

PROPOSED LOCAL LAW __ – 2020

A Proposed Local Law to amend Chapters 240 and 342 of the Code of the Village of Mamaroneck (Zoning) regarding required setbacks from water bodies.

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

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

Section 1.

Section 240-2 of the Code of the Village of Mamaroneck is amended by adding the following subsections:

- C. The Board of Trustees has determined that the public interest, health and safety and the economic and general welfare of the residents of the Village of Mamaroneck will be best served by providing for the protection, preservation, proper maintenance and use of the Village's coastal shoreline, waterbodies and watercourses from encroachment, spoiling, polluting or elimination resulting from population growth attended by commercial development, housing, road construction and/or disregard for natural resources.**
- D. Buffer Areas adjacent to the coastal shoreline, waterbodies, and watercourses provide essential protection mitigating the impacts of activities taking place on surrounding lands.**
- E. The protection of buffer areas of the costal shoreline, waterbodies, watercourses, and is a matter of concern to the entire Village. The establishment of regulatory and conservation practices for the coastal shoreline, waterbodies, watercourses, and respective buffer areas serves to protect the Village by ensuring review and regulation of the coastal area, particularly any activity on or along the coastal shoreline, wetlands, watercourses, and buffer areas that might adversely affect the Village's citizens' health, safety and welfare.**
- F. Encroachment on buffer areas of the costal shoreline, waterbodies, watercourses, can cause or aggravate flooding, erosion, sedimentation, stormwater and waste treatment and may pose a threat to the health, safety and welfare of the people of the Village and the surrounding region.**

Section 2.

Section 240-3 of the Code of the Village of Mamaroneck is amended as follows:

§ 240-3 Authority.

This chapter is adopted pursuant to the following laws of the State of New York: Article 42 of the Executive Law, § 46-a of Article 4 of the Navigation Law, Article 2 of the Municipal Home Rule Law, the **Environmental Conservation Law** and Article 9 of the State Constitution. This chapter is also adopted pursuant to the Waterfront Revitalization and Coastal Resources Act in order to implement the policies of the Village of Mamaroneck Local Waterfront Revitalization Program.

Section 3.

Section 240-4(B) of the Code of the Village of Mamaroneck is amended by adding subsection five, as follows:

- (5) Define a 50-foot buffer area surrounding a coastal shoreline, waterbody or watercourse, and provide for a permit for developments proposed within the 50-foot buffer area and criteria for considering and approving such developments.**

Section 4.

Section 240-5 of the Code of the Village of Mamaroneck is amended the definition of "mean high water," as follow:

MEAN HIGH WATER LEVEL (TIDAL WATERBODY OR WATERCOURSE)

The average height of the high waters of a tidal waterbody over a nineteen-year period immediately preceding the current year.

Section 5.

Section 240-5 of the Code of the Village of Mamaroneck is amended by adding the following definitions:

ACTION

Any projects or physical activity, such as construction or other activities that may affect the environment by changing the use, appearance or condition of any natural resource or structure, that is directly undertaken, funded or approved by an agency of the Village of Mamaroneck; or agency planning and policy-making activities that may affect the environment and commit the agency to a definite course of future decisions; or adoption of agency rules, regulations and procedures, including local laws, codes, ordinances, executive orders and resolutions that may affect the environment; or any combination of the above; provided, however, that "action" does not include the following:

- A. Maintenance or repair involving no substantial changes in an existing structure or facility.
- B. Replacement, rehabilitation or reconstruction of a structure or facility, in kind, on the same site, including upgrading buildings to meet building or fire codes.
- C. Agricultural farm management practices, including construction, maintenance and repair of farm buildings and structures, and land use changes consistent with generally accepted principles of farming.
- D. Repaving of existing highways not involving the addition of new travel lanes.
- E. Street openings and right-of-way openings for the purpose of repair or maintenance of existing utility facilities.
- F. Maintenance of existing landscaping or natural growth.
- G. Construction or expansion of a primary or accessory/appurtenant, nonresidential structure or facility involving less than 4,000 square feet of gross floor area and not involving a change in zoning or a use variance and consistent with local land use controls, but not radio communication or microwave transmission facilities, **unless a**

permit is required under Chapter 192 of the Village Code or the construction or expansion is within the 50-foot Buffer Area.

