

# Waterfront Overlay Public Comments

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APPENDIX A: CONTENT

## INTRODUCTION

In response to increasing development pressures, especially in the waterfront area, and concerns that the current zoning ordinance does not provide the tools to shape future development in the waterfront area, the Village of Sag Harbor Board of Trustees enacted a moratorium on development to conduct a three-phase planning process to understand the community's vision for the waterfront, review the current zoning code, and to propose revisions for the waterfront area. The Village retained the consultant team of Nelson Pope & Voorhis, LLC (NPV), the Form-Based Codes Institute (FBCI), and Chuck Banas Design (CBD) who collaborated with the Waterfront Planning Committee to review the current zoning and develop the Sag Harbor Waterfront Overlay. The draft overlay code was posted to the project webpage on the Village website on January 25, 2021 and the Village accepted written and verbal comments for consideration by the Board of Trustees on the initial draft until February 16, 2021. Additional opportunities for public comment on the Waterfront Overlay will occur during the Public Hearing process for the adoption of the Sag Harbor Waterfront Overlay.

This document provides a summary of the written comments submitted to the Village as of February 16, 2021, as well as comments expressed at Board of Trustee Work Sessions and meetings with stakeholders and interested parties that identify proposed changes to the draft of the Waterfront Overlay. Comments that support or comments not specific to the draft Overlay were not summarized in this document. The comments have been grouped into the following nine topic areas: Historic Preservation & Architectural Review Board, Land Uses, Height, Height Bonuses, Dimensional Standards, Waterfront & Visual Access, Refuse & Service Areas, Landscape Requirements and Traffic & Parking. Following a summary of each topic area is a discussion of how the current draft of the Waterfront Overlay is addressing the topic and comments raised by the public. In addition, a section has been added under each topic that includes any recommendations of modifications on draft of the Overlay from the Waterfront Planning Committee in response to comments that have been raised by the public. This document will be delivered to the Village Board for their review and consideration.

# **1. HISTORIC PRESERVATION AND ARCHITECTURAL REVIEW BOARD AUTHORITY**

## **1.1. PUBLIC COMMENTS**

A portion of the recommended Waterfront Overlay is located within a historic district and concerns were expressed that the adoption of the Waterfront Overlay would negatively impact the Board of Historic Preservation and Architectural Review's (BHPAR) duty to evaluate form, architectural style, and materials.

## **1.2. RECOMMENDED WATERFRONT OVERLAY REQUIREMENTS**

The Village Historic District is on the National Register of Historic Places. The Waterfront Overlay District code will be a tool to help the Village implement the vision for the waterfront to apply for new construction and significant building modifications and which includes respecting the historic character of the Village, particularly the scale of development, the pedestrian orientation, the mix of uses, and the focus on the water. It will not replace the Historic District.

The Board of Historic Preservation and Architectural Review will continue to review projects for compliance with historic preservation considerations and aesthetics. The Overlay does not exempt any property or any application from appearing before the BHPAR as currently required. The form-based code will set standards for features such as: use, building placement, heights, lot coverage, and transparency of facades for new construction, including substantial renovations. The code will not address whether a building should be demolished or rehabilitated, whether an addition is architecturally appropriate in relation to a historic building, or other considerations under the purview of the ARB.

In addition, to prevent the potential for conflicts between the Waterfront Overlay and the current review process of Village Boards, Section 1.4.3 of the Waterfront Overlay states: If any provision of this Overlay contains an actual, implied, or apparent conflict with any other provision of the Sag Harbor Code, the more restrictive provision controls. Notwithstanding the provisions of this Overlay, any New York State building code and fire code requirements are applicable and controlling.

## **1.3. WATERFRONT PLANNING COMMITTEE RECOMMENDATIONS**

Following a review and discussion of the public comments related to historic preservation, the Waterfront Planning Committee recommends the following modifications to the Waterfront Overlay.

1. Add a clarifying statement in the Waterfront Overlay indicating the review and recommendations from the Historic Preservation and Architectural Review Board (HPARB) will not be superseded by the provisions of the Waterfront Overlay.
2. Add clarifying statements to the building type illustrations that the architecture depicted is intended to be representative of existing character of the Village and is not intended to impact

the HPARB's role in reviewing proposed architecture. The intent of the building type illustrations is to demonstrate potential scale and massing, rather than any specific architecture preference.

