

A LOCAL LAW Amending Chapter 300 Zoning to Include a New Article XV to Establish Zoning Regulations to Govern Development within a Newly Created Waterfront Zoning Overlay District and to Amend the Zoning Map for the Village of Sag Harbor to Establish the Boundaries of the New Overlay District

WHEREAS, the Village Board of Trustees of the Village of Sag Harbor enacted a moratorium to temporarily suspend the Planning Board’s authority to grant site plan, special exception use and subdivision approvals affecting parcels of land depicted on a certain map entitled “Waterfront Planning Analysis: Study Area Map” prepared by Nelson, Pope & Voorhis dated August 11, 2020, which expires on March 1, 2022; and

WHEREAS, the Village Board of Trustees has held a number of public meetings where a proposed draft code representing the Waterfront Overlay District local law was considered; and

WHEREAS, the enactment of this local law represents a Type I Action pursuant to the New York Environmental Quality Review Act (“SEQRA”), 6 NYCRR Part 617.4(b)(2) and an Environmental Assessment Form was prepared for this Board’s consideration by the Village’s planning consultant, Nelson Pope and Voorhis; and

WHEREAS, that the Village Board of Trustees assumed lead agency status pursuant to 6 NYCRR Part 617.6; and

WHEREAS, after considering feedback regarding the form based code from members of the public, involved agencies including the Suffolk County Planning Commission, and the Village Planning Consultant, the Board reconsidered the proposed form based code, and, after study, expanded the proposed overlay district area to include more of the Sag Harbor Village waterfront; and

WHEREAS, based upon its review, the Board also amended the draft code to eliminate the proposed building forms and specified architectural details of the form based code in favor of amending the zoning code, in its existing format, to create new zoning regulations for the Waterfront Overlay District; and

WHEREAS, this Board sought to retain those portions of the form based code that satisfied the intent of the law to examine new strategies for guiding the future growth of the Village within the study area while protecting: (i) the character of the Village, (ii) the remaining public water vistas, and (iii) groundwater and natural resources; and

WHEREAS, as a result of these amendments, the proposed draft code must be re-noticed and re-referred to all involved agencies; and now therefore be it

RESOLVED, that the Village clerk shall forward the revised Environmental Assessment Form Part I, together with the revised local law, to the Suffolk County Planning Commission, Village of Sag Harbor Planning Board for referral purposes, the Village of Sag Harbor Committee for a

Coastal Consistency Review pursuant to Village Code Chapter 275, and all other interested and required referral agencies for their review and recommendations; and be it further

RESOLVED, that the Village Clerk is hereby authorized to publish the following Notice of Public Hearing:

PLEASE TAKE NOTICE, that the Board of Trustees of the Village of Sag Harbor will hold a public hearing on the **9th day of November, 2021**, at 6:00 P.M. at the **Village of Sag Harbor Fire House** located at 1357 Brick Kiln Road, Sag Harbor, NY 11963 to consider the adoption of a local law as follows:

A LOCAL LAW Amending Chapter 300 Zoning to Include a New Article XV to Establish Zoning Regulations to Govern Development within a Newly Created Waterfront Zoning Overlay District and to Amend the Zoning Map for the Village of Sag Harbor to Establish the Boundaries of the New Overlay District.

LOCAL LAW NO. OF 2021
INTRODUCTORY NO. OF 2021

A LOCAL LAW amending Chapter 300 Zoning to include a new Article XV to establish zoning regulations to govern development within a newly created Waterfront Zoning Overlay District and to amend the Zoning Map for the Village of Sag Harbor to establish the boundaries of the new overlay district, said Local Law to read as follows:

BE IT ENACTED by the Village Board of Trustees of the Village of Sag Harbor as follows:

SECTION 1. Legislative Intent

The Village of Sag Harbor is described as “proud of its long history and many historic buildings that grace its streets. It has retained a small scale country village and seaport character that is unique. As the following initial objectives indicate it seeks to enhance this character rather than exploit it by maintaining a balance between economic development and the preservation of its environment.” See, LWRP, 1986, amended in 2006. The uniqueness of the Village structures is cited multiple times in the 2008 Planning Study as the basis for its character. The Village is already governed by the standards of the LWRP as set forth in Village Code Chapter 275, Waterfront Consistency Review, which addresses concerns regarding public access to the waterfront, among many others. See Village Code Chapter 275, Waterfront Consistency Review §275-5(G), Policy 7, stating, “provide for public access to and recreation opportunities on waters, public lands and public resources of the Village of Sag Harbor local waterfront revitalization area.”

