

# **Final Generic Environmental Impact Statement**

## **Proposed Action:**

✧ Planning Strategies of the Inc. Village of Sag Harbor ✧  
(with an emphasis on the Commercial District)

✧ Village Zoning Code Update ✧  
Substantial Revisions to Chapter 55, Zoning  
of the Code of the Village of Sag Harbor

✧ Village Zoning Map ✧  
Revised Zoning District Boundaries &  
Overlays of Suffolk County Tax Map

## **Project Location:**

Incorporated Village of Sag Harbor  
Suffolk County • New York State

## **Lead Agency:**

Board of Trustees  
Inc. Village of Sag Harbor  
PO Box 660 • 55 Main Street  
Sag Harbor, New York 11963

## **Contact Person:**

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## **Date Accepted by Lead Agency:**

May 15, 2009

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- March 4, 2009 Letter From Thomas Isles, AICP, Director of Planning & Daniel J. Gulizio, Deputy Director of the Suffolk County Department of Planning To the Inc. Village of Sag Harbor
- March 17, 2009 Facsimile From Village Attorney Anthony Tohill, Esq. To Andrew Freleng, Chief Planner for the Suffolk County Department of Planning
- March 19, 2009 Correspondence From Andrew Freleng, Chief Planner for the Suffolk County Department of Planning To Village Attorney Anthony Tohill, Esq.
- March 4, 2009 Correspondence From Village Attorney Anthony Tohill, Esq. To Mayor Gregory Ferraris and Trustee Tiffany Scarlato

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*Documents Describing the Concept of Special Exception Uses*

- April 14, 2009 Letter from Village Attorney Anthony Tohill, Esq. To Bruce Tait, Chairman of the Harbor Committee
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**Introduction.**

This document is the Final Generic Environmental Impact Statement (GEIS) for the following three documents, which will be collectively referred to as the “proposed action” throughout this Final GEIS:

- 1) The *Planning Strategies for the Inc. Village of Sag Harbor (with an emphasis on the Commercial District)* (hereafter referred to as the “Planning Strategies”);
- 2) The proposed update to Chapter 55, Zoning of the Village Code (hereafter referred to as the “Zoning Code Update”, the “Proposed Zoning Code” or the “Proposed Code”); and
- 3) The proposed Zoning Map to accompany the new Zoning Code.

Pursuant to 6 NYCRR Part 617.9(a)(5) of the State Environmental Quality Review Act (SEQRA), “the lead agency must prepare or cause to be prepared and must file a final EIS, within 45 calendar days after the close of any hearing or within 60 calendar days after the filing of the draft EIS, whichever occurs later.” After the public hearing for the Draft GEIS was closed on April 16, 2009, the Board of Trustees for the Incorporated Village of Sag Harbor (hereafter, the “Village”) resolved that a final GEIS should be prepared for the proposed action (a copy of the minutes from the April 16, 2009 Board of Trustees meeting can be found in Appendix A).

Please note that sections of SEQRA will be referenced within this Final GEIS using the symbol “§” followed by the section number—e.g. 6 NYCRR Part 617.9(a)(5) will appear herein as §617.9(a)(5).

## 1.0. Content, SEQRA Requirements & Timeframes for a Final GEIS

### 1.1. Content of this Final GEIS.

#### 1.1.1. SEQRA Required & Recommended Content of a Final GEIS.

All GEISs, both draft and final, are also standard environmental impact statements (EIS). According to §617.10(a):

*“Generic EISs may be broader, and more general than site or project specific EISs and should discuss the logic and rationale for the choices advanced. [...] They may discuss in general terms the constraints and consequences of any narrowing future options”*

The subsections of §617.10 discuss instances where a GEIS *may* be prepared (as per §617.10(a)(1)-(4) & (b)), and what *should* be included in such a document (as per §617.10(c)). This differs from the *requirements* of §617.9(b), which states items that an EIS *must* include. Inasmuch as the proposed action is broad in scope and will have an impact on the entire Village—albeit a non-significant, non-adverse impact, as determined by the Draft GEIS—this Final GEIS contains both the requirements for final EISs set forth in §617.9(b)(8) and the recommendation for a GEIS provided in §617.10(c).

Provided below is a list of the contents of a final EIS required under §617.9(b)(8). This list also contains references to sections of this Final GEIS that satisfy those requirements.

1. The draft EIS, including any revisions or supplement to it.
  - See Section 1.1.3 for the narrative regarding the Draft GEIS.
2. Copies or a summary of the substantive comments received and their source (whether or not the comments were received in the context of a hearing).
  - See Section 2.1 and 2.2 for the summary of comments received during the public hearing period.
  - See Appendix A for a copy of the minutes from all four public hearings held for the Draft GEIS.
3. The lead agency’s responses to all substantive comments.
  - See Section 2.1 and 2.2.

The recommendation for GEISs provided in §617.10(c) is stated as follows:

**§617.10(c).**

*“Generic EISs and their findings should set forth specific conditions or criteria under which future actions will be undertaken or approved, including requirements for any subsequent SEQRA compliance. This may include thresholds and criteria for supplemental EISs to reflect specific significant impacts, such as site specific impacts, that were not adequately addressed or analyzed in the generic EIS.”*

Section 1.2.2 of this Final GEIS addresses this recommendation.

*1.1.2. Other Content.*

This Final GEIS includes a listing of all revisions made to the Zoning Code Update (see Section 3.0).

While this content is not required under SEQRA (nor is it necessary for the State Environmental Quality Review process), the Board of Trustees felt it necessary to provide those revisions herein because the majority of the public comments collected during the public hearing period included questions about, recommendations and revisions for, the Zoning Code Update.

*1.1.3. Incorporation of the Draft GEIS.*

For all intents and purposes, the entirety of the Draft GEIS for the proposed action, which was prepared by Inter-Science Research Associates, Inc. (“Inter-Science”) and Anthony Tohill, Esq. on December 22, 2008, is hereby incorporated into this Final GEIS.

As stated in the Executive Summary of the Draft GEIS the following was explained within said document:

- “1. The adoption of the Planning Strategies, and subsequently, the adoption of the Proposed Zoning Code Update and Zoning Map will not cause significant adverse environmental impacts. It is believed that this absence of impacts is mainly due to the following factors: a) the changes being made to the Zoning Code are modifications that reorganize the sections to match the style of modern Zoning Codes; b) the updates that are being proposed primarily involve the inclusion of more detailed definitions and regulatory procedures; and c) the revisions are consistent with prevailing planning norms with an ideology that is more protective of environmental concerns, and as such would not cause any significant adverse environmental impacts (see Section IX, Mitigation Measures [of the Draft GEIS] for more information).*
- “2. The proposed action is consistent with the policies of the Village’s LWRP [(see Section VI of the Draft GEIS)].*
- “3. The proposed action will not have any detrimental cumulative and/or growth inducing impacts ([see] Section VIII [of the Draft GEIS]).*

- “4. *Insomuch as the proposed action satisfies the Issues of Significant Concern to a much greater degree than the No Action Alternative, the proposed action is the preferred alternative [(see Section X of the Draft GEIS)].*”

Since the submission of the Draft GEIS, no other revisions or supplements have been prepared. As a result of this referenced incorporation, the first requirement of §617.9(b)(8) is fulfilled. (See Section I(A)(i) of this Final GEIS for more information on the content required and recommended by SEQRA for a final GEIS.)

