

Village of Mamaroneck



*Village Hall at the Regatta
P.O. Box 369*

*123 Mamaroneck Avenue
Mamaroneck, NY 10543*

<http://www.villageofmamaroneck.org>

OFFICE OF
ROBERT A. SPOLZINO
VILLAGE ATTORNEY

Tel (914) 777-7737
Fax (914) 777-7769

TO: Mayor Murphy and the Board of Trustees
Jerome Barberio, Village Manager
Daniel Sarnoff, Assistant Village Manager

FROM: Robert A. Spolzino, Esq.

RE: Proposed Local Law Regarding Land Use Application Notification
Requirements

DATE: April 3, 2019

Pursuant to the Board's direction, I have prepared a proposed local law that strengthens and makes uniform the public notice provisions with respect to applications to land use boards. The proposed local law is attached.

The form of the law may be somewhat different than what you may have expected. Rather than simply amend the various notice provisions in the Code, I have created a new article within chapter 342 entitled "Village of Mamaroneck Uniform Land Use Review Procedures." All of the land use board procedural provisions would refer to that article for notice requirements. Making the procedures uniform and accessible in one place, rather than scattered throughout the Code, will make it easier for residents to know what the requirements are, for Village staff to enforce those requirements and for applicants to comply with them.

The proposed local law would also begin to implement a modern, technology-based approach to notice of land use applications. The requirement for a sign on the subject property would not change and an initial letter to the owner of every property within 400 feet of the property which is the subject of the application would still be required. The letter, however, would go out before the application is first heard and would identify all of the required approvals, state when the applicant anticipates that each board will first consider the application and provide a web address and phone number for additional information. After a brief discussion, the staff believes that we can implement a process by which a resident who wishes to receive information about a particular application

could sign up on the website and receive email updates after every land use board meeting that will contain information about what happened at the meeting and when the application will next be considered. We hope to be able to supplement that in the near future with online access to all of the application documents and proceedings.

PROPOSED LOCAL LAW __ – 2019

A Proposed Local Law to amend Chapter 342 of the Code of the Village of Mamaroneck (Zoning) regarding land use review procedures.

BE IT ENACTED BY THE BOARD OF TRUSTEES OF THE VILLAGE OF MAMARONECK
AS FOLLOWS:

*(Language in strike-through ~~abedefghijk~~ to be deleted; language in **bold** is to be added)*

Section 1.

Section 6-6(A) of the Code of the Village of Mamaroneck is amended to read as follows:

A. Every application for a permit for the construction or reconstruction, as defined in § 6-3 herein, of any building or structure within the Village of Mamaroneck shall be referred by the Building Inspector to the Board of Architectural Review within five days of the date of the application, provided that it conforms in all respects to all other applicable laws and ordinances. **The applicant must comply with the notification requirements set forth in article XX of chapter 342.**

~~(1) Every applicant that submits an application to the Building Inspector, which is subsequently referred to the Board of Architectural Review, must post a notification sign on the property which is the subject of said application within three days of acceptance of the application by the Board of Architectural Review and must maintain the posted sign in place until the Board of Architectural Review has rendered its final decision approving or denying said application. The sign shall be erected not more than 10 feet from the front yard boundary of the property that abuts a public road and must be conspicuous to the public. The bottom edge of the sign so erected shall be positioned no less than 2.5 feet and no more than three feet above the ground. If the sign's visibility is obscured by vegetation, the applicant must cut the vegetation to a degree sufficient to maintain clear visibility of the sign from the road. If the front yard of the property does not abut a public road, a sign shall be posted in a location that can readily be seen by the public. A sign erected under this provision must be removed within 10 days after the Board of Architectural Review has rendered its final decision approving or denying said application.~~