The Waterfront Overlay District area is also located in the Historic District and there are standards in place to maintain the historic character by requiring review from the Board of Historic Preservation and Architectural Review. *See* Village Code §300-13.1, purpose, which states, “[i]t is the intent of this article to establish procedures and design criteria necessary to avoid such results and to preserve and enhance the character, historical interest, beauty and general welfare of the Village and to ensure that the location and design of buildings, structures and open spaces in the Village shall aid in creating a balanced and harmonious composition of the whole as well as in the relationship of its several parts.”

The previously considered form based code failed to consider the interplay between these code sections and the proposed building forms. It also did not specifically take into account or identify existing, well-loved or desirable buildings in Sag Harbor, compare the proposed building forms to those buildings, in order to exemplify the character and scale that the Village was trying to maintain by introducing a form based code. Finally, the form based code did not consider the uniqueness of the existing buildings and essential unique development of the Village that has occurred over time and has resulted in its unique character today that the residents wish to maintain. However, the prior law did consider the intense development pressure currently facing the waterfront and imposed important restrictions to the height of commercial structures on waterfront properties, prohibited the development of additional residential condominiums on the waterfront and encouraged the creation of public vistas and access to the water, that are carried over in this proposed local law, among others.

The existing Waterfront Zoning District (WF) states that “all uses in the WF district shall be water-dependent uses and that no use shall unduly impede access of the public to the foreshore.” Development within the WF Zoning District is limited and only allows water dependent uses such as, yacht clubs, marinas, boat dealerships, sail canvas shops, yacht sales, boat yard, etc. The establishment of the Waterfront Overlay District (WFOD) seeks to apply some of the concepts set forth in both the WF and LWRP such as maintaining public access and vistas to the waterfront, to the actual larger coastal area of Sag Harbor Village, reflecting the true waterfront area while not restricting the uses to only water dependent uses within other zoning districts present along the waterfront area.

In response, this Board seeks to establish a Waterfront Overlay District that will (i) expand the area to include additional coastline representing the true waterfront in Sag Harbor

Village, (ii) eliminate the form based code provisions which promoted specific building forms that do not relate to the unique nature of the Village of Sag Harbor and did not consider pre-existing, nonconforming structures, (iii) introduce a review of development of structures over 3,500 square feet in the Waterfront Overlay District by requiring that a Special Exception Use Permit be obtained from the Village Board of Trustees to ensure the proposed development is in keeping with the goals of the waterfront overlay district, community needs and character; and, (iv) introduce construction standards for development in the Waterfront Overlay District area to enhance and maintain both visual and pedestrian access to the waterfront.

SECTION 2. Amendment. Please see the following and amend Village Code §300-3.1 Designation of Districts by deleting those words that are stricken and adding those words that are underlined:

§ 300-3.1, Designation of districts. [Amended 4-21-2016 by L.L. No. 5-2016]

For the purpose of this chapter, the Village of Sag Harbor is hereby divided into six zoning districts and ~~two~~ three overlay districts, which shall be designated as follows:

R-20 One-Family Residence District

OD Office District

RM Resort Motel District

VB Village Business District

WF Waterfront District

PC Parks and Conservation District

Historic Overlay District

Tidal Flood Hazard Overlay District

WFOD Waterfront Overlay District

SECTION 3. Amendment. Please see the following and amend Village Code Article XV, §300-15.1 through §300-15.3, Reserved, by deleting those words that are stricken and adding those words that are underlined:

Article XV (~~Reserved~~) Waterfront Overlay District (WFOD)

§300-15.1 (~~Reserved~~) Intent.