## 1.2. The SEQR Process for the Proposed Action.

### 1.2.1. Public Hearings & Acceptance of the Final GEIS.

The Draft GEIS for the proposed action to the Board of Trustees by the Village’s consultants, Inter-Science, on December 22, 2008. That Draft GEIS was submitted in lieu of an environmental assessment form (EAF), which is allowed pursuant to §617.6(a)(4), as follows:

#### §617.6(a)(4)

*“An agency may waive the requirement for an EAF if a draft EIS is prepared or submitted. The draft EIS may be treated as an EAF for the purpose of determining significance.”*

At a special meeting of the Board of Trustees on December 29, 2008, the Board accepted the Draft GEIS as complete and resolved to open the public comment period in accordance with §617.9(a)(4). At the time of the preparation of this Final GEIS, copies of the Draft GEIS, Planning Strategies, Zoning Code Update and Zoning Map were hand delivered or mailed to the involved agencies and the interested agencies, as defined under §617.2 of SEQRA.

#### §617.2

- “(s) **Involved agency** means an agency that has jurisdiction by law to fund, approve or directly undertake an action. If an agency will ultimately make a discretionary decision to fund, approve or undertake an action, then it is an ‘involved agency’, notwithstanding that it has not received an application for funding or approval at the time the SEQR process is comments. The lead agency is also an ‘involved agency’.
- “(t) **Interested agency** means an agency that lacks the jurisdiction to fund, approve or directly undertake an action but wishes to participate in the review process because its specific expertise or concern about the proposed action. An ‘interested agency’ has the same ability to participate in the review process as a member of the public.” **[emphasis added]**

The Draft GEIS was mailed to the following agencies: 1) the Village Board of Trustees; 2) the Sag Harbor Village Planning Board; 3) the Sag Harbor Village Zoning Board of Appeals; 4) the Sag Harbor Village Board of Historic Preservation and Architectural Review; 5) the Village Harbor Committee; 6) the East Hampton Town Clerk; 7) the Southampton Town Clerk; 8) the Shelter Island Town Clerk; 9) the North Haven Village Clerk; 10) the Suffolk County Planning Commission; 11) the New York State (NYS) Department of Environmental Conservation: Division of Regulatory Services; 12) the NYS Secretary of State; 13) the NYS Office of Parks, Recreation and Historic Preservation (OPRHP); 14) the NYS Department of Transportation – Albany; 15) the NYS Department of Transportation – Region 10, Hauppauge; and 16) the NYS Department of State.

During the public comment period, four public meetings were held in 2009 by the Board of Trustees at Village Hall on January 29<sup>th</sup>, February 13<sup>th</sup>, March 19<sup>th</sup> and April 16<sup>th</sup>. These meetings were held as open discussions between the public and the Board of Trustees, where specific sections of the Zoning Code Update were debated, and the general premise for several of the new regulations were explained. Many written comments were also received during this time. A summary of the substantive comments spoken at the public meetings can be found in Section 2.1 with their respective responses. Copies of the minutes from those meetings are in Appendix A. The written comments are discussed in Section 2.2 and provided in Appendix B. These comments resulted in revisions to the Proposed Zoning Code, all of which are supplied in Section 3.0 of this Final GEIS.

With the submission of this Final GEIS, the Board of Trustees, as the lead agency, must determine whether the document is complete. Following that determination of completeness, §617.11(a) states that the Board has a minimum of ten (10) calendar days in which to consider the Final GEIS before issuing its written findings statement. The ten-day-minimum is meant to afford other agencies and the public a “reasonable time period in which to consider” the Final GEIS.

Once the Board of Trustees issues its written findings statement in accordance with §617.11(d) and §617.12, it can make its decision whether to adopt the documents of the proposed action.

### 1.2.2. Subsequent SEQRA Compliance.

This Final GEIS (and, by way of reference, the Draft GEIS) addresses only the Planning Strategies, Zoning Code Update and Zoning Map. Any action or project that is proposed subsequent to the acceptance of the Final GEIS and the adoption of the three documents of the proposed action that would not be, “carried out in conformance with the conditions and thresholds established for such actions in [this] generic EIS,” (§617.10(d)(1)) should be evaluated under SEQRA and Chapter 15, Environmental Quality Review of the Village Code as is normally required. In other words, this Final GEIS makes no claims or recommendations as to the need or requirement for the review of future actions or projects under SEQRA, except that the review process should be followed as required by SEQRA and Chapter 15, Environmental Quality Review of the Village Code.

## **2.0. Substantive Comments to the Draft GEIS & the Proposed Action.**

As described in Section 1.2.1 of this Final GEIS, between December 29, 2008 and April 16, 2009, four meetings of the Village Board of Trustees were devoted to the public hearing of the proposed action and its Draft GEIS. Substantive spoken comments were received at the January 29, 2009 meeting, the February 13, 2009 meeting and the April 16, 2009 meeting. Those comments, as well as the responses to those comments are summarized in the Section 2.1.

In addition to the spoken comments collected during the meetings, several written comments were also received. A list and summary of those written comments, and the responses to those comments, are provided in Section 2.2.

Finally, the comments of the Suffolk County Planning Commission and Julian Adams, Certified Local Government Coordinator are discussed in Section 2.3 and 2.4, respectively.

### **2.1. Spoken Comments from the Public Hearings.**

The following is a summary of the substantive comments received at the January 29, 2009, February 13, 2009, March 19, 2009 and April 16, 2009 public hearings, along with responses from the Village of Sag Harbor.

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#### ***Public Hearing Comment No. 1:***

The process conducted for the construction of the Proposed Code and the public hearings were insufficient to allow for the business community's input.

#### **Response:**

The Board of Trustees finds that the process of securing input from the business community allowed the Village to obtain substantial information, which after consideration for the comments received, led to changes to the draft version of the new Chapter 55 (herein referred to as the Proposed Zoning Code). The meetings held to secure input were appropriately publicized, giving property owners and business owners the opportunity to offer their comments on the Proposed Code.

Two lengthy public informational meetings were held where planning and legal presentations were made prior to drafting the Proposed Code—one on September 27, 2007 in the Sag Harbor Fire House, and again on October 24, 2007 at Village Hall. Both presentations gave the public the opportunity to review the materials gathered to date and listen to the concepts being considered by the Village. Both meetings were well publicized and attended. In addition, public comments, both written and oral, were accepted and review in detail by the Village.

A draft of the Comprehensive Plan (which is referred to as the “Planning Strategies” within this Final GEIS) was completed in mid-January 2008 based upon the materials presented at the September 27<sup>th</sup> and October 24<sup>th</sup>, 2007 meetings and comments received from those meetings. A draft of the revised Chapter 55 was delivered to the Board of Trustees on April 15, 2008.

Thereafter a series of public meetings occurred on May 8<sup>th</sup>, May 15<sup>th</sup>, June 3<sup>rd</sup>, June 19<sup>th</sup>, July 12<sup>th</sup> and August 4<sup>th</sup>, 2008. In those public meetings, the Village Trustees caused a special work session to occur to allow any property owner the ability to make an appointment to discuss on a one-on-one basis the draft Zoning Code and how it affects their individual circumstances. During the course of these meetings, public comment was received regarding the changes being considered with the draft Zoning Code. The extensive series of meetings held at the second floor meeting room of the Village Hall resulted in a series of revisions to the Planning Strategies, the Zoning District Map and the Zoning Code Update, culminating with the circulation of revised copies of those documents for public review on August 28, 2008.

Many of the changes made to the Zoning Code were made to be consistent with those of neighboring municipalities (e.g., listing specific uses and having the Planning Board review Special Exception Use applications). Other proposed changes are currently practiced by the Village, but are not codified. By indicating specific processes in the Code—such as the site plan exemption requirements of §55-14.3(A) (see Revision 19 in Section 3.1 of this Final GEIS)—it provides future applicants with an overview of how the review process will play out. It should also guide the applicants to ensure that their future applications are more complete, thereby streamlining the process.

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***Public Hearing Comment No. 2:***

A forum should have been conducted to consider potential changes to the Zoning Code Update.