## 2. LAND USES

### 2.1. PUBLIC COMMENTS

Feedback from the public indicated that maintaining a mixture of industrial, commercial, and residential uses, as well as preserving the working waterfront is important to the community. It was recommended that the waterfront parcels be developed with water-related businesses and public spaces and residential uses should be prohibited on the waterfront, which is consistent with the recommended Waterfront Overlay.

Concerns related to land uses related to the Waterfront Overlay included:

- A request for a clarification regarding the definition of institutional offices and why they are listed with civic buildings.
- Concern that increasing outdoor seating for restaurants without requiring additional parking will impact existing restaurants in the remainder of the VB district.
- Some special exceptions review processes have been eliminated and it is not clear why this was done.
- Civic buildings should have limitations on the percentage of accessory uses allowed to ensure that the principal use is a civic use.

Concerns were raised regarding the recommended expansion of retail and office uses permitted in the OD zoned parcels of the Waterfront Overlay as outlined below:

- Permitting additional retail uses would exacerbate traffic and parking problems since retail uses generate more traffic than residential and office uses.
- Encouraging additional retail uses could harm the existing retail and the existing character of Main Street.

Concern that the proposed Table of Uses has been changed to permit by right or by exception certain uses that are contrary to the goals of this study or contrary to the current zoning districts in Sag Harbor creating spot zoning. Specific modifications to the Waterfront Overlay Use Table are outlined below:

- Exclude "traveler accommodations" in addition to residential uses on waterfront lots.
- Do not change museums to a permitted use in VB and WF districts.
- Do not change public libraries to a permitted use in the VB and OD districts.
- Do not change hotels to a SE use in the VB and OD Districts.
- Do not change laundromats to a permitted use in the VB district.

## 2.2. RECOMMENDED WATERFRONT OVERLAY REQUIREMENTS

The Waterfront Overlay includes a Table of Uses specific to the overlay district boundaries. The recommended changes are primarily related to the expansion of retail and food service uses in the OD District. The expansion of the uses within the overlay were done with the objective of providing flexibility for the market. By allowing for additional uses within the Waterfront Overlay it provides property owners and landlords the flexibility to incorporate into their buildings or properties various uses that the market supports and assists in creating an active waterfront. The Waterfront Overlay includes restrictions prohibiting residential uses along the waterfront (properties north of Bay Street and Long Island Avenue) and removed single-family housing from the OD. The Overlay primarily keeps the current uses allowed in the Waterfront (WF) zoning as it exists now.

The Waterfront Overlay includes new scale limitations for certain land uses as indicated below:

- Any commercial use in the VB and OD districts is limited to 2,000 square feet of gross floor area.
- A dwelling unit for any residential use in the VB and OD districts must not exceed 1,200 square feet of gross floor area.
- Any traveler accommodations use in the VB and OD districts must not exceed 10 guest rooms.

## 2.3. WATERFRONT PLANNING COMMITTEE RECOMMENDATIONS

Following a review and discussion of the public comments related to land use, the Waterfront Planning Committee recommends the following modifications to the Waterfront Overlay.

1. The Waterfront Overlay Use Table allows hotels by Special Permit in the VB and OD districts, where they are currently prohibited. The intent of the inclusion of hotels was to allow for a boutique hotel with a maximum of 10 guest rooms, as required in Section 4.1.2.A.3 of the Waterfront Overlay; however, this requirement is not clear in the Use Table. The Committee recommends adding the maximum guest room standard directly to the Use Table and changing the name of the use from “hotel” to “boutique hotel”.
2. Consider updating Section 3.1.1.C.3 for civic buildings to clarify the process for when a civic building is converted to another use especially if the use is not a civic use.
3. The Committee recommends reviewing the proposed Use Table in detail based upon public comment and providing modifications to the Board of Trustees in the next Waterfront Overlay Draft.

## 3. HEIGHT

### 3.1. PUBLIC COMMENTS

Concerns were expressed that existing view corridors would be lost as a result of the Waterfront Overlay. An additional concern was related to increasing the height in the OD to 35 feet; however, the existing height in the OD is currently 35 feet.

The draft graphics do not indicate/address chimneys, mechanical equipment and other rooftop penetrations. Concern was expressed that the proposed language for 5.3.4.B may be excessive as it permits numerous roof items and the commentor asked how the 20% mechanical exemption would be calculated.

A question was raised regarding if balconies with views and rooftop decks on mixed use buildings with water views would be permitted.