- H. Routine activities of educational institutions, including expansion of existing facilities by less than 10,000 square feet of gross floor area and school closings, but not changes in use related to such closings.
- I. ~~Except when a wetlands permit is required under Chapter 192 of the Village Code,~~ Construction or expansion of a single-family, a two-family or a three-family residence on an approved lot including provision of necessary utility connections as provided in Subsection K and the installation, maintenance and/or upgrade of a drinking water well and a septic system, **unless a permit is required under Chapter 192 of the Village Code or the construction or expansion is within the 50-foot Buffer Area.**
- J. ~~Except when a wetlands permit is required under Chapter 192 of the Village Code,~~ Construction, expansion or placement of minor accessory/appurtenant residential structures, including garages, carports, patios, decks, swimming pools, tennis courts, satellite dishes, fences, barns, storage sheds or other buildings not changing land use or density, but not including construction, expansion or placement of water-dependent accessory/appurtenant residential structures, such as piers, docks, seawalls or similar water access or erosion control structures, or other structures within ~~50 feet of mean high water~~ **the 50-foot Buffer Area, unless a permit is required under Chapter 192 of the Village Code.**
- K. Extension of utility distribution facilities, including gas, electric, telephone, cable, water and sewer connections to render service in approved subdivisions or in connection with any action on this list.
- L. Granting of individual setback and lot line variances.
- M. Granting of an area variance(s) for a single-family, two-family or three-family residence.
- N. Public or private best forest management (silvicultural) practices on less than 10 acres of land, but not including waste disposal, land clearing not directly related to forest management clear-cutting or the application of herbicides or pesticides.
- O. Minor temporary uses of land having negligible or no permanent impact on the environment.
- P. Installation of traffic control devices on existing streets, roads and highways.
- Q. Mapping of existing roads, streets, highways, natural resources, land uses and ownership patterns.
- R. Information collection, including basic data collection and research, water quality and pollution studies, traffic counts, engineering studies, surveys, subsurface investigations and soil studies that do not commit the agency to undertake, fund or approve any action classified as either a Type I or unlisted action under the New York State Environmental Quality Review Act Regulations (6 NYCRR Part 617).

- S. Official acts of a ministerial nature involving no exercise of discretion, including building permits where issuance is predicated solely on the applicant's compliance or noncompliance with the relevant local building or preservation code(s).
- T. Routine or continuing agency administration and management, not including new programs or major reordering of priorities that may affect the environment.
- U. Conducting concurrent environmental, engineering, economic, feasibility and other studies and preliminary planning and budgetary processes necessary to the formulation of a proposal for action, provided that those activities do not commit the agency to commence, engage in or approve such action.
- V. Collective bargaining activities.
- W. Investments by or on behalf of agencies or pension or retirement systems or refinancing existing debt.
- X. Inspections and licensing activities relating to the qualifications of individuals or businesses to engage in their business or profession.
- Y. Purchase or sale of furnishings, equipment or supplies, including surplus government property, other than the following: land, radioactive material, pesticides, herbicides or other hazardous materials.
- Z. License, lease and permit renewals, or transfers of ownership thereof, where there will be no material change in permit conditions or the scope of permitted activities.
- AA. Adoption of regulations, policies, procedures and local legislative decisions in connection with any action on this list.
- BB. Engaging in review of any part of an application to determine compliance with technical requirements, provided that no such determination entitles or permits the project sponsor to commence the action unless and until all requirements of this chapter have been fulfilled.
- CC. Civil or criminal enforcement proceedings, whether administrative or judicial, including a particular course of action specifically required to be undertaken pursuant to a judgment or order, or the exercise of prosecutorial discretion.
- DD. Adoption of a moratorium on land development or construction.
- EE. Interpreting an existing code, rule or regulation.
- FF. Designation of local landmarks or their inclusion within historic districts.
- GG. Emergency actions that are immediately necessary on a limited and temporary basis for the protection or preservation of life, health, property or natural resources, provided that such actions are directly related to the emergency and are performed to cause the least change or disturbance, practicable under the circumstances, to the environment. Any decision to fund, approve or directly undertake other activities after the emergency has expired is fully subject to the review procedures of this chapter.

HH. Applications for area variances for signs located on existing structures.

- II. The construction, expansion or reuse of a nonresidential structure not requiring a change in zoning or a use variance involving less than 8,000 square feet of gross floor area in the Village's General Commercial (C-1) and Central Commercial (C-2) Districts, unless a permit is required under Chapter 192 of the Village Code or the construction, expansion or reuse is within the 50-foot Buffer Area.

50-FOOT BUFFER AREA

An area surrounding a coastal shoreline, waterbody, or watercourse that is subject to the regulations of this chapter extending 50 feet from the mean high water level.

MEAN HIGH WATER LEVEL (NON-TIDAL WATERBODY OR WATERCOURSE)

The average springtime high water level of a non-tidal waterbody or watercourse, as determined by vegetative characteristics, such as the presence, absence or destruction of terrestrial or aquatic vegetation, and physical characteristics, such as a clear natural line impressed on a bank, scouring, shelving, or the presence of sediments or debris.