**Response:**

The Board of Trustees finds that there were considerable opportunities for the public to have input into the process. Initially, two meetings were held—the September 27, 2007 meeting at the Sag Harbor Fire House, and the October 24, 2007 meeting at Village Hall, allowed for the public to listen to the concerns that had been voiced to the Village over the prior year or so, along with a presentation of the anticipated preliminary objectives to be accomplished in a Zoning Code Update.

Following these two meetings, the Village held numerous work sessions—six in total—over the summer of 2008, to allow the public to consider and comment on the proposed Draft Zoning Ordinance. Numerous people attended each of these meetings, causing the Village to consider the comments and/or concerns, and react accordingly. Following these work sessions, the final draft Zoning Code was released for public review, and more formal public hearings occurred.

The Board of Trustees find that sufficient opportunity was afforded to all members of the public to review and comment on the Proposed Zoning Code.

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***Public Hearing Comment No. 3:***

The proposed application fees for the Planning Board approval process have no cap.

**Response:**

In order to maintain fiscal responsibility, the Board of Trustees have determined it appropriate to institute a fee schedule for regulatory review of projects that allows for the applicant to be required to fund the cost of the review of the matter. This is considered a “user fee” approach. Sag Harbor is a relatively small village that does not maintain a full-time planning or engineering staff. As a result, when a complicated application is being processed that requires additional expertise, the Village employs professional to review applications on an hourly basis. Such costs can become considerable on larger applications. Thus, the Village proposes to institute a system that passes through the cost of these consultants to the applicant.

If such a fee structure were not instituted, then the Village taxpayers would be required to finance additional consulting fees. Under those circumstances no consultants could be hired and the Village Boards would lack the counsel needed to properly review applications.

The Board of Trustees finds that the approach of passing on the costs of reviewing applications to the applicants is fair and fiscally-responsible.

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***Public Hearing Comment No. 4:***

Why are second floor offices required to move after the new Zoning Code Update is adopted?

**Response:**

The Board of Trustees have never considered a requirement that existing first or second floor offices be required to move once the Zoning Code Update is adopted.

Among others, the Village identified two specific concerns:

- Under the current Zoning Code, the potential exists for an increase in non-retail uses (including offices) within the core commercial area, potentially detracting from the vibrant retail trade that is found in Sag Harbor.
- Encouraging the utilization of space found on second floors and above within the Village Business District for residential apartment use would provide opportunities for additional more affordable housing within the Village, and foster “smart growth” concepts.

The Proposed Zoning Code initially prohibited new offices to be established on the second floor and above, unless they were tied to the retail use on the first floor. Existing offices would have become pre-existing non-conforming, and would have been permitted to remain—there was no effort being contemplated to require their removal.

However, since the start of the public hearing process, the Village Board of Trustees has received considerable comments regarding the need for second floor office uses as part of the mix of uses within the Village Business District, and has revised the Proposed Zoning Code to cause offices on the second floor and above to be permitted uses (see Revisions 24 and 31 of Section 3.2).

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***Public Hearing Comment No. 5:***

The Village should clarify the process for the conversion of uses over 3,000 sq. ft.

**Response:**

Based upon this comment, in order to clarify the procedure for the change-of-use (conversion) from one use to another a table was prepared and presented at the public hearings, which illustrated the mechanism by which a property owner could navigate this process. It identified the process for both exemptions and waivers from Site Plan approval (where applicable).

Please refer to the flow charts in Appendix E, which provide a summary of the process require for changing uses.

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***Public Hearing Comment No. 6:***

Are the off-street parking requirements written down in the Zoning Code?

**Response:**

The off-street parking requirements are contained in §55-9.6 of the Proposed Zoning Code for all proposed off-street parking requirements. Off-street parking requirements were also provided in §55-11.6 of the existing Zoning Code.

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**Public Hearing Comment No. 7:**

Why was 3,000 sq. ft. chosen as the maximum for a use in the Village Business District?

**Response:**

As described in the Draft GEIS, prior to preparing the Planning Strategies and the Zoning Code Update, Inter-Science Research Associates, Inc. conducted a survey and analysis of all potential commercial space within the Village of Sag Harbor Village Business (VB) District in Fall and Winter 2007. Using information supplied by the Southampton Town Tax Assessor's office, which was supplemented by field work completed by staff of Inter-Science, the study included a determination of the areas of uses, width of uses, types of uses, number of floors, and business names of the potential commercial space (e.g., retail stores, offices, service uses, apartments, banks, residences, etc.). This data was then analyzed to determine such things as the average and median areas of each type of use and the total number of each use.

This study (whose results can be found in Section III(B) and Appendix C of the Draft GEIS) found that the average area for first floor uses in the VB District was 1,935 sq. ft. This was rounded up to 2,000 sq. ft.<sup>1</sup>, thereby resulting in the regulation provided in the proposed §55-6.4(C).

Establishing a 3,000 sq. ft. maximum size limit was considered important by the Village. They sought to attempt to maintain the diversity of the uses within the Village—to wit, maintain a maximum number of smaller shops that would continue to support the vibrant commercial shopping business trade that is evident in the Village.

A limit of 3,000 sq. ft. was chosen as the maximum permitted gross floor area for most uses in the VB District (pursuant to proposed §55-6.4(D)) in order to provide the existing property owners and their tenants with availability to meet increasing space demands by allowing the expansion of their use by 50% (i.e., 50% of 2,000 sq. ft. is 1,000 sq. ft. ; 2,000 sq. ft. + 1,000 sq. ft. = 3,000 sq. ft.).

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<sup>1</sup> The Trustees found that an important factor in determining the maximum size of a use was the fact that the median value for the 160 first floor commercial spaces within the Village Business District was 1,394 sq. ft., which is substantially smaller than the 2,000 sq. ft. limitation being considered.

Also note that, pursuant to §55-11.16 of the Zoning Code Update, grocery stores, hardware stores and home furnishing stores may have an area up to and including 8,000 sq. ft. in gross floor area, as long as they secure special exception approval from the Planning Board.

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**Public Hearing Comment No. 8:**

Has the Village Board of Historic Preservation and Architectural Review (BHPAR) always had the jurisdiction to require approval for built-in displays identified as visually unpleasing?

**Response:**

The jurisdiction of the Village Board of Historic Preservation and Architectural Review is identified in Article XV of the existing Zoning Code. As per the existing §55-15.2(I) (and proposed §55-13.2(I)):

*“The Board is charged with the duty of maintaining the desirable character of the village and of disapproving the construction, reconstruction, and alteration of buildings, structures or signs that are designed without consideration of the harmonious relation of the new or altered building or structure to such buildings or structures as already exist and the environs in which they are set.”*

The Existing Zoning Code defines a “sign” under §55-2.2, Definitions (and the same section under the Proposed Code) as:

*“Any kind of billboard, signboard, pennant or other shape or device or display used as an advertisement, announcement or direction, including any text, symbol, lights, marks, letters or figures painted thereon or painted on or incorporated in the composition of an exterior facing of a building or structure”.*

Thus, the Board of Historic Preservation and Architectural Review has the authority to regulate signage as it is located specifically on the exterior of a building, but does not have the authority to regulate interior displays.

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**Public Hearing Comment No. 9:**

The Building Inspector’s power should not be arbitrary.

**Response:**

The Board of Trustees finds that the decision-making process of the Building Inspector is not arbitrary, but there are times when discretionary decisions are placed before the Building Inspector for consideration/interpretation. The Proposed Zoning Code will reduce the extent to which a Building Inspector has to make discretionary decisions. For example:

- A larger number of uses are now defined in the Zoning Code.
- All uses are assigned a standard classification code, tied to the North American Industry Classification System (NAICS), which allows for uniformity in evaluating what falls within use categories.