It was recommended that the proposed Height Zones be modified so that parcels adjoining or across the street from public parks (parcels on the south side of Bay Street across from Marine Park), as well as parcels on the northwest corner of Main Street and Meadow Street, and the parcels on the south side of Bay Street between Main Street and Division Street, should be limited to two-stories.

A few comments were submitted related to allowing additional height in the following circumstances:

- FEMA flood zone requirements should allow for an increased maximum building height.
- Recommended increasing the height of Civic buildings to 40' (currently 35').
- Proposed measuring height to the midpoint of a pitched roof.
- Proposed an increase for mechanical equipment coverage to 60% of roof area.

### **3.2. RECOMMENDED WATERFRONT OVERLAY REQUIREMENTS**

The Overlay District will continue to regulate the height of buildings and in some ways the Overlay will be more restrictive than the current zoning code. The current zoning ordinance allows a maximum of 2 stories in the OD and WF Districts and a maximum of 3 stories in the VB District. The maximum height currently permitted in the VB, OD, and WF Districts is 35 feet.

The Waterfront Overlay proposes the establishment of two height zones. Sub-Zone A is located south of Bay Street and Long Island Avenue and permits a maximum of 3 stories and 35 feet. Any portion of the building above 25 feet is required to have a 10-foot upper story setback so that massing will feel like a 2-story building from the sidewalk.

As drafted, Sub-Zone B is located north of Bay Street and Long Island Avenue and permits a maximum of 2 stories and 25 feet, which represents an overall reduction in the permitted height. Applicants can apply for a height bonus in exchange for public access through the site to the waterfront or waterfront park and additional community benefits to allow for an additional 10 feet of building height with a 10-foot setback for a maximum height of 35 feet and 3 stories for projects that meet the bonus criteria.

Section 5.3.4.B requires that building height is measured in feet from grade to the top of the roof surface of a flat roof or to the peak of a pitched roof. This height calculation does not include the following architectural and structural features, so long as such features do not exceed 125% of the permitted height of the structure on which the feature is placed, and does not occupy more than 20% of the total area of the roof:

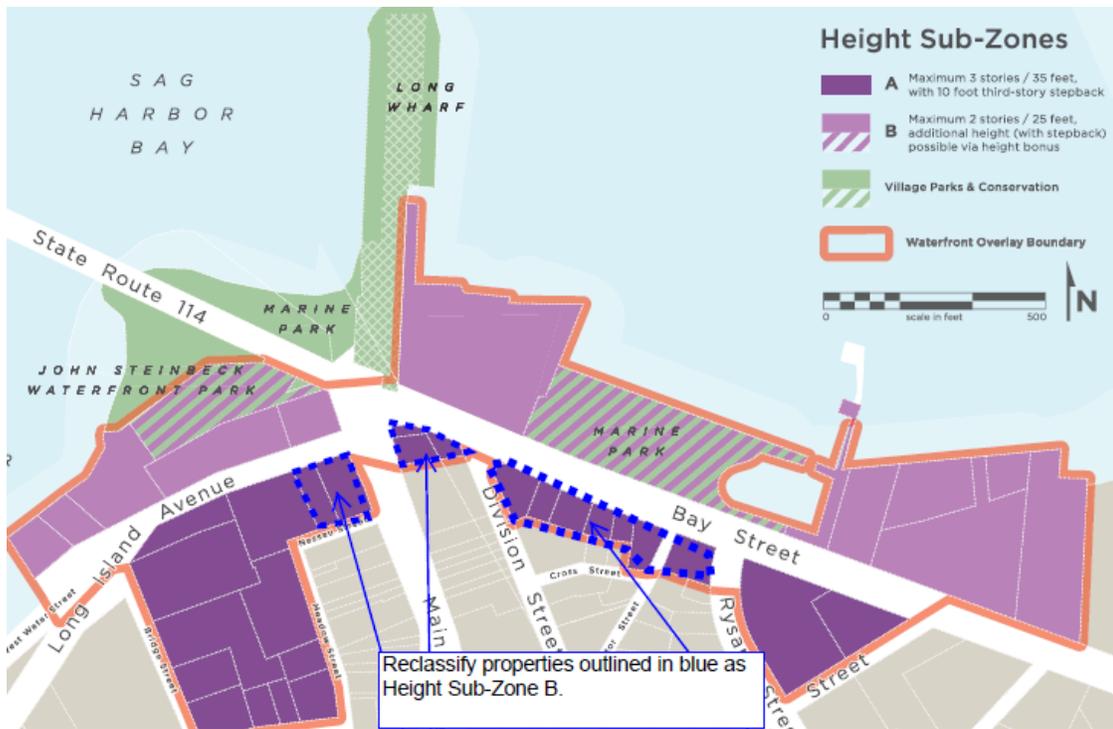
1. A code-required railing or parapet.
2. Mechanical equipment, placed and screened in accordance with Section 3.3.5.A.
3. On any public or semipublic building, a spire, cupola, dome, belfry, or clock tower.
4. Flagpole, chimney, flue, elevator, stair bulkhead, skylight, or fire escape.
5. Radio or television tower, transmission line or tower, or similar structure necessary as a public service facility, only after approval as a special exception use by the Planning Board.

