ensure the siting of these tall facilities in a manner consistent with sound land use planning by:

1. Minimizing visual effects through careful structure design, site planning, and proper screening. Submission of a Visual Environmental Assessment Form with a special use permit application to guide the Planning Board in review of proposed visual impacts, at the discretion of the Planning Board, may be required of any application.
2. Ensuring adequate safety and protecting public health and welfare through proper engineering, safeguards, and careful siting of tall structures.
3. Reducing the number of tall structures needed by maximizing the use of any new (i.e. build for shared use) or existing tower and encouraging the use of any existing building and/or structure.

C. Special Use Permit Standards:

Any request for a tall structure as defined in this Article shall be generally considered a Type I Action under the New York State Environmental Quality Review Act, unless the specified use is explicitly named as a Type II action.

No tall structure shall hereafter be used, erected, moved, reconstructed, changed or altered except after the approval of a Special Use Permit and in conformity with these regulations. No existing structure shall be modified unless in conformity with these regulations.

These regulations shall apply to all districts in the Town.

Exceptions to these regulations are limited to lawful or approved uses existing prior to the effective date of these regulations.

Where these regulations conflict with other laws and regulations of the Town of Lorraine, the more restrictive shall apply, except for structure height and setback restrictions which are governed by these special use standards.

Reasonable site planning precautions shall be engineered so risks to life, property, wildlife, forested areas, wetlands, and loss of agricultural acreage shall be minimized.

D. Shared Use:

1. At all times, shared use of existing structures shall be preferred to the construction of new towers. Additionally, where such shared use is unavailable, location of antenna (e) on pre-existing structures shall be considered. An applicant shall be required to present an adequate report listing existing tall structures within a reasonable distance of the proposed site and the possible use thereof.
2. The applicant shall pay all reasonable fees and costs of adapting an existing tower or structure to a new shared use. These costs include but are not limited to structural reinforcement, preventing transmission or receiver interferences, additional site screening and other changes, including real property acquisition or lease required to accommodate shared use.
3. Wind Energy Facilities may not have shared or third-party instrument attachments. The only permitted instrumentation shall be small instruments mounted on top of the hub or power generation nacelle needed to operate the turbine itself.

E. Use-Specific Regulations:

1. Residential and commercial structures and their accessory use(s) may, by Special Use Permit, be allowed uses in the underlying district if the tall structure does not detract from the character of the surrounding structures and neighborhood.
2. Telecommunication Facilities may be allowed by Special Use Permit in the Rural and Commercial Districts only if the applicant provides proof that the facility site is required to maintain adequate service. Telecommunication Facilities shall not be permitted in the Hamlet district. Telecommunication towers shall conform to Static Tower setback requirements of this Article.
3. Elevated water tanks connected to any public water supply system may be erected by Special Use Permit in any district and shall conform to Static Tower setback requirements of this Article.
4. Commercial and industrial smokestacks may be erected by Special Use Permit only in the Commercial District and shall conform to Static Tower setback requirements of this Article.
5. Small chimney flues from heating appliances attached to residential and commercial structures shall be permitted and inspected through a building permit as outlined in Article 3, Section 310, do not require a Special Use Permit, and are limited in height to five feet (5') above the highest roof elevation. The structure and chimney may be subject to other permit requirements in this Ordinance.
6. Amusement and carnival rides such as roller coasters and Ferris wheels shall conform to a Static Tower setback from parcel boundaries. Temporary installations associated with travelling shows installed for no more than fifteen (15) days do not require a Special Use Permit. Installations for longer durations including permanent structures require a Special Use Permit before construction.
7. Wind Energy Facilities shall be sized for and the electricity produced shall be used primarily for on-site consumption to offset utility expenses and/or provide independence from the power grid, with ties to the electrical grid as approved by the utility company. Each facility shall conform to height and setback requirements of this Article.
8. Agricultural Wind Energy Facilities shall conform to height, setback and Special Use Permit requirements defined in this Article.
9. All other tall structures and their uses not explicitly enumerated in this section shall be denied Special Use Permits. An applicant may petition the Zoning Board of Appeals for variances as required.