Under §55-12.4(C), the Proposed Zoning Code contains the following provision, which provides a specific avenue for the Building Inspector to request an interpretation from the Zoning Board of Appeals on a matter. This section reads as follows:

*“The Board of Appeals shall, upon appeal, hear and decide: [...]*

*“C. Any matter which the Building Inspector Appeals on grounds of doubt as to the meaning or intent of any provision of this chapter or as to the location of a district boundary line on the Zoning Map.”*

The Proposed Zoning Code also contains a provision that allows a property owner to directly appeal a Building Inspector’s decision to the Zoning Board of Appeals if they believe that the decision made by the Building Inspector was in error (See §§55-12.4(A) and 55-12.4(B)).

The Village finds that they have minimized the discretionary authority of the Building Inspector in the Proposed Zoning Code.

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**Public Hearing Comment No. 10:**

Why does an applicant have to go to the BHPAR to get signs approved?

**Response:**

Section 55-15.2 of the current Zoning Code (and §55-13.2(I) of the Proposed Zoning Code) contains the provisions which require an applicant to secure approval of signage from the Board of Historic Preservation and Architectural Review, as follows:

*“The Board is charged with the duty of maintaining the desirable character of the village and of disapproving the construction, reconstruction, and alteration of buildings, structures or **signs** that are designed without consideration of the harmonious relation of the new or altered building or structure to such buildings or structures as already exist and the environs in which they are set.” [emphasis added]*

Section 55-2.2, Definitions in both the current and Proposed Zoning Code defines a “sign” as:

*“SIGN – Any kind of billboard, signboard, pennant or other shape or device or display used as an advertisement, announcement or direction, including any text, symbol, lights, marks, letters or figures painted thereon or painted on or incorporated in the composition of an exterior facing of a building or structure.”*

In order to maintain the character of the Village, the Board of Trustees finds that it is appropriate to continue with the regulation of signs, and such regulations are contained in Article 13 of the draft Zoning Code.

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***Public Hearing Comment No. 11:***

Will a Certificate of Occupancy for a property or use still be valid after the Zoning Code Update is adopted?

**Response:**

The Board of Trustees finds that the Proposed Zoning Code will not affect the validity of any legal, existing use or Certificate of Occupancy. Section 55-17.3(B) of the Proposed Zoning Code requires:

**§55-17.3. Certificates of Occupancy.**

*“B. Any change of ownership of any property containing a building or structure shall require that the successor owner obtain a new certificate of occupancy within thirty (30) days.”*

The intention of this provision is to establish a requirement that allows for an inspection and re-validation of a certificate of occupancy when ownership of a property or use is transferred. Over time, this will allow the Building Inspector to ensure that improvements on properties have received proper regulatory approval for their existence.

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**Public Hearing Comment No. 12:**

Certificates of Occupancy should be more detailed with regard to multiple uses on single properties.

**Response:**

The Board of Trustees concurs with this comment. To the extent that buildings exist within the Village Business District with multiple uses, §55-9.8 of the Zoning Code is proposed to be included:

**§55-9.8. Buildings or Land in the VB District With Multiple Uses.**

*“Notwithstanding any other provision of this Chapter, any building of land within the VB District that is benefitted by more than one certificate of occupancy of compliance or a single certificate allowing multiple uses upon the effective date of enactment of this amendment that allow for more than one use in or upon the building or land shall be allowed the uses as are represented by such certificate(s), although the building or land owner may elect to combine one or more such uses, or to redistribute, among various uses, the floor areas previously allocated to such uses, provided that the total floor area of all uses allowed by such certificate(s) is not exceeded. Any such combination of uses or reallocation of floor areas among uses shall not require site plan approval or any special exception or discretionary approval or authorization from any Village board or agency provide that any use or uses is permitted under the certificate(s) of occupancy or compliance for that building.”*

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**Public Hearing Comment No. 13:**

The Village should consider increasing the maximum gross floor area for food markets to greater than 8,000 sq. ft.—for example, to 15,000 sq. ft.

**Response:**

Sag Harbor currently has one food market: Schiavoni’s IGA, located on Main Street. This market has an approximate gross floor area of 7,530 sq. ft. (based upon the Southampton Town Tax Assessor’s records).

The Board of Trustees finds while having a food market within the Village is an important aspect to sustaining a well-rounded community, commercial resources within the Village are limited. Larger, more regional-scale food markets may be out of character with the objective of trying to

maintain smaller scale stores to service the local population. Such larger food markets already exist within near proximity to the Village (e.g., in Bridgehampton and Southampton).

In establishing the maximum size for commercial space (at 2,000 sq. ft. with expansion capability to 3,000 sq. ft., as identified in §55-6.1(D) of the Proposed Zoning Code), the Board of Trustees recognized that special consideration should be provided to three particular uses: grocery stores, hardware stores, and home-furnishings and decor stores, each of which require larger than typical retail space for the display and sales of merchandise. In these three instances, the special exception requirements were established to allow the expansion to greater than 3,000 sq. ft., with a maximum size limit of 8,000 sq. ft. (See §55-11.16 of the Proposed Zoning Code).

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***Public Hearing Comment No. 14:***

The parking problems within the Village should be addressed in the Zoning Code Update.

**Response:**

As allowed under Village Law §7-722, the Board determined at this time not to pursue a parking study as part of this project.

The Board of Trustees finds that over the past 30 years, prior administrations have undertaken numerous studies in an attempt to address the issue of parking in the Village. For example, additional parking spaces have been delineated and parking requirements have been written and rewritten—all in an effort to ameliorate some of those parking issues. While the Board acknowledges that parking is still a critical issue in the Village's commercial district, it has chosen not to undertake an additional detailed study as part of this effort.

Below is summary of the efforts made by the Village throughout the years to address its parking and traffic circulation problems.

Over the years, the Board of Trustees has caused a number of parking studies to be undertaken in an effort to identify solutions to these issues. The first of these parking studies began in October 1979 and ended in September 1981, culminating with the establishment of the Village of Sag Harbor Off-Street Parking and Truck Loading Space Trust Fund and the fees that are associated with that fund that are provided in §55-11.6(I) of the existing Zoning Code.

The second parking study was a prelude to a third study. According to the Village's files on the subject, the process for the second study began in August 1991 when the Village Mayor at the time, Robert Freidah, requested Storch Associates to provide some preliminary information on how the Village may get a handle on its actual parking needs. Following that, a Planning Board meeting was held on September 11, 1991, where Storch Associates discussed the information that would need to

be collected—such as how much parking the Village actually has, recommendations from the public, existing land uses, etc.—and how to collect that data.

Between September 1991 and January 1992, the Planning Board worked to collect information from other Village boards and departments, as well as local non-profit groups and civic organizations. A parking survey was created to gather information from Village business owners and residents on the amount of parking spaces they currently have, what kind of land use they maintain and requesting any further recommendations. Once completed, this survey was published in the local newspaper (the Sag Harbor Herald) and mailed to Village residents and merchants.

After that information was collected, the Planning Board held several meetings to discuss potential recommendations. Several recommendations were proposed, including (but not limited to):

- Church Street should be a one-way street with parking on the east (Bulova) side of the street so that the parking would be easier to maintain;
- Signs should be posted directing pedestrians and drivers towards the parking areas; and
- Parking on the Long Wharf should be limited to three hours.

Church Street remained one-way for only a few years, but was returned to a two-way after several petitions were submitted by residents living thereon. As for the signs and the three-hour parking on the Long Wharf, these were eventually taken into effect—many of the signs were posted after the third parking study was conducted and, though not adopted initially, the three-hour parking on the Long Wharf was made into law on November 6, 2001.

Another result of the second parking study was the creation of a Village Parking Committee by the Board of Trustees on September 1, 1992, which was made up of the Planning Board chairman, two other members of the Planning Board and two members of the business community. This Parking Committee was charged with conducting another parking study, utilizing much of the parking and other information collected during the previous study.