WATERBODY

Any natural or artificial pond, lake, embayment, reservoir, or other area which usually or intermittently contains water and which has a discernible shoreline.

WATERCOURSE

Any natural or artificial, permanent or intermittent, public or private waterbody or water segment, such as ponds, lakes, reservoirs, rivers, streams, brooks, estuaries, bays, harbors, waterways and the like that is contained within, flows through or borders on the Village.

Section 6.

Section 240-30 of the Code of the Village of Mamaroneck is amended as follows:

§ 240-30 Planning Board permit-required Development within the 50-foot Buffer Area.

- A. ~~In addition to all other required permits and approvals, a permit from the Planning Board shall be required for any No building, structure or parking area otherwise requiring subdivision or site plan approval that is wholly or in part hereafter may be constructed, altered, enlarged and/or enclosed within the 50-foot Buffer Area 50 feet from the mean high water line of Long Island Sound or any body of water which flows into Long Island Sound. A dock, mooring, breakwater or other structure which must, due to the nature of its use, be located on, in or immediately adjacent to the water shall be exempt from this provision. Application shall be made to the Planning Board on such forms as it shall require and shall be coordinated with the subdivision or site plan approval process. Notwithstanding any inconsistent provision of the Village Code, this provision shall not apply to normal maintenance or to the replacement in kind of any existing building or structure which has been damaged or destroyed by fire, storm or other casualty; however, damage or destruction due to neglect shall not be exempt from the requirement of a permit. The permit applicant shall demonstrate to the Planning Board's satisfaction that the encroaching building, structure, or parking area is water-dependent (based upon the criteria in the Village of Mamaroneck Local Waterfront Revitalization Program) or cannot reasonably be located elsewhere on the property. Water-dependent buildings or structures may include, as an illustration, marinas, cabanas, boat~~

~~storage, and boat mechanics' work areas, except,~~

- (1) a dock, mooring, breakwater or other structure which must, due to the nature of its use, be located on, in or immediately adjacent to the water;
- (2) construction which constitutes normal maintenance or the replacement in kind of any existing building or structure which has been damaged or destroyed by fire, storm or other casualty, but not construction that is necessary to repair damage or destruction due to neglect; and
- (3) a building, structure or parking area for which the Zoning Board of Appeals has granted a permit in accordance with this section or § 342-50(B)(5) of this Code.

B. The Zoning Board of Appeals may grant a permit for the construction, alteration, enlargement or enclosure of a building, structure or parking area within the 50-foot Buffer Area if it determines that (i) locating the building, structure or parking area within the 50-foot Buffer Area will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties, (ii) the benefit sought by the applicant cannot reasonably be achieved by some method, feasible for the applicant to pursue, other than locating the structure within the 50-foot Buffer Area, and (iii) locating the building, structure or parking area within the 50-foot Buffer Area will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

Section 7.

Section 342-3 of the Code of the Village of Mamaroneck is amended by adding the following definitions:

COASTAL SHORELINE

The shoreline of Long Island Sound.

50-FOOT BUFFER AREA

An area surrounding a coastal shoreline, waterbody, or watercourse that is subject to the regulations of this chapter extending 50 feet from the mean high water level.

MEAN HIGH WATER LEVEL (NON-TIDAL WATERBODY OR WATERCOURSE)

The average springtime high water level of a non-tidal waterbody or watercourse, as determined by vegetative characteristics, such as the presence, absence or destruction of terrestrial or aquatic vegetation, and physical characteristics, such as a clear natural line impressed on a bank, scouring, shelving, or the presence of sediments or debris.

MEAN HIGH WATER LEVEL (TIDAL WATERBODY OR WATERCOURSE)

The average height of the high waters of a tidal waterbody over a nineteen-year period immediately preceding the current year.

WATERBODY

Any natural or artificial pond, lake, embayment, reservoir, or other area which usually or intermittently contains water and which has a discernible shoreline.

WATERCOURSE

Any natural or artificial, permanent or intermittent, public or private waterbody or water segment, such as ponds, lakes, reservoirs, rivers, streams, brooks, estuaries, bays,

harbors, waterways and the like that is contained within, flows through or borders on the Village.

Section 8.

Section 342-50(B)(5) of the Code of the Village of Mamaroneck is repealed and section 342-50(B)(6) is renumbered section 342-50(B)(5).

Section 9.