As stated in Village Code §300-1.2B, the Board of Trustees finds that the “Village of Sag Harbor is uniquely situated on a navigable arm of Peconic Bay and tributaries thereof. As a result of its unusually extensive water frontage development, it is of necessity closely related to valuable marine environmental resources. Preservation and enhancement of these marine resources will continue to be important in the Village's future. The Village has a long history beginning with its

settlement in the early 18th century and development soon thereafter as a major port. It has an unusually rich and varied architecture and an environment reflecting its development stages.”

The Sag Harbor Waterfront Overlay is adopted to advance the objectives of the Sag Harbor Comprehensive Plan through standards that guide the relationship between building facades and the public realm and protect against over-development on the waterfront. These standards enact the following intents: (i) protect and enhance the unique and eclectic character of the Village; (ii) preserve and enhance public views of the waterfront and provide continuity of access directly to the water; (iii) encourage a diversity of scales, architectural styles, and materials which respects the historical character and gives the Village its authentic and unique nature; (iv) continue to support a mixture of local industrial, commercial, water-dependent businesses, and residential uses; (v) enhance streetscaping and the pedestrian environment; (vi) establish a level of development appropriate for a waterfront location; and, (vii) incorporate strategies to minimize adverse impacts on groundwater and surrounding surface waterbody quality.

§300-15.2 Permitted and Special exception uses.

A. Buildings or structures over 3,500 square feet in gross floor area within the WFOD shall be required to obtain a special exception permit from the Village Board of Trustees pursuant to Village Code §300-11.23.

B. Except for the Special Exception Permit required above in §300-15.2A and in §300-11.23, Village Code §300, Attachment 1, Table of Uses, designating the uses for the underlying zoning districts within the WFOD, shall apply.

§300-15.3 Waterfront Overlay District Standards.

A. Lands to which this article applies. This article shall apply to all areas of land shown on the map entitled “Proposed Zoning Map Amendments”, dated October 8, 2021, prepared by Nelson Pope and Voorhis.

B. Interpretation and Conflict with other laws.

In their interpretation and application, the provisions of this article shall be held to be minimum requirements, adopted for the promotion of the public health, safety and welfare. Whenever the requirements of this article are at variance with the requirements of any other lawfully adopted rules, regulations or ordinances, the most restrictive or that imposing the higher standards shall govern.

C. Definition of Waterfront in the WFOD

Lot, Waterfront. A lot that abuts a water body or a lot that abuts a park that abuts a water body as set forth in the diagram below.



D. Height/Stories.

(1) The permitted height of structures on waterfront properties in the WFOD shall be 25 feet as measured from street or lowest grade on site, whichever is less with a maximum of two stories. Third stories with a maximum height of 35 feet may be permitted on waterfront properties in the VB and OD Zoning Districts within the WFOD as set forth in Village Code §300-11.23D(10) for structures over 3,500 square feet in gross floor area requiring a special exception permit from the Village Board of Trustees.

(2) The permitted height of structures that are not waterfront properties in the WFOD shall be governed by the underlying zoning district regulations for that property as set forth in §300, Attachment 2, Table of Dimensional Regulations.

(3) To the extent a third story is permitted as set forth in section 2 above, a third story stepback for front, corner and side facades shall be created at a minimum of 10 feet.

E. Setbacks. On waterfront properties located in the WFOD, the required waterfront yard setback for principal structures shall be a minimum of 30 feet from the mean high water line.

F. Accessory structures in the WFOD must meet the following dimensional requirements:

1. Front yard setback minimum of 20 ft.
2. Side and rear yard setback is a minimum of 5 feet.
3. Maximum height in stories/feet: 1 story/15 feet.
4. Distance between buildings is a minimum of 15 feet.
5. Accessory structures are not permitted in view corridors and/or public access easements.

G. Waterfront Visual Access. Provision of open viewsheds at ground level to provide water view from public streets and surrounding properties. The provision of visual access yards shall be provided on all properties fronting on the waterfront or on waterfront parks. The minimum visual access yard shall be 20% of the property width, but no less than 15 feet in width for any individual lot. The visual access yard shall not be obstructed with visual barriers (including but not limited to landscaping, fencing, accessory structures) and shall not be used for parking or loading spaces. Where a property is located opposite a publicly owned property or public roadway, the visual access yard shall be provided to provide views from same.