It quickly became evident to the Parking Committee that they would need to hire outside experts to provide them with a detailed parking study to help recommend solutions to many of the parking and traffic circulation issues that the Committee began to identify after its creation. In November 1992, the planning agency Szepatowski Associates, Inc. and the traffic engineering firm Dunn Engineering, P.C. were chosen and contracted to write a detailed parking study. These companies were asked to:

1. Collect a more detailed inventory of the existing conditions;
2. Coordinate with the Village boards and agencies;
3. Analyze the existing Zoning Code regulations (the Zoning Code that existed in late 1992 to early 1993) and the Village's LWRP;

4. Extrapolate future parking needs of the Village; and
5. Formulate recommendations for:
  - a. Regulatory changes;
  - b. Village parking and circulation improvements;
  - c. Private business improvements;
  - d. Joint improvements; and
  - e. Areas for funding for those improvements;

Using this outline, Szepatowski Associates and Dunn Engineering prepared a Parking and Circulation Study that was completed in March 1993. Said study included numerous recommendations, including (but not limited to): changes to the parking regulations; areas for additional signage to indicate where public parking is available to help alleviate traffic concerns; and properties that could be purchased by the Village to be converted to public parking areas. Discussions by the Parking Committee regarding the Parking and Circulation Study also yielded suggestions of areas where additional parking spaces could be delineated.

These recommendations resulted in:

- Amendments to the off-street parking and truck loading space of §55-11.6<sup>2</sup>;
- “Early warning” signs erected to show incoming traffic where public parking is available
- Sign was erected near the Sag Harbor Yacht Club parking lot stating that it is a public parking lot
- The delineation of approximately 21 parallel parking spaces (according to a May 13, 1993 letter from the Village Highway Forman to the Village Clerk) were marked on the north side of Long Island Avenue;
- The delineation of approximately 13 parallel parking spaces (according to the same May 13, 1993 letter) were marked on the south side of Burke Street; and
- The purchase of Mobil Oil property (SCTM No. 0302-2-1-5.1) by the Village to be used as public parking. Purchased lot yielded approximately 44 off-street spaces (according to aerial photographs).

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<sup>2</sup> Note that this section refers to the existing Zoning Code. These amendments to §55-11.6 are identified in the existing Zoning Code by notes stated that a particular section was added or amended on June 1, 1993 by Local Law No. 3 of 1993.

Although the addition of approximately 78 parking spaces may not seem substantial, but they must be taken in context. Currently the Village has roughly 487 public parking spaces available (see Section V(B)(3)(i)(a) of the Draft GEIS), which means that the Village had approximately 400<sup>3</sup> public parking spaces available in 1993. Based on this estimation, the recommendations of the 1993 Parking and Circulation Study resulted in a 19.5% ( $78 \div 400 = 0.195$ , or 19.5%) increase in the number of public parking spaces available to the Village.

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**Public Hearing Comment No. 15:**

The Village should consider limiting the maximum gross floor area (GFA) of pharmacies to 2,000 sq. ft.

**Response:**

The Board of Trustees determined it was appropriate to limit pharmacies and drug stores in a manner consistent with the other uses within the Village Business District—i.e., to a maximum of 2,000 sq. ft. with the potential to expand to 3,000 sq. ft., as allowed under §55-6.4(D) of the Proposed Zoning Code. An excerpt of that section is provided below:

**§55-6.4. VB District special conditions.**

*“D. Enlargement of gross floor area or width or frontage shall be permitted provided any such enlargement is limited to more than 50% of the existing gross floor area or frontage or width and the resultant gross floor area shall not in total exceed 3,000 square feet or a frontage or width of 75 feet. . .”*

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**Public Hearing Comment No. 16:**

The Trustees should review other portions of the Village Code to implement other regulations that affect other portions of the Village (i.e., residential and subdivision regulations).

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<sup>3</sup>  $487 - 78 = 409$  parking spaces

According to the 1993 Parking and Circulation Study, the east side of the Marine Park (SCTM No. 302- ) was not developed with parking at the time the study was completed. Aerial photographs show that the east side of the Marine Park provides about 9 parking spaces—hence the estimation of 400 public parking spaces available in 1993.

**Response:**

Following the adoption of the Zoning Code, the Board of Trustees intends to examine the Village subdivision regulations. Residential regulations have been addressed in a minor context in the Proposed Zoning Code and may be further evaluated at a later date.

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***Public Hearing Comment No. 17:***

Why place a limit on the number of accessory apartments?

**Response:**

The Board of Trustees believes that establishing provisions which will allow accessory apartments within the R-20 District will aid in the affordable housing market for the community. The Proposed Zoning Code states in §55-11.6(K) of its Special Exception requirements that the newly formed Accessory Apartment Review Board may not approve or allow more than 50 accessory apartments in the R-20 District. However, in recognition about the potential for change, the Board of Trustees felt it appropriate to establish a “cap,” or maximum number of accessory apartments that could initially be created.

The limit was established to ensure that the Village can properly regulate the use of accessory apartments. It should be noted that the number could be adjusted if the Board of Trustees finds that the maximum of 50 is too high or too low.

Additionally, the limit only applies to accessory apartments in the R-20 District. No limits have been proposed for accessory apartments in the VB District.

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***Public Hearing Comment No. 18:***

Day Care Facilities should not be allowed near busy roads.

**Response:**

The Board of Trustees determined that the approval of Day Care Facilities should be done with care and as such, established Special Exception criteria in the Proposed Zoning Code (see proposed §55-11.12). Specifically, pursuant to §55-11.12(C):

**§55-11.12. Day Care Facility**

*“C. Any day care facility shall not be located on a major thoroughfare or within one hundred (100’) feet of the intersection of any street with a major thoroughfare.”*

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**Public Hearing Comment No. 19:**

The Village should also consider the limitation on the number of day care facilities and bed & breakfasts that could be established in the Village.

**Response:**

The Board of Trustees finds that the inclusion of day care facilities creates an opportunity for local residents to receive local care for their children while at work. As such, the Board established a legitimate set of regulations/standards by which the creation of such a facility could be approved, as outlined in §55-11.12 of the Proposed Zoning Code (Special Exception standards for a day care facility).

Additionally, §55-11.2(D) of the Proposed Zoning Code requires that day care facilities (along with bed & breakfasts) have an increased notice provision, which requires applicants to notice *“all property owners within a five hundred foot (500’) radius of the perimeter of the property which is the subject of the public hearing,”* instead of the normal requirement of providing notice to only abutting parcels. This requirement will aid in determining whether such a facility is an acceptable use for the neighborhood where it is proposed.

The establishment of Bed and Breakfast transient housing was also seen by the Board of Trustees as an opportunity for the local community to provide transient housing on a limited and controlled basis to visitors to the area, as outlined in §55-11.8 of the Proposed Zoning Code (Special Exception Standards for a Bed and Breakfast). It is noted that approvals for Bed and Breakfasts expire two years after issuance, and include notice to the neighborhood and a public hearing. As such, it is believed that the Proposed Zoning Code, through the Special Exception process, will enable the Village to sufficiently control the appropriate institution of such a use.

The Board of Trustees determined that at the present time, the standards contained in the Proposed Zoning Code include limitations that would automatically control the spread of these uses in the community. In addition, the Special Exception process requires the consideration of adjacent properties, compatibility with the neighborhood, sufficiency of the lot area to accommodate the proposed use, etc. The Board of Trustees recognizes that, should limitations on the numbers of these facilities be needed, additional legislation could be adopted to insert such a limitation into the Zoning Code.

***Public Hearing Comment No. 20:***

It was recommended that the Village consider maintaining consistency with the historic (pre-zoning) setbacks in residential zones.