~~(2) In the event that an application shall be withdrawn or become inactive, the applicant shall remove the sign within five business days of withdrawing the application or of receiving notice from the Board of Architectural Review that the application has been designated inactive. For the purposes of this section, any application which has not appeared on the Board of Architectural Review's agenda for six or more months shall be designated inactive. The Board of Architectural Review shall notify the applicant, in writing, that the application has become inactive and instruct the applicant to remove the sign until such time as the application shall be reactivated. Once the application is reactivated, the sign shall be posted within three days.~~

~~(3) Said sign shall be at least 30 inches by 20 inches in size, consist of sturdy and serviceable material containing a white background with black letters and shall read as follows, in legible lettering at least two inches high:~~

~~"ON THIS SITE A (describe action set forth in the application) IS PROPOSED. THIS MATTER WILL BE DISCUSSED AT A BOARD OF ARCHITECTURAL REVIEW MEETING ON (give date) AT (give time) AT (give location)."~~

~~The applicant shall update said sign at least two weeks prior to the first Board meeting in which the applicant's matter will be heard, and at least one week prior to all subsequent meetings when the application review is continued.~~

~~(4) Prior to the commencement of any public hearing or, if no public hearings are required, prior to the rendering of any decision disposing of any application, the applicant shall submit a sworn certification verifying placement and maintenance of the required notice sign. If the certification is not timely submitted, any scheduled public hearings shall be cancelled, subject to rescheduling, and any dispositive action by the Board of Architectural Review shall be deferred until timely certification is submitted. In the event of repeated or continued noncompliance with the sign posting and certification requirements, the application may be dismissed at the discretion of the Board of Architectural Review.~~

Section 2.

Section 192-6 of the Code of the Village of Mamaroneck is amended as follows:

§ 192-6. Notice of application.

The applicant must comply with the notification requirements set forth in article XX of chapter 342.

~~A. Within five days of its receipt of a completed application for a permit regarding a proposed regulated activity, the Agency shall provide the applicant with a notice of application, which the applicant shall publish, at his or her own expense, at least once in the official newspaper of the Village of Mamaroneck.~~

~~B. Said notice of application shall be in a form prescribed by the Agency and shall:~~

~~(1) Specify that persons wishing to object to the application should file a notice of objection by a specified date, together with a statement of the precise grounds of objection to the application, with the Agency.~~

~~(2) Specify that if no notices of objection are timely filed or if the Agency determines that the proposed activity is of such a minor nature as to not affect or endanger the balance of systems within any wetland, then the Agency, in its discretion, may determine a hearing is not necessary and dispense with the public hearing.~~

~~(3) Specify that the application, including all documents and maps therewith, is available for public inspection at the office of the Clerk of the Village of Mamaroneck.~~

~~C. Notwithstanding any other provisions of this section, the Agency may, in its discretion,~~

~~dispense with the requirement for a public notice of application and require a notice of hearing pursuant to § 192-8.~~

Section 3.

Section 240-21(D) of the Code of the Village of Mamaroneck is amended to read as follows:

D. Public hearing notification and review procedure for permit applications.

- (1) Upon receipt of a permit application that complies in material respect with all applicable submission requirements, the Building Department shall refer the application to the Harbor and Coastal Zone Management Commission for review and determination, and circulate the application to the Village's engineering consultant, Commission counsel and staff, other Commission consultants as determined to be necessary and appropriate, the Harbor Master, the Clerk-Treasurer and the Village Manager for their review and comment. The Harbor and Coastal Zone Management Commission shall calendar a public hearing for each application in accordance with the Commission's Rules of Procedure.
- (2) ~~All property owners within 400 feet of any boundary line of the applicant's property shall be notified, by regular mail at least 15 days prior to the public hearing, of said hearing date by the applicant, who shall provide proof to the Harbor and Coastal Zone Management Commission of such notification.~~ **The applicant must comply with the notification requirements set forth in article XX of chapter 342.**
- (3) ~~Every applicant must post a notification sign on the property which is the subject of said application at least 10 days prior to the public hearing date and must maintain the posted sign in place until the Harbor and Coastal Zone Management Commission has rendered its final decision approving or denying said application. The sign shall be erected not more than 10 feet from the front yard boundary of the property that abuts a public road and must be conspicuous to the public. The bottom edge of the sign so erected shall be positioned no less than 2.5 feet and no more than three feet above the ground. If the sign's visibility is obscured by vegetation, the applicant must cut the vegetation to a degree sufficient to maintain clear visibility of the sign from the road. If the front yard of the property does not abut a public road, a sign shall be posted in a location that can readily be seen by the public. A sign erected under this provision must be removed within 10 days after the Harbor and Coastal Zone Management Commission has rendered its final decision approving or denying said application.~~
- (4) ~~In the event that an application shall be withdrawn or become inactive, the applicant shall remove the sign within five business days of withdrawing the application or of receiving notice from the Harbor and Coastal Zone Management Commission that the application has been designated inactive. For the purposes of this section, any application which has not appeared on the Harbor and Coastal Zone Management Commission's agenda for six or more months shall be designated inactive. The Harbor and Coastal Zone Management Commission shall notify the applicant, in writing, that the application has become inactive and instruct~~