Currently whether a property is in a FEMA flood zone or not, is required to adhere to the maximum height of 35 feet.

### 3.3. WATERFRONT PLANNING COMMITTEE RECOMMENDATIONS

Following a review and discussion of the public comments related to building heights, the Waterfront Planning Committee recommends the following modifications to the Waterfront Overlay.

1. Reevaluate the requirements for mechanical equipment on rooftops and consider limiting the maximum height allowed for mechanical equipment.
2. Alter the boundary of Height Sub-Zone B (max. 2 stories, 25' feet) to include additional properties, as shown in the image below, that are across the street from existing parks or view corridors.



## 4. HEIGHT BONUS PROCESS

### 4.1. PUBLIC COMMENTS

Concerns were expressed regarding the potential for the height bonus to provide loopholes. A request was made that no bonuses are given for open space, visual access, or physical access to the water.

Regarding the process of reviewing and approving height bonuses it was recommended that if the Planning Board is going to review these requests, an ordinance may need to be adopted giving them the authority to negotiate items like height in return for items benefiting the public. In addition, it was recommended that the Planning Board's lawyer should draft any access restriction or open space covenant which would be recorded and therefore, part of any conveyance of the property at a later date, and not rely on the applicant's attorney.

It was also recommended that the approval process for a height bonus be modified so the Planning Board and Zoning Board of Appeals both have oversight.

Specific comments related to the proposed height bonus language in the Waterfront Overlay included:

- Public art should be more clearly defined;
- Provide for a bonus upon developing a Village approved architectural feature such as or similar to a building mounted tower, clock or windmill; and
- Consider a height bonus to comply with FEMA requirements.

### 4.2. RECOMMENDED WATERFRONT OVERLAY REQUIREMENTS

The Waterfront Overlay permits a height bonus in Height Sub-Zone B only up to 10 additional feet for a maximum of 35-foot building height (3-stories) with a 10 foot setback for any height above 25 feet, in exchange for community benefits. The Planning Board may approve additional height in exchange for public benefits in accordance with this section. The Planning Board must set a public hearing for any such height bonus, at which only the height bonus and public benefit aspects of the project will be heard.

In order to qualify for a height bonus, the project must provide **public** waterfront access. This public waterfront access must consist of public walkways or a public park, conveyed at no cost to a municipal government or non-profit organization or reserved by a permanent access easement, occupying at minimum that portion of the lot occupied by any required waterfront yard or visual access yard. No height bonus may be approved without an agreement for such public waterfront access. The Overlay does not provide for a height bonus for required open space or setbacks that does not provide public access.

In addition to the waterfront access, the project must also provide at least three of the following public benefits:

- a. Green building systems and sustainable landscapes.
- b. Preservation and adaptive reuse of historic resources.
- c. Public art.
- d. Accessible buildings and sites exceeding minimum standards of the United States Access Board (USAB).
- e. Renewable energy production.
- f. Water conservation and reuse.

Currently, applications for a height bonus will be evaluated by the Planning Board based upon the value of added community benefits weighed against the value of a requested bonus to ensure that the bonus will not have a negative impact. If height bonuses are to be considered, a separate Public Hearing would be required specifically for the height bonus. Under no circumstances are the height bonus provisions to be interpreted as allowing for a building height in excess of three stories and or a maximum of 35 feet via height bonus.

The height bonus is a form of incentive zoning which is permitted under Section 7-703 of New York State Village law.

### **4.3. WATERFRONT PLANNING COMMITTEE RECOMMENDATIONS**

Following a review and discussion of the public comments related to height bonuses, the Waterfront Planning Committee recommends the following modifications to the Waterfront Overlay.

1. Incorporate input from the HPARB on height bonuses into the review process.
2. Provide additional criteria to assist the Planning Board with the review of any proposal for a height bonus.
3. Remove “public art” as one of the potential public benefits that can be considered when evaluating a proposal for a height bonus.