**Response:**

The Village Board of Trustees determined that maintaining consistency with setbacks in the Proposed Zoning Code ensures that property owners and neighbors alike can readily understand the requirements for any given property. Opportunities are available to property owners through the Zoning Board of Appeals to request relief from setbacks, if a sufficient and appropriate showing can be made, and the standards for relief are met.

As such, the setbacks contained within the Proposed Zoning Code are generally consistent with those of the current Zoning Code, just retabulated onto the Table of Dimensional Regulations.

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***Public Hearing Comment No. 21:***

The size and hours of convenience stores that are accessory to gas stations should be regulated.

**Response:**

The Board of Trustees recognizes that there are limits to governmental authority to regulate the hours of operation of business/commerce. However, where pursuant to a request for a convenience store ancillary to a gasoline filling station, the Special Exception criteria contained within §55-11.20 do create a linkage between the operation of the principal use—the filling station, and the operation of the accessory use—the convenience store. Section 55-11.20(A)(1) of the Proposed Zoning Code states that:

*“Any convenience store shall operate with limited hours that shall not be greater than the operation of the filling station for the sale of gasoline. In no event shall the convenience store operate as a separate non-accessory or independent use unrelated to the filling station.”*

The size of a filling station convenience stores is also regulated under §55-11.20(A)(2) of the Proposed Zoning Code, which states that:

**§55-11.20(A)**

“2. In no event shall a convenience store exceed 600 square feet of gross floor area for the display of goods for retail sale.”

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**Public Hearing Comment No. 22:**

Why is the Board of Historic Preservation and Architectural Review allowed to judge whether a resulting use is consistent with Village character, as per proposed §55-6.4(D)?

**Response:**

The Board of Trustees amended the Proposed Zoning Code language to clarify that the Board of Historic Preservation and Architectural Review was examining the consistency of the structure’s architecture, vs. evaluating the appropriateness of the use on the site.

Initially, §55-6.4(D) of the Proposed Zoning Code stated that:

*“any such enlargement [i.e., an enlargement of gross floor area to 3,000 square feet or of a building’s width to 75 feet] shall be subject to approval of the Board of Historic Preservation and Architectural Review who shall affirmatively find, among other things, that **the enlargement and any resultant use** is consistent with the historic character of the existing structures within the VB District.” [emphasis added]*

For the purposes of clarity, the Board of Trustees amended §55-6.4(D) of the Proposed Zoning Code to read as follows:

*“[...] among other things, that **the enlargement and any resultant exterior alteration** is consistent with the historic character of the existing structures within the VB District.” [emphasis added]*

It is believed that this change clarifies the intent as well as the authority of the Village Board of Historic Preservation and Architectural Review.

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**Public Hearing Comment No. 23:**

The existing and future capacity of the Village sewage treatment plant should have been evaluated.

**Response:**

The Board of Trustees acknowledges that the Village Sewage Treatment Plant (STP), which is operated under the supervision of the Village Department of Public Works, is part of the important infrastructure of the Village of Sag Harbor.

The STP was constructed in the early 1970s to eliminate the sewage from directly entering into the bay. The system was designed as an extended aeration style process, using chlorine to kill bacteria before entering the bay. The plant has recently been upgraded to a new system called sequential batch reactor, which processes the influent using a ultra-violet light system to kill the bacteria prior to outflow. It is understood that the current sewage treatment plan has a maximum capacity of 250,000 gallons per day of sanitary flow that it can treat and discharge.

As part of the review of the Bulova Watchcase Factory project (a recent application before the Village Planning Board) Paul Grosser, Ph.D., P.E., the Village's Consulting Engineer, wrote in a letter to the Planning Board dated March 13, 2007, that the peak flow for the Village STP was calculated in 2005 to be 190,000 gallons per day and 170,000 gallons per day in 2006. (Note that the Bulova Project would had generated approximately 14,540 gpd, which would have slightly increased the flows at the plant.)

A telephone conversation with Mr. Rick Ryder, Operator of the Village STP confirmed that there are significant seasonal flows of effluent treated in the plant—with the highest flows being during the summer, and the lowest flows being during the winter months. Mr. Ryder advised that for comparative purposes, the flow was approximately 106,000 gallons per day (GPD) from May 2007 to October 2007; 57,000 GPD between November 2007 through April 2008; 76,000 GPD between May 2008 and October 2008; and 51,000 GPD between November 2008 and April 2009.

During the busy summer months, the normal range of flows into the STP are between 125,000 and 140,000 GPD. Since he took over the operation of the STP, Mr. Ryder said that the highest flow observed was 175,000 GPD on a 4<sup>th</sup> of July weekend.

The collection system is gravity-fed: there are no pump or lift stations to collect the waste and transport it to the Sewage Treatment Plant. All of the piping system is inspected every year with an internal camera, and the lines are "jetted" (cleaned) to ensure proper flow.

The Board of Trustees finds that the sewage treatment plant operates within its allowable capacity, and has room to accommodate additional flow from growth within the sewer district.

***Public Hearing Comment No. 24:***

The Trustees should consider whether it is appropriate to rezone the property at 34 Bay Street (SCTM No. 0302-2-3-2) from Waterfront to Village Business.

**Response:**

The property at 34 Bay Street adjacent to the American Legion Post has recently been through the approval process at the Village Zoning Board of Appeals as well as the Village Planning Board.

In February 2004, the Village Zoning Board of Appeals granted variances to allow the warehouse/storage use in the Waterfront District to be changed in the proposed structure to retail shops and office space. Site plan approval followed in May of 2004 from the Village Planning Board. The Village Board of Historic Preservation and Architectural Review granted their approval in February 2008, allowing the building permit application to be issued. At the present time, a two story, brick veneer building is under construction.

The subject site is currently located within the Village Waterfront (WF) District. A variance was granted by the Zoning Board of Appeals to allow retail shops and office use to occupy the space, even though it is in the WF District.

The grant of the variance by the Zoning Board of Appeals allowing the retail shops and office uses in the WF-zoned property at 34 Bay Street allows these uses to occupy the space.

The Board of Trustees had initially considered re-zoning this parcel to a Village Business designation. After some deliberation the Board determined it was appropriate to leave the site within the WF District—i.e., its current designation—to allow for a greater number of uses to occupy the space—i.e., those uses which are permitted in the Waterfront District, as well as those for which a variance had been granted by the Village Zoning Board of Appeals.

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***Public Hearing Comment No. 25:***

The Village should consider developing a specific formula for the option of cash-in-lieu of construction to meet the affordable housing requirements.

**Response:**

The Board of Trustees find that §55-11.5 of the Proposed Zoning Code includes provisions for the requirement of affordable housing for any apartment building within the Office District. The

provisions included in the Code are consistent with the findings and recommendations of the Suffolk County Planning Commission on this particular issue—requiring that ten percent (10%) of units be set aside as affordable units for sale or rental.

If the housing is not to be constructed on-site, §55-11.5(2) includes a specific provision for the payment of a sum of money to the Sag Harbor Community Housing Trust Fund equal to \$186,000 times twice the number of units that could otherwise be built if the affordable housing were constructed on-site (or payment of \$372,000 per unit of required affordable housing).

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**Public Hearing Comment No. 26:**

Will the new Table of Uses restrict what particular uses can go into a storefront?

**Response:**

The Board of Trustees determined that it was important to develop a specific listing of uses that can be pursued within existing Village Business District storefronts. The emphasis on the change of uses that are currently permitted in the Village Business District was several fold:

- To restrict the further expansion of non-retail uses within what is considered the core commercial area (the first floor spaces within the Village Business District).
- To create an area (the Office District) that can accommodate these important non-retail uses in near proximity to the center of the Village Business District.
- Create a detailed Table of Uses within the Proposed Zoning Code which better defines the types of business uses that can be accommodated within each of the non-residential zoning classifications.