~~the applicant to remove the sign until such time as the application shall be reactivated. Once the application is reactivated, the sign shall be posted within three days.~~

- ~~(5) Said sign shall be at least 30 inches by 20 inches in size, consist of sturdy and serviceable material containing a white background with black letters and shall read as follows, in legible lettering at least two inches high:~~

~~"ON THIS SITE A (describe action set forth in the application) IS PROPOSED. THIS MATTER WILL BE DISCUSSED AT A HARBOR AND COASTAL ZONE MANAGEMENT COMMISSION MEETING ON (give date) AT (give time) AT (give location)."~~

~~The applicant shall update said sign at least two weeks prior to every Commission meeting in which the applicant's matter will be heard.~~

- ~~(6) Prior to the commencement of the public hearing, the applicant shall submit a sworn certification verifying placement and maintenance of the required notice sign. If the certification is not timely submitted, any scheduled public hearing shall be cancelled, subject to rescheduling, and any dispositive action by the Harbor and Coastal Zone Management Commission shall be deferred until timely certification is submitted. In the event of repeated or continued noncompliance with the sign posting and certification requirements, the application may be dismissed at the discretion of the Harbor and Coastal Zone Management Commission.~~

Section 4.

Section 240-29(B) of the Code of the Village of Mamaroneck is amended as follows:

- B. For the actions of all other Village agencies, except as otherwise provided in § 240-29H, the agency, upon the calendaring of an application on its agenda, shall forward a copy of the CAF, the application or a description of a proposed direct action, and supporting documentation to the Harbor and Coastal Zone Management Commission for its review. **The applicant must comply with the notification requirements set forth in article XX of chapter 342.**

Section 5.

Section 342-69 of the Code of the Village of Mamaroneck is amended as follows:

§ 342-69 Submission of application; variance request.

All applications for required special permits shall be made to the ~~Director of Building, Code Enforcement and Land Use Administration~~**Building Inspector**, who shall refer them to the Board of Appeals or the Planning Board, as may be required by this chapter. If the applicant requests a variance in conjunction with the special permit because of unnecessary hardship, the application shall state the circumstances constituting the basis for such request. ~~All applications made under this section shall comply with all required notice provisions as enumerated and set forth herein under Articles XI and XIII of this chapter, and Chapters 6 and 240 of this Code.~~ **The applicant must comply with the notification requirements set forth in article XX of chapter 342.**

Section 6.

Section 342-77(E) of the Code of the Village of Mamaroneck is amended as follows:

E. Notice.

The applicant must comply with the notification requirements set forth in article XX of chapter 342.