F. New Towers:

1. An applicant shall be required to submit a site plan as described in Article V of this Ordinance. The site plan shall document the proposed capacity and uses as well as justification for the height of any tower and associated instrumentation or turbines. Additionally, the Planning Board shall require that the site plan include a completed Visual Environmental Assessment Form. The Planning Board may require submittal of a more detailed visual analysis based on the results of the Visual Environmental Assessment Form.
2. The applicant shall be required to submit a "search ring" prepared, signed and sealed by a qualified engineer, registered in New York State and overlaid on an appropriate background map depicting the area within which a communication facility needs to be located, in order to provide proper signal strength and coverage to the target cell.
3. The applicant must be prepared to explain to the Planning Board why it selected the proposed site, discuss the availability or lack thereof of a suitable structure within the search ring for co-location and the extent to which the applicant has explored locating the proposed tower in a less sensitive area. All correspondence with other telecommunication providers is part of this requirement.
4. In the interest of minimizing the number of new towers, the Planning Board may require as a condition of any permits granted, that the applicant indicate in writing its commitment to co-location of other uses on its tower(s). The applicant will design the tower to have the minimum height and carrying capacity needed to provide future shared use and agree to negotiate in good faith for shared use of the proposed tower by other co-locators in the future. The condition for future co-location may not be required if the applicant demonstrates that provisions of future shared usage are not feasible based on:
 - a. The kind of tower site and structure proposed, including as a dedicated tower for supporting a wind turbine.
 - b. Available spaces on other existing and approved towers.
 - c. The potential adverse visual impact of a tower designed for shared use.
5. All towers and other structures shall be sited to have the least practical adverse visual effect on neighboring properties, land users, and the environment.

G. Setbacks:

1. Static towers supporting only non-moving instruments shall maintain a property line setback of one-and-one-half times (1.5x) the total Tower Height. The setback measurement shall begin from the central hinge point at the base of the tower, or if a hinge point does not exist, from the outermost edge of the structural base.
2. Towers supporting any moving features larger than one meter in diameter, such as a Wind Energy Facility, shall maintain a property line setback of five-and-one-half-times (5.5x) the total Tower Height. The setback measurement shall start from the outermost point of any turbine blade at any directional position on the tower or outermost edge of

the structural base, whichever is further from the central vertical axis of the tower. Such Facilities shall not be permitted closer than two thousand (2000') feet of the Hamlet (H), Rural (R) zoning district boundaries.

3. Setbacks shall apply to all structural tower and turbine parts excluding guy wires and anchors. All accessory structures shall comply with the existing setbacks within the underlying district regulations found in Article 2.
4. Guy wires and anchors shall have a minimum of fifteen feet (15') setback from any structure or property line.
5. In no case shall setbacks be less than the existing setbacks within the underlying district.
6. Additional setbacks may be required by the Planning Board to preserve privacy or protect health, safety and welfare of adjoining property owners.

H. Height:

1. The applicant shall submit information to justify the proposed height as the minimum necessary to achieve its coverage objectives. At no time however shall any tall structure exceed two hundred and fifty feet (250') without an area variance from the Zoning Board of Appeals.

I. Lighting:

- *1. Tall structures shall not be artificially lighted except to assure human safety as required by the F.A.A. and employ ground-avoidance in lighting fixture selection.*
2. Towers shall be galvanized finish or painted gray unless other standards are required by the F.A.A. Towers should be designed and sited, including height limitations so as to avoid, whenever possible, application of the F.A.A. lighting and painting requirements.
3. Ground-based flood lights use for night-time illumination shall minimize light dispersion and pollution in directions other than onto the structure. The Planning Board may impose additional restrictions regarding illumination to reduce impacts to adjoining parcels and maintain neighborhood character.

J. Screening:

1. Existing on site vegetation shall be preserved to the maximum extent possible.
2. Deciduous or evergreen tree planting may be required to screen portions of the structure(s) from nearby property.

K. Parking:

1. The applicant will provide a service road and parking to assure adequate emergency and service access. Road construction shall be consistent with proper practice to reduce loss of vegetation and eliminate soil erosion.