The Proposed Zoning Code will restrict to a degree some of the uses that are currently permissible within the storefronts in the Village Business District. The Board of Trustees finds that such a restriction is necessary in order to attempt to maintain the character and vibrancy of the existing commercial district.

***Public Hearing Comment No. 27:***

A financial impact study should be prepared to determine any and all possible adverse economic effects that the Proposed Zoning Code Update may incur on the business and property values along the waterfront and in the Village Business District.

**Response:**

The Board of Trustees finds that pursuant to Village Law §7-722, a financial impact study is not warranted, nor is it required to be completed as part of the process for the review and consideration of adoption of a Village Comprehensive Plan and a Proposed Zoning Code.

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***Public Hearing Comment No. 28:***

The Village should consider rezoning the three one-half acre residential lots (designated as SCTM No. 0903-2-1-19.1, 19.2 & 19.3) along Long Island Avenue to a multifamily designation and allow for a density of 8 units per acre.

**Response:**

The Village Board of Trustees has considered the three residential lots that front on Long Island Avenue (designated as SCTM No. 0903-2-1-19.1, 19.2 & 19.3). At the present time, these lots are zoned R-20 Residence District. Immediately adjacent to the property to the north, the property is zoned Resort Motel (RM).

Prior to January 2001, this property was zoned Resort Motel (RM). Specifically at the request of the property owner, these properties were rezoned by the Village Board of Trustees from Resort Motel (RM) to R-20 Residence District, with the rationale that the proposed change was going to a less intensive use on the site. The three residential lots were then created through a subdivision process, which concluded in November of 2002.

The Board of Trustees finds that at the present time it is appropriate to leave these three parcels in the R-20 Residence Zoning District. As such, there is no change proposed to the classification of these three lots as part of this Zoning Code Update.

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***Public Hearing Comment No. 29:***

Why does the Table of Dimensional Regulations state that 2,904 sq. ft. is required per transient guest unit when §55-5.4(A) requires a minimum of 20 transient guest units per acres? At 20 units per acre, the minimum area per transient guest unit should be 2,178 sq. ft.

**Response:**

The scrivener's error contained in the Table of Dimensional Regulations has been corrected to show that in the Resort Motel District that one transient guest unit will be permitted for each 2,178 sq. ft. of lot area. This revision is noted in Revision 33 of Section 3.2.

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***Public Hearing Comment No. 30:***

There's no empirical data that we need offices, therefore the creation of an office district is unnecessary.

**Response:**

The current Zoning Code provides specifically for non-retail uses (such as offices, banks, real estate, legal, architecture, engineering and the like) to be permitted within the VB District.

The Table of Uses contained in the Proposed Zoning Code will restrict the ability for non-retail uses like offices from being established on ground floor space by making them prohibited uses. In acknowledging that there may be the potential need for such use, a proposed Office District was established. The majority of the Office District proposed to be created is predominantly through a rezoning of existing VB-zoned properties (west of Main Street). Inasmuch as these sites currently have the capability of being developed with either office or retail uses, this change in classification is considered a de-intensification of land use for this area. It will also serve to buffer the core commercial district from surrounding residential neighborhoods.

Only the four lots located long Division Street that are proposed to become zoned Office District are currently residentially zoned. Of these four properties, only one is used for residential purposes, and one is a Village-owned parking lot.

It is believed that rezoning these parcels as Office District will appropriately recognize the existing use of two parcels and allow for a single office use to be added to this area.

Additionally, it is believed that the creation of the Office Districts would create a “transition” from the core commercial district to the outlying residential neighborhoods (see Section V(B)(2)(i)(b) of the Draft GEIS for more explanation).

The Board of Trustees finds that it is appropriate to include areas for office use. In recognition of the request of the business community, the Board of Trustees also modified prior consideration of the elimination of new non-retail uses within spaces on the second floor and above within the Village Business District.

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**Public Hearing Comment No. 31:**

What is the role of the Suffolk County Planning Commission in this process?

**Response:**

Pursuant to Section A-14-14 through A-14-23 of the Suffolk County Administrative Code and General Municipal Code §239-m, the Suffolk County Planning Commission has reviewed the report entitled *Planning Strategies for the Inc. Village of Sag Harbor (with emphasis on the Commercial District)*, dated July 21, 2008, the Draft Generic Environmental Impact Statement, dated December 22, 2008, along with the proposed Chapter 55 (Zoning) for the for the Inc. Village of Sag Harbor.

On March 4, 2009, after due deliberation and study the Suffolk County Planning Commission resolved to approve the documents presented to them subject to four specific conditions, as follows:

1. The proposed code amendments and comprehensive plan update should provide further details concerning the treatment of affordable housing units consistent with Suffolk County Planning Commission Guidelines.
2. The Inc. Village of Sag Harbor is encouraged to continue its comprehensive planning efforts. It is recommended that these efforts include analysis of potential traffic and parking impacts associated with the proposed changes in the Village Business District.
3. References to Suffolk County Planning Commission jurisdiction contained within the Comprehensive Plan and Code amendments should be verified.
4. Substantive amendments to the comprehensive plan and draft code amendments should be referred to the Commission for review consist with Commission guidelines.

A copy of the letter from the Planning Commission is contained within Appendix C of this Final GEIS.

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***Public Hearing Comment No. 32:***

Why were the uses expanded on the use table and in the definitions?

**Response:**

The Board of Trustees found that the listing of uses contained in the current Zoning Code, was incomplete, and contained overly broad generalization of uses. The generalization of uses created a disadvantage for the Village in terms clarifying what uses are permitted where, and regulating the change-of-use in a manner that does not affect the Village resources (parking traffic, etc.). Most more modern zoning ordinances provide more detailed and specific listing of uses—which is what the Proposed Zoning Code has included in the Table of Uses.

In addition, the uses identified have been classified by a national standard reference, allowing both applicants and the Village to determine how particular uses fit within zoning categories. The uses in the Table of Uses have been assigned reference numbers from the North American Industry Classification System (NAICS).

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***Public Hearing Comment No. 33:***

Why require a new certificate of occupancy for a change-of-use? Under the new zoning code, would a change-of-use be required to secure a permit or a certificate of occupancy?

**Response:**

In order to regulate the changes of uses within the Village in an effort to maintain a balance of uses that is appropriate to maintain the healthy retail/commercial trade, the Board of Trustees finds that it is appropriate to regulate a change-of-use.

Regulating changes in use ensures that the consideration of the proposed use will take into account issues related to the use of the building (e.g., parking needs, or sanitary flow to be generated by the proposed use).

The Proposed Zoning Code includes the following provision in §55-17.3, entitled “Certificates of Occupancy”:

**§55-17.3. Certificates of Occupancy.**

*“A. It shall be unlawful to use or to permit the use of any building, structure, premises, lot or land, or part thereof, hereafter erected or altered, enlarged or moved or put to use, in whole or in part, after the effective date of this chapter or to use or permit the use of any building, structure, premises, lot or land, or part thereof, of which the use is changed until a certificate of occupancy has been obtained by the owner.”*

It is noted that this provision has been contained within the Sag Harbor Village Zoning Code since 1999, when by Local Law No. 4 of 1999 the language that is proposed to be carried through into the new Zoning Code was adopted by the Board of Trustees. Accordingly, even under the old zoning code, a change-of-use required a new certificate of occupancy.

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***Public Hearing Comment No. 34:***

Why were the Waterfront District uses chosen as they appear?

**Response:**

The listing of uses contained within the Table of Uses was meant to reflect those uses that have been traditionally in the Village’s Waterfront District. As part of the review process, and as suggested by the Harbor Committee, additional uses were added to the Table of Uses including:

- Ship/Marine Chandlery
- Marine Surveyor
- Naval Architect
- Sail Loft & Canvas Shop
- Fish Market

The Board of Trustees finds that the listing of uses proposed in the Zoning Code are appropriate for the waterfront of the Village of Sag Harbor.