## **5. DIMENSIONAL STANDARDS**

### **5.1. PUBLIC COMMENTS**

Concerns were raised that the use of the terms “large”, “maximum visibility” and “encourage” are not enforceable in order to avoid unintended consequences.

In addition, it was recommended that the Committee consider eliminating the interior side yard setback maximum.

It was also recommended that the main entrance for civic buildings can be an interior side and not only on the front façade due safety concerns as a significant amount of people entering and exiting the building at one specific location on the street.

## 5.2. RECOMMENDED WATERFRONT OVERLAY REQUIREMENTS

Section 3.2.1.E.1 of the draft Overlay states ground story windows must be large display windows, allowing for maximum visibility from the viewpoint of the pedestrian. While the Waterfront Overlay does not specifically dictate the size of large windows, there are transparency requirements based on the building type as indicated in the Table below. A transom, helping bring natural light into the interior of the shopfront, is encouraged. A transom, helping bring natural light into the interior of the shopfront, is encouraged. The intent of this language is to provide flexibility to the HPARB when reviewing applications for development.

| Building Type             | Ground Floor Transparency, front façade (min./max.) | Ground Floor Transparency, corner side façade (min./max.) | Upper story transparency, front & corner side facades (min./max.) | Maximum Blank Wall Width (front/corner side facades) |
|---------------------------|---|---|---|--|
| <b>Mixed Use Building</b> | 70/95%  | 40/95%  | 25/70%  | 10'/10'  |
| <b>General Building</b>   | 30/95%  | 30/95%  | 20/70%  | 10'/20'  |
| <b>Civic Building</b>     | 40/95%  | 40/95%  | 40/95%  | N/A  |

Article 5 of the draft Overlay states “should” or is/are “encouraged” express a suggestion or recommendation, and do not express a requirement or impose a duty”.

The Waterfront Overlay defines the interior side yard as the area of the lot that extends from the front yard line to the rear yard line, between the interior side lot line and the interior side yard line. The interior side yard setback is determined by building type and underlying zoning district as shown in the Table. An interior side setback of at least 5' in depth, and/or rear setback of at least 15' in depth, is required where the applicable lot line abuts an R-20 district.

| Building Type             | Underlying District | Zoning | Minimum Interior Side Yard Setback | Maximum Interior Side Yard Setback |
|---------------------------|---------------------|--------|------------------------------------|------------------------------------|
| <b>Mixed Use Building</b> | VB, OD              |        | 0'                                 | 15'                                |
|                           | WF, PC              |        | N/A                                | N/A                                |
| <b>General Building</b>   | OD                  |        | 5'                                 | 30'                                |
|                           | WF, PC              |        | N/A                                | N/A                                |
| <b>Civic Building</b>     | VB, OD              |        | 0'                                 | 30'                                |
|                           | WF, PC              |        | N/A                                | N/A                                |

Currently, only the main entrance is only allowed on the front façade.

### 5.3. WATERFRONT PLANNING COMMITTEE RECOMMENDATIONS

Following a review and discussion of the public comments related to waterfront and visual access, the Waterfront Planning Committee determined that no modifications are needed related to dimensional regulations.

## 6. WATERFRONT & VISUAL ACCESS

### 6.1. PUBLIC COMMENTS

A variety of comments emphasized the importance of improving access to the waterfront through parks and a waterfront walkway. Specific comments related to the recommended Waterfront Overlay provisions included:

- Consider reducing the waterfront access yard to 15% (currently 20%);
- Consider permitting off-street truck loading in the visual access yards;
- Eliminate the requirement to the extent practicable that public rights-of-way include the visual extension of Meadow Street through to Long Island Avenue; and
- Eliminate the requirement of a facade facing a public park with waterfront access, waterfront yard, or visual access yard must comply with front façade;

### 6.2. RECOMMENDED WATERFRONT OVERLAY REQUIREMENTS

Section 3.1.2 of the Waterfront Overlay outlines the waterfront-specific standards.