- ~~(1) Whenever site plan approval of the Planning Board is sought by an applicant, the applicant, in addition to any other notice required by law, shall notify, in writing, all property owners within 200 feet of any boundary line of the proposed site affected by the pending application.~~
- ~~(2) The notification referred to in Subsection E(1) hereof shall consist of a complete and accurate copy of the application submitted, the date(s) of any public hearing scheduled and a brief description of the nature of the proposed application. The notification shall be served personally or by certified mail, return receipt requested, upon all affected property owners at least 10 days prior to the scheduled hearing date, and an affidavit of service shall be filed with the Secretary of the Planning Board at least five days prior to the scheduled hearing date. In the event that service is effectuated by certified mail, then the return receipt shall be submitted to the Planning Board at the first hearing date.~~
- ~~(3) Every applicant that submits an application for site plan approval to the Planning Board must post one notification sign on the property which is the subject of said application at least 10 days prior to the scheduled hearing date and must maintain the posted sign in place until the Planning Board has rendered its final decision approving or denying said application. The sign shall be erected not more than 10 feet from the front yard boundary of the property that abuts a public road and must be conspicuous to the public. The bottom edge of the sign so erected shall be positioned no less than 2.5 feet and no more than three feet above the ground. If the sign's visibility is obscured by vegetation, the applicant must cut the vegetation to a degree sufficient to maintain clear visibility of the sign from the road. If the front yard of the property does not abut a public road, a sign shall be posted in a location that can readily be seen by the public. A sign erected under this provision must be removed within 10 days after the Planning Board has rendered its final decision approving or denying said application.~~
- ~~(4) In the event that an application shall be withdrawn or become inactive, the applicant shall remove the sign within five business days of withdrawing the application or of receiving notice from the Planning Board that the application has been designated inactive. For the purposes of this section, any application which has not appeared on the Planning Board's agenda for six or more months shall be designated inactive. The Planning Board shall notify the applicant, in writing, that the application has become inactive and instruct the applicant to remove the sign until such time as the application shall be reactivated. Once the application is reactivated, the sign shall be posted within three days.~~
- ~~(5) Said sign shall be at least 30 inches by 20 inches in size, consist of sturdy and~~

~~serviceable material containing a white background with black letters and shall read as follows, in legible lettering at least two inches high:~~

~~"ON THIS SITE A (describe action set forth in the application) IS PROPOSED. THIS MATTER WILL BE DISCUSSED AT A PLANNING BOARD MEETING ON (give date) AT (give time) AT (give location)."~~

~~The applicant shall update said sign at least two weeks prior to every Board meeting in which the applicant's matter will be heard.~~

- ~~(6) Prior to the commencement of any public hearing or, if no public hearings are required, prior to the rendering of any decision disposing of any application, the applicant shall submit a sworn certification verifying placement and maintenance of the required notice sign. If the certification is not timely submitted, any scheduled public hearings shall be cancelled, subject to rescheduling, and any dispositive action by the Planning Board shall be deferred until timely certification is submitted. In the event of repeated or continued noncompliance with the sign posting and certification requirements, the application may be dismissed at the discretion of the Planning Board.~~
- ~~(7) Failure to comply with any of the provisions hereof shall be a basis for denying any approval sought by the applicant.~~

Section 7.

Section 342-94(B) of the Code of the Village of Mamaroneck is amended as follows:

B. Notice.

- ~~(1) The Board shall not act upon any application for a variance or a special permit without first holding a public hearing, notice of which hearing and of the substance of the appeal or application shall be given by publication in a paper of general circulation in the Village at least five days before the date of such hearing. Provided that due notice shall have been published, that copies have been mailed to all government agencies required by law to be notified and to all property owners of record within 400 feet of the property which is the subject of the public hearing (except that, in the cases of fences and boat storage, the distance shall be 200 feet) and to the area school district and that there shall have been substantial compliance with the remaining provisions of this section, the failure of one or more property owners to receive such notice in exact conformance herewith shall not invalidate any action taken by the Board in connection with such applications. **The applicant must comply with the notification requirements set forth in article XX of chapter 342.**~~
- ~~(2) Every applicant that submits an application for a variance to the Board of Appeals must post one notification sign on the property which is the subject of said application at least 10 days prior to the scheduled hearing date and must maintain the posted sign in place until the Board has rendered its final decision approving or denying said application. The sign shall be erected not more than 10 feet from the front yard boundary of the property that abuts a public road and must be~~