H. Floodproofing. For buildings within a flood zone, dry floodproofing of the ground floor and maintenance of existing grade is required in lieu of raising the ground floor elevation.

I. Mechanical Equipment.

1. Roof-mounted mechanical equipment must be fully screened from view at ground level on all sides of the structure and, to the extent practicable, from adjacent buildings of similar height. Such mechanical equipment must be set back a distance of one and one-half times its height from the façade and must not occupy more than 20% of the total area of the roof. Screens must be of durable, permanent materials and be constructed to a height of at least one foot above the height of the mechanical equipment. Mechanical equipment must be the minimum height necessary to perform its proper function. No mechanical equipment may be greater than five feet in height above the roof surface, except where the Planning Board has affirmatively approved such additional height with a specific reference in the site plan approval.

2. Ground-mounted mechanical equipment must be screened with a fence, wall, or dense evergreen hedge, so that no portion is readily visible from any public right-of-way. If ground-mounted mechanical equipment is screened by existing structures, fencing, or landscape, this requirement will be deemed to have been met. No mechanical equipment may be located in a waterfront yard or visual access yard.

3. Vents, air conditioners, and other utility elements, except where such elements are enclosed, camouflaged, screened, obscured, or otherwise not readily apparent to a casual observer, are prohibited as part of a front or corner side facade, or of a facade facing a waterfront yard or visual access yard.

4. Any existing mechanical equipment, which was lawfully established prior to the adoption of this Overlay, will be considered conforming, and may be repaired and replaced in-kind.

J. Refuse Areas.

The storage of refuse and recyclables must be provided inside a fully-enclosed building or within an outdoor area enclosed by walls or opaque fencing. Any refuse area located outside of a fully-enclosed building must be sited as follows:

1. Refuse areas, including dumpsters and garbage cans, must be located in the rear yard adjacent to the principal building. No refuse area may be located in a waterfront yard or visual access yard.

2. Refuse areas must be screened by a fence or enclosure of at least six feet in height on all sides, or as necessary to conceal any dumpsters or other refuse structures. Enclosures must remain locked and closed, except when in use

K. Residential Uses. No residential uses shall be permitted on waterfront properties within the VB or OD Districts within the WFOD.

L. All development shall comply with Suffolk County Sanitary Code and Chapter 220 “Sewers” of the Village Code. Where extension of a sewer service area or new connection is required, all costs shall be the responsibility of the applicant.

SECTION 4. Amendment. Please see the following and amend Village Code §300-3.11.1 and 11.23 Special Exception Uses by deleting those words that are stricken and adding those words that are underlined:

Article XI Special Exception Uses

300-11.1 Delegation of authority to Planning Board.

The Planning Board is hereby authorized to act on proposed special exception uses which are specifically provided for in this chapter except where such authority is retained by the Village Board of Trustees as set forth herein. Such action may include approval, conditional approval or disapproval based on the standards set forth in this article.

300-11.23 Uses or Structures greater than 3,500 square feet of gross floor area in the Waterfront Overlay District (WFOD)

A. The Village Board of Trustees is hereby authorized to review special exception use permit applications submitted pursuant to this section as set forth herein. Single family residential dwellings, accessory structures and uses located in the R-20 Zoning District are excluded from special exception permit review in Village Code §300-11.23.

B. This section shall also apply to a group of buildings or structures on one or more lots under common ownership or control with a gross floor area greater than 3,500 square feet in the aggregate.

C. The application shall comply with the standards outlined in 300-11.3, General Standards, in addition to all of the applicable requirements of this chapter.

D. The Village Board of Trustees shall determine whether the proposed use is consistent with the Village Comprehensive Plan, WFOD standards and whether it will have an undue adverse impact on other properties or current uses within the WFOD and community. In making such a determination, the Village Board shall consider and apply the following standards:

(1) Whether the proposed use and design is consistent with the goals, spirit and intent of § 300-15.1 of the Village Code (WFOD).