L. Supporting Documentation:

1. All information prepared by the manufacturer of the proposed structure, tower, instruments and/or turbine including but not limited to:
 - a. Make and model of tower.
 - b. Detail of tower type.
 - c. Manufacturers design data for installation instructions and construction plans.
 - d. Applicants proposed tower maintenance and inspection procedures and records systems.
 - e. Anti-climb devices for the tower and any guy wires
2. A copy of the applicants F.C.C. and/or F.A.A. license(s)
3. When shared use is possible, an engineer's report certifying that a proposed shared use will not diminish the structural integrity and safety of the existing tall structure or explaining what modification(s), if any, will be required in order to certify to the above.
4. Documentation from the owner of the existing tall structure or tower for allowed shared use.
5. Documentation that all guy wires, guy wire anchors and structures shall be sufficiently secured to protect them from trespassing or vandalism.
6. The applicant shall agree in writing to keep the tall structure facility, including road and all surrounding area in good working order and safe condition.

M. Removal of Obsolete Unused Facilities:

1. The applicant shall agree in writing, and post a bond or other security acceptable by the Planning Board and Town attorneys of not less than thirty thousand (\$30,000.00), to remove the tower if the facility becomes obsolete, damaged beyond use, or ceases to be used for its intended use for twelve (12) consecutive months. After that twelve month period removal shall take place within six (6) months. Such agreement shall also include a commitment by the applicant to impose a similar obligation upon any person subsequently securing any rights to the tower.
2. All applicants applying for tall structure special use permits shall agree to reimburse the Town of Lorraine for fees incurred for consultants and/or specialists to assist in the application and/or engineering costs.
3. The owner of any tall structure shall have all towers inspected at least every second year for structural integrity by a New York State licensed engineer. A copy of the inspection report shall be submitted to the Town of Lorraine Development Enforcement Officer.

Article 13 Definitions

Definitions of the Development Ordinance of the Town of Lorraine are amended as follows:

Add...

- a) The definition of "Instrument" shall be alphabetically inserted after "Home Based Business" to read as follows:

Instrument: Any tower attachment device intended to measure atmospheric conditions, take photographs, antennas used for communications, or similar uses with minimal moving parts.

- b) The definitions of "Smokestack" and "Static Tower" shall be inserted after "Site Plan" to read as follows:

Smokestack: Commercial or industrial scale smoke, exhaust or other gaseous waste chimney, associated with an incinerator, power generation plant, or other large-scale combustion or exhaust source.

Static Tower: Any tower with all attached instruments having no moving parts more than one meter in diameter.

- c) The definition of "Tower Height" shall be inserted after "Telecommunication Tower" to read as follows:

Tower Height: The height of the tower structure above the average grade at the tower base, inclusive of instruments and wind turbine blades at their highest elevation.

- d) The definition of "SMALL WIND ENERGY CONVERSION SYSTEM ("Small WECS")" shall be inserted after "Wholesale Business" to read as follows:

SMALL WIND ENERGY CONVERSION SYSTEM ("Small WECS") - A wind energy conversion system consisting of a wind turbine, a tower, and associated control or conversion electronics, which has a rated capacity of 100 kW or less and which is intended to primarily reduce consumption of utility power at that location.

- e) The definition of "WIND ENERGY CONVERSION SYSTEM ("WECS")" shall be inserted after "SMALL WIND ENERGY CONVERSION SYSTEM ("Small WECS" to read as follows:

WIND ENERGY CONVERSION SYSTEM ("WECS") - A wind energy conversion system consisting of a wind turbine, a tower, and associated control or conversion electronics, which has a rated capacity more than 100 kW and which is intended to generate power for a commercial purpose (energy is sold through the electric grid).

- f) The definition of "WIND ENERGY FACILITY)" shall be inserted after "WIND ENERGY CONVERSION SYSTEM ("WECS")" to read as follows:

WIND ENERGY FACILITY - Any Wind Energy Conversion System, Small Wind Energy Conversion System, or Wind Measurement Tower, including all related infrastructure, electrical lines and substations, access roads and accessory structures.

- g) The definition of "WIND MEASUREMENT TOWER)" shall be inserted after "WIND ENERGY FACILITY" to read as follows:

WIND MEASUREMENT TOWER - a tower used for the measurement of meteorological data such as temperature, wind speed and wind direction.

Remove...

Wind Power Generating Facilities: Wind generating facilities which generate original power with the intention to transfer to a transmission system for distribution to customers.