~~conspicuous to the public. The bottom edge of the sign so erected shall be positioned no less than 2.5 feet and no more than three feet above the ground. If the sign's visibility is obscured by vegetation, the applicant must cut the vegetation to a degree sufficient to maintain clear visibility of the sign from the road. If the front yard of the property does not abut a public road, a sign shall be posted in a location that can readily be seen by the public. A sign erected under this provision must be removed within 10 days after the Board has rendered its final decision approving or denying said application.~~

~~(a) In the event that an application shall be withdrawn or become inactive, the applicant shall remove the sign within five business days of withdrawing the application or of receiving notice from the Board that the application has been designated inactive. For the purposes of this section, any application which has not appeared on the Board's agenda for six or more months shall be designated inactive. The Board shall notify the applicant, in writing, that the application has become inactive and instruct the applicant to remove the sign until such time as the application shall be reactivated. Once the application is reactivated, the sign shall be posted within three days.~~

~~(b) Said sign shall be at least 30 inches by 20 inches in size, consist of sturdy and serviceable material containing a white background with black letters and shall read as follows, in legible lettering at least two inches high:~~

~~"ON THIS SITE A (describe action set forth in the application) IS PROPOSED. THIS MATTER WILL BE DISCUSSED AT A BOARD OF APPEALS MEETING ON (give date) AT (give time) AT (give location)."~~

~~The applicant shall update said sign at least two weeks prior to every Board meeting in which the applicant's matter will be heard.~~

~~(c) Prior to the commencement of any public hearing or, if no public hearings are required, prior to the rendering of any decision disposing of any application, the applicant shall submit a sworn certification on a form provided by the Village verifying placement and maintenance of the required notice sign. If the certification is not timely submitted, any scheduled public hearings shall be cancelled, subject to rescheduling, and any dispositive action by the Board shall be deferred until timely certification is submitted. In the event of repeated or continued noncompliance with the sign posting and certification requirements, the application may be dismissed at the discretion of the Board.~~

Section 8.

Chapter 342 of the Code of the Village of Mamaroneck is amended by adding Article XX, as follows:

Article XX Village of Mamaroneck Uniform Land Use Review Procedures

§ 342-152 Purpose and intent.

The Board of Trustees encourages public participation in the land use application

review process in the Village of Mamaroneck. Public participation requires meaningful and regular notice of the approval process often through proceedings by multiple land use boards over an extended period of time. Modern technology makes it possible to provide that notice. The purpose of this article is to establish a uniform, integrated and effective procedure for providing notice to residents who may have an interest of land use applications and of the public meetings at which those applications will be discussed.

§ 342-153 Definitions.

For purposes of this Article XX, the following terms shall have the meanings set forth in this section:

LAND USE APPLICATION

A referral to the Board of Architectural Review under Chapter 6, Board of Architectural Review; an application for permission to conduct a regulated activity in a wetland under Chapter 192, Freshwater Wetlands; an application for a permit to construct or reconstruct a marine structure under Article VI of Chapter 240, Management of Coastal Zone, Harbor and Vessels; a determination of consistency under Article VIII of Chapter 240, Management of Coastal Zone, Harbor and Vessels; an application for site plan approval under Article XI of Chapter 342, Zoning; an application for a special permit application under Article X of Chapter 342; a variance under Article XIII of Chapter 342; and approval of a subdivision plat under Chapters 58 and A348.

LAND USE BOARD

The Board of Architectural Review, the Harbor and Coastal Zone Management Commission, the Planning Board and the Zoning Board of Appeals.

§ 342-154 Notice of application required.