(2) Whether the design, scale and appearance of the buildings on-site are compatible with each other and with the neighborhood, adjacent properties, and the WFOD, including a consideration of the materials used, roof pitch, variation in rooflines, facade, arrangement of windows and doors, and architectural style and details.

(3) The applicant demonstrates a need for a building or building complex larger than 3,500 square feet; and

(4) The size of the subject property can accommodate the proposed building and use.

(5) Traffic:

a. Submission of a traffic impact analysis which determines that the existing roadway network in the area of the proposed development will be able to handle the existing through traffic, plus the additional traffic that the development will generate; and

b. The project design must address the anticipated traffic generated by the proposed use and ensure adequate traffic circulation, access to the property, public safety, and motorist and pedestrian convenience.

(6) Whether adequate parking is provided on site and screened from adjacent residential properties by incorporating shade trees and landscape features into the design. A parking plan shall be provided and such plan shall be made as unobtrusive as possible by incorporating shade trees and landscape features in the design, while respecting transition yard and buffer requirements.

(7) Whether buildings, site designs, and on-site activities are consistent with Chapter 167, Noise, of the Village Code and incorporate appropriate measures to ensure that site activities and operations do not generate noise that adversely affects adjacent residential uses and districts.

(8) Whether the design includes transitional side and rear buffers to be installed and maintained by the nonresidential property owner along the property lines, including landscape plantings and a fence or berm.

(9) Principal structures shall be set back 25 feet from any rear property line or a minimum of five feet from the required transition yards or buffers, whichever is greater. The Board of Trustees may but shall not be required to allow lesser setbacks when preexisting, nonconforming buildings are incorporated into the proposed special exception use, and the Board finds that the use of such building setbacks shall not cause adverse impacts due to the proposed special exception use.

(10) The maximum height of structures in the WFOD shall be governed by Village Code §300-15.3(D) except that for a waterfront property over 3,500 square feet in gross floor area in the VB or OD Zoning District within the WFOD, the Village Board of Trustees may, where appropriate, permit an increase of height to 3 stories or 35 feet, conditioned upon the applicant providing the construction of a permanent accessible pedestrian walkway, a minimum of 10 feet in width, for public use, providing public access to the waterfront. The Board may consider a proposed public access along the waterfront side of the property provided there is already public access leading to it. The proposed public access shall mitigate the impact of allowing for an increase in height of structures on the waterfront. The walkway shall be made available for public use pursuant to an easement agreement between the Village and the property owner that shall be recorded in the Suffolk County Clerk's Office.

(11) Whenever practical, the primary structure on the lot shall have its main entrance facing the principal street on which it is located.

(12) Signs shall meet the standards set forth in § 300-9.7 of the Village Code.

(13) A waste management plan shall be required to ensure that the site is kept clean and free from litter, vermin and odors. The details of such plan shall be presented to and approved by the Planning Board during site plan review but must include, at a minimum, details regarding dumpster location, method and design of screening, and days and times of garbage pickup. Waste receptacles shall be designed to be sensitive to adjacent residential properties and waste receptacles recessed within principal buildings are encouraged.

SECTION 5. Amend the Zoning District Map by adding the boundaries of the Waterfront Overlay District, as more fully set forth on the attached map entitled "Proposed Zoning Map Amendments", dated October 8, 2021, prepared by Nelson Pope and Voorhis.

SECTION 6. Authority.

This Local Law is enacted pursuant to Village Law Section 7-708 and Municipal Home Rule Law Sections §10(1)(ii)(a)(11), (12), and 10(1)(ii)(e)(3).

SECTION 7. Severability.

If any clause, sentence, paragraph, section or part of this local law shall be adjudged by any court of competent jurisdiction to be invalid, the judgment shall not affect, impair or invalidate the remainder of this local law but shall be confined in its operation to the clause, sentence, paragraph, section or part of this local law that shall be directly involved in the controversy in which such judgment shall be rendered.

SECTION 8. Effective Date.

This chapter shall take effect immediately upon filing in the office of the Secretary of State pursuant to the Municipal Home Rule Law.