Section 342-76 of the Code of the Village of Mamaroneck is amended by adding subsection P, as follows:

P. 50-foot Buffer Area. In addition to the other criteria and standards set forth in this section, for any development within the 50-foot Buffer Area that is permitted by the Zoning Board of Appeals pursuant to section 240-30, the site development plan must:

- (1) Require a landscape plan for the area between the building, structure or parking area that incorporates native plantings and shade trees to the satisfaction of the Planning Board. Non-native plants must not be planted within the 50-foot Buffer Area.**
- (2) Demonstrate that the bank of the coastal shoreline, waterbody or watercourse is stable and will remain stable after development to the satisfaction of the Planning Board.**
- (3) Require that any parking areas within the 50-foot Buffer Area must be constructed of permeable pavers or porous pavement. Impervious parking surface within the 50-foot Buffer Area is prohibited.**
- (4) Satisfy the water quantity requirements of Chapter 294, regardless of whether direct discharge is possible.**
- (5) Incorporate any other requirements to minimize the environmental impact of the development in the 50-foot Buffer Area on the costal shoreline, waterbodies, watercourses.**

Section 10.

Section 342-89 of the Code of the Village of Mamaroneck is amended as follows:

§ 342-89 Jurisdiction.

The Board shall have exclusive jurisdiction of all matters prescribed by § 7-712 of the Village Law or by this chapter **or chapter 240 of the Village Code**, or as may hereafter be referred to it by law or the Village Board. The following provisions relating to its powers and duties shall not be deemed to limit any power conferred by law upon the Board of Appeals.

Section 11.

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 12.

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 13.

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.



Village of Mamaroneck Planning Department

Memo

To: Jerry Barberio- Village Manager
From: Greg Cutler, AICP- Director of Planning
CC: Mayor and Board of Trustees, Dan Sarnoff- Assistant Village Manager, Robert Spolzino-Village Attorney, Christy Mason, Deputy Village Attorney
Date: 1/8/20
Re: 50 foot buffer special permit- Policy Recommendation

BACKGROUND

At the December 16, 2019 meeting the Board of Trustees had a discussion regarding the 50 foot setback requirement and the recommendations of the land use boards. There was some confusion regarding what the Zoning Board of Appeals recommendation included. Subsequently, the Board of Trustees received further clarification from the Chair of the ZBA, who indicated that the special permit should be by the ZBA, and the findings should include the area variance findings as well as the findings recommended by the Planning Department.

SUMMARY OF LAND USE BOARD RECOMMENDATIONS

	Planning Board	Board of Appeals	HCZMC
Special Permit?	Yes	Yes	Yes
Type of Conditions	New Special Permit Criteria	- New Special Permit Criteria AND - Select Area Variance Criteria	New Special Permit Criteria
Apply to all development?	Yes*	Yes*	Yes
Recommended Reviewing Board	Planning Board	Board of Appeals	HCZMC
Additional Comments	Concerns that the law as-is will negatively impact affordable housing development.	The requirement for no pesticide should be mandatory for the Village and not just a condition related to this special permit.	

*These views are not in the official recommendation memos but were discussed at the respective meetings.

DRAFT POLICY CONDITIONS

The following draft policy conditions are inclusive of three of the area variance criteria plus the criteria recommended by the Planning Department. This is being included as a potential policy for your consideration and was not prepared at the direction of the Board of Trustees.

- 1) That locating the building, structure or parking area within 50 feet from the mean highwater line will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties.
- 2) The benefit sought by the applicant cannot be achieved by some method, feasible for the applicant to pursue, other than locating the structure within 50 feet from the mean highwater line.
- 3) Locating the building, structure or parking area within 50 feet from the mean highwater line will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.
- 4) Buildings, structures, or parking areas must be a minimum of ten feet further from the waterbody than the existing building, structure, or parking area located on the property.
- 5) The landscape plan must incorporate native plantings and shade trees to the satisfaction of the **INSERT REVIEWING BOARD**. Non-native plants must not be planted within the riparian buffer.
- 6) The use of non-organic fertilizers within the riparian buffer are prohibited.
- 7) The applicant must demonstrate to the satisfaction of the **INSERT REVIEWING BOARD** that the stream bank is stable and will remain stable in a post-development condition.
- 8) Parking areas within the riparian will be constructed with of permeable pavers or porous pavement. Impervious parking surface within the riparian buffer are prohibited.
- 9) All development within the riparian buffer, regardless of whether direct discharge is possible, must meet the otherwise applicable water quantity requirements of Chapter 294.

It is further recommended that the special permit not be within the infill housing section of the code but rather as a standalone special permit in Article VII that would apply to all development in the C-1 and C-2 zoning districts.