- A. The applicant for every land use approval must, at least 15 days prior to the first date at which the application will be heard by any land use board, provide notice of the application in two ways: by posting a sign on the property and by mailing notice of the application, by certified mail, to the record owner of every property within 400 feet of any boundary line of the site that is the subject of the application.
- B. The sign that is required by this section to be posted must comply with the following requirements:
 - 1. The sign must be erected not more than 10 feet from the front yard boundary of the property that is the subject of the application or, if the front yard boundary does not abut a public road, in some other conspicuous location from which the sign can readily be seen from the public road. The bottom edge of the sign must be no less than 2.5 feet and no more than three feet above the ground. If the sign's visibility is obscured by vegetation, the applicant must cut the vegetation to a degree sufficient to maintain clear

visibility of the sign from the road.

2. The sign must be at least 30 inches by 20 inches in size, consist of sturdy and serviceable material containing a white background with black letters and must read as follows, in legible lettering at least two inches high: "AN APPLICATION TO A LAND USE BOARD [OR BOARDS] OF THE VILLAGE OF MAMARONECK HAS BEEN MADE WITH RESPECT TO THIS SITE. THE APPLICATION IS FOR (identify the permits or approvals requested). IF GRANTED, THE APPLICANT WILL BE PERMITTED TO BUILD (describe the proposed construction). IT IS ANTICIPATED THAT THIS MATTER WILL BE DISCUSSED AT THE FOLLOWING BOARDS ON THE FOLLOWING DATES AND TIMES AT THE FOLLOWING LOCATIONS (identify each anticipated meeting location). FURTHER INFORMATION CAN BE FOUND AT (identify website) or by calling (identify individual who will respond to inquiries)."
 3. The sign must remain posted until every land use application with respect to the property is either granted, denied, withdrawn or becomes inactive and must be removed within 10 days after the last of those dates. An application is inactive if it has not appeared on the agenda of any land use board for six months.
 4. The applicant must update the sign after every meeting at which an application with respect to the property is considered.
- C. The notice that is required by this section to be sent by mail must comply with the following requirements:
1. The notice must be mailed to the owner of record of each property within 400 feet of the property that is the subject of the application.
 2. The notice must be sent by certified mail.
 3. The notice must include the following information:
 - (a) the name of the applicant;
 - (b) the location of the property with respect to which approval has been requested;
 - (c) the specific approval or approvals requested and the board or boards to which application is being made;
 - (d) the nature of the construction or other land development activity that would be conducted if the approvals are granted;
 - (e) to the extent known, the date, time and place of the first public meeting of each board at which the application will be considered;
 - (f) the website and a telephone number for additional information with respect to the application; and
 - (g) a statement that the application, including all documents and maps, is available for public inspection at the office of the Clerk of the Village of

Mamaroneck.

§ 342-155 Notice to other governmental entities.

In addition to the requirements of section 342-154, the applicant must provide notice of the application to the school district in which the property that is the subject of the application is located.

§ 342-156 Proof of notice.

At least five days prior to the first public meeting at which the application will be considered, the applicant must submit a photograph of the sign, a sworn statement certifying that the sign has been installed and maintained as required by this article and a sworn statement that the applicant has made the required mailing, with proof of mailing from the United States Postal Service. If the applicant does not make this submission in a timely fashion, the application will be removed from the calendar until due proof of the notice required by this article is submitted.

§ 342-157 Effect of failure to give required notice.

Failure to comply with any of the provisions of this article may be a basis for denying an application.

Section 9.

If any section, subsection, clause, phrase or other portion of this local law is, for any reason, declared invalid, in whole or in part, by any court, agency, commission, legislative body or other authority of competent jurisdiction, the portion of the law declared to be invalid will be deemed a separate, distinct and independent portion and the declaration will not affect the validity of the remaining portions hereof, which will continue in full force and effect.

Section 10.

This law is adopted pursuant to the authority granted by Municipal Home Rule Law § 10(1)(e)(3) and will supersede the provisions of the Village Law to the extent that they are inconsistent with this local law.

Section 11.

This local law will take effect immediately upon its filing in the office of the Secretary of State in accordance with Municipal Home Rule Law § 27.