- A. Terms Defined. A **waterfront yard** is the area of a waterfront lot measured from the mean high water line of the adjacent water body to the waterside facade of the principal building. A **visual access yard** is an open yard providing an unobstructed view through a lot to a shoreline or shoreline park, intended to extend existing views from upland areas.
- B. Waterfront Yards. All development on waterfront lots must provide a waterfront yard along the shoreline of the property of a minimum depth of 30 feet.
  1. A required waterfront yard must be maintained clear of all permanent structures and vehicular access and parking, with the exception of a water-dependent use or a walkway, park, or open space, plus related accessory structures, which may encroach upon a required waterfront yard. A water-dependent use is a use which can only be conducted in, on, over, or adjacent to a water body because such use requires direct access to that water body, and which involves, as an integral part of such activity, the use of the water.
  2. The required waterfront yard substitutes for a required rear or interior side yard, wherever such yards coincide.
- C. Visual Access Yard(s). All development on waterfront lots, or on lots abutting a public park with waterfront access, must provide a visual access yard(s) of at least 20% of the lot width, but not less than 15 feet for any individual lot.

### **6.3. WATERFRONT PLANNING COMMITTEE RECOMMENDATIONS**

Following a review and discussion of the public comments related to waterfront and visual access, the Waterfront Planning Committee determined that no modifications are needed related to waterfront and visual access.

## **7. REFUSE & SERVICE AREAS**

### **7.1. PUBLIC COMMENTS**

A general comment regarding refuse areas was submitted stating the need for any new development to incorporate modern methods that manage waste and litter and do not detract from the waterfront, including parks. Concern was expressed related to the permitted locations for refuse in waterfront lots since the refuse area must be in the rear yard but cannot be along the waterfront side.

### **7.2. RECOMMENDED WATERFRONT OVERLAY REQUIREMENTS**

The recommended Waterfront Overlay requires the storage of refuse and recyclables to 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, 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. In addition, 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.

The Waterfront Overlay states that refused areas are prohibited in waterfront access yards and visual access yards. Refuse areas can still be located within the rear yard for waterfront properties, as long as the refuse area is not within the minimum 30' waterfront yard measured from the mean high water line.

### **7.3. WATERFRONT PLANNING COMMITTEE RECOMMENDATIONS**

Following a review and discussion of the public comments related to refuse and service areas, the Waterfront Planning Committee determined that no modifications are needed related to waterfront and visual access. However, it is recommended that the Village Board evaluate refuse and service area requirements Village-wide through an analysis separate from the Waterfront Overlay and amend the code, if needed, at a later date.

## **8. LANDSCAPE REQUIREMENTS**

### **8.1. PUBLIC COMMENTS**

Questions were raised regarding how invasive species are determined and that spacing requirements for trees should be established. A question was raised on who determines what street trees cannot be accommodated on the subject site. An additional question was raised regarding whether it is legal in New York state to require off site planting or contribution to a tree fund if an applicant is unable to comply with the requirements on the subject property. The Planning Board may need to be granted the authority by the Board of Trustees by ordinance or resolution.

### **8.2. RECOMMENDED WATERFRONT OVERLAY REQUIREMENTS**

The recommended Waterfront Overlay requires plant materials must be native to Long Island, per the Village of Sag Harbor Native Plant Guide, which is available upon request at the Village Building Department. Regarding recommended street tree requirements, the recommended Waterfront Overlay requires any new construction or additions to install a minimum of one street tree on the adjacent public right-of-way for each 30 feet of right-of-way frontage. Where the Planning Board finds that street trees cannot be accommodated on site, the Planning Board must, with the concurrence of the Superintendent of Public Works, require street tree installation in alternative locations within the Village.

### **8.3. WATERFRONT PLANNING COMMITTEE RECOMMENDATIONS**

Following a review and discussion of the public comments related to landscape requirements, the Waterfront Planning Committee determined that no modifications are needed related to the landscape requirements. However, it is recommended that the Village Board review legal comments raised by the public with the Village of Sag Harbor attorney and a review of the current list of approved plantings in the Village is conducted to ensure it is accurate and comprehensive. If applicable, the Village should expand upon the lists and include specific recommendations for street trees.

## **9. TRAFFIC & PARKING**

### **9.1. PUBLIC COMMENTS**

Comments were provided by the public that generally were supportive of incorporating Transportation Demand Management (TDM) strategies in the Village; however, concerns were raised that there can be challenges to gaining public acceptance and enforcement of TDM strategies, which decreases the effectiveness of TDM strategies. Clarification was requested regarding the permitted location for off-street parking on waterfront properties since parking is not permitted in the front yard or the waterfront side. It was requested that the Village consider eliminating parking requirements for Civic buildings.

A draft of the TDM strategies was posted on February 4, 2021 for review and comment by the public. To provide additional time to comment on the draft TDM, an addendum to this report will be provided to the Village Board at the March 9, 2021 Village Board meeting.