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***Public Hearing Comment No. 35:***

Why list “marina” and “yacht yard” as special exception uses in the Waterfront District?

**Response:**

The Proposed Zoning Code identifies the following uses as Special Exception (SE) uses:

- Marina
- Boatyard, including sales, rentals, storage and repairs
- Yacht Sales and Charters, including boat display
- Yacht Club

“Yacht Yard” is not a specifically listed use.

The Board of Trustees finds that any new establishment of these land uses on a property should be carefully scrutinized through the Special Exception Review process. Issues of the adequacy of parking, lot coverage, drainage, landscaping, lighting, and the compatibility of use with adjacent uses are issues that the Planning Board would review in the Special Exception process. The Board of Trustees finds that the inclusion of these uses doesn’t preclude their being able to be established on waterfront property—it just places new construction of these facilities in a more rigorous process that ensures that the planning and engineering requirements along with environmental protection are adequately address in the review of an application. Additional information and discussion of Special Exception uses can be found in the response to Written Comment No. 13 in Section 2.2 of this Final GEIS.

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**Public Hearing Comment No. 36:**

Would a “farmer’s market” be permitted under the new Zoning Code update?

**Response:**

Traditionally the “farmer’s market” that has been permitted within the Village of Sag Harbor has occurred on either Village-owned land or public spaces. Their authorization is through a permit issued by the Board of Trustees with specific requirements and/or restrictions. It is considered both an “attraction” for the Village, and a accommodation to the Village residents.

A “farmer’s market” use is considered a transitory seasonal use, and one which requires more land than most of the individual privately-held properties can accommodate. Accordingly, the Proposed Zoning Code does not regulate a “farmer’s market” as a particular land use.

**Public Hearing Comment No. 37:**

The definition of lot coverage should be clarified in the Zoning Code.

**Response:**

Contained within §55-2.2 of the Proposed Zoning Code is a definition for Lot Coverage, as follows:

*“LOT COVERAGE - The portion of the lot area covered by the area of all buildings and structures thereon, whether temporary or otherwise, and including areas of open storage of more than an incidental transitory character and including patios, terraces, decks whether roofed or not and whether at grade or otherwise.”*

That section also contains definitions for both “buildings” and “structures”. Please refer to the responses to Written Comment No. 8 in Section 2.2 of this Final GEIS.

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**Public Hearing Comment No. 38:**

Are public hearings mandatory for special exception uses?

**Response:**

Yes. Pursuant to §55-11.2(A) of the Proposed Zoning Code, the Planning Board is required to hold a public hearing prior to taking action on any special exception use. However, §55-11.1 only authorizes the Planning Board to act on proposed special exception uses, where “*such action may include approval, conditional approval or disapproval based on the standards set forth [under Article 11].*”

It should be noted that this requirement of public hearings for special exception uses is the same under the existing Zoning Code, §55-13.2(B), except that §55-13.1 authorizes the Zoning Board of Appeals to act on proposed special exception uses.

## 2.2. Written Comments Received During the Public Comment Period.

Written comments were accepted for the Draft GEIS and the documents of the proposed action starting after the public comment period was opened on December 29, 2008. These comments were accepted until the public comment period closed on April 16, 2009. Thirteen (13) written comments were received. Each of the written comments are summarized, quoted or paraphrased below, depending on the complexity of the written comment. The responses from the Board of Trustees for the comments are also provided.

A copy of all written comments are provided in Appendix B of this Final GEIS.

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### *Written Comment No. 1:*

*January 28, 2009 Letter from William Esseks, Esq. with an attached January 5, 2009 Letter from Nathiel Egosi.*

#### **Summary:**

The letter requests consideration of a change-of-zone for approximately 1.5 acres of land which is currently zoned R-20 Residence District to Resort Motel (RM), and permit a density which would total of 12 units on this 1.5 acre site, or 8 units per acre, or 1 unit per 5,250 sq. ft. of lot area.

#### **Response:**

The Board of Trustees finds that the expansion of the Resort Motel District within this area is not a desirable change at this point in time. They understand that at the property owner's request, this property was rezoned from Resort Motel to R-20 Residence District in 2001, and subsequently subdivided into three individual lots.

The Proposed Zoning Code contains provisions under §55-5.4(A), that:

*“There shall be no more than 20 guest units per acre.”*

Further, as a result of Written Comment No. 4, the proposed Table of Dimensional Regulations was revised/corrected to show that one transient guest unit is to be allowed for every 2,178 square feet of lot area on a property.

**Written Comment No. 2:**

*January 28, 2009 Letter from Dennis Downes, Esq. on behalf of East End Ventures, LLC (Michael Maidan).*

**Summary:**

This letter stated that Mr. Downes' client, East End Ventures, LLC—who is the owner of 1, 3, 5, Ferry Road—is in opposition to the Proposed Zoning Code.

**Response:**

The Board of Trustees will review this letter and consider its comments when making its determination and findings regarding the Proposed Zoning Code.

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**Written Comment No. 3:**

*Letter from the Sag Harbor Business Association, Inc. (Received by the Village on January 29, 2009).*

**Summary & Response:**

This letter from the Sag Harbor Business Association (SHBA), received on January 29, 2009, included numerous comments regarding the Proposed Zoning Code. Many of the written comments were presented orally and were discussed at the public hearings held by the Board of Trustees on January 29 and February 13, 2009.

On April 15, 2009, the Sag Harbor Business Association submitted a follow-up letter (see Written Comment No. 12), which acknowledged the diligent efforts of the Board of Trustees during the public comment process and thanked the Board for listening and responding to the concerns of the SHBA and the significant changes that were made to the Proposed Zoning Code.

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**Written Comment No. 4:**

*January 29, 2009 Letter from Nathiel Egosi, P.E. of the Sag Harbor Inn.*

**Summary:**

In his letter, Mr. Egosi pointed out the Table of Dimensional Regulations contained an error in terms of the minimum lot area per unit for a transient guest unit in the Resort Motel (RM) district. It was recommended that the Table be revised so that the minimum lot area per transient guest unit in the RM District be changed from 2,904 sq. ft. to 2,178 sq. ft. to reflect 20 units per acre instead of 15 units per acre.

**Response:**

This revision has been made subsequent to receiving this comment (See Revision 33 in Section 3.2).

The requirement of 2,904 square feet per transient guest unit in the RM District was a relic of the originally released draft of the Proposed Zoning Code, where 15 transient guest units were allowed per acre. Pursuant to comments received, the density was increased to 20 transient guest units per acre. Accordingly, the Table of Dimensional Regulations has been corrected to accurately reflect the minimum lot area needed per transient motel unit as being 2,178 sq. ft.

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**Written Comment No. 5:**

*February 2, 2009 Letter from Christopher Kelley, Esq. on behalf of Duncan Darrow with attached seven page memorandum.*

**Summary:**

The comments of Christopher Kelley, Esq. of Twomey, Latham, Shea, Kelley, Dubin & Quartararo LLP on behalf of Duncan Darrow (who is a resident and taxpayer of the Village according to the cover letter from Mr. Kelley) were largely in support of the proposed action and the Draft GEIS. As quoted from the conclusion of Mr. Kelley's letter:

*"In conclusion, we thank the Board [of Trustees] for its efforts. We believe that the DGEIS provides a more-than-adequate analysis of the overall action, which includes the Comprehensive Plan as embodied in the Planning Strategies document, as well as the Village Code update and the Village Zoning map. We urge the Board to adopt the DGEIS as well as the planning documents it incorporates by reference."*

The only additional comment made therein suggested that “*the use table include a size limitation of 2,000 square feet or less for a pharmacy.*”

**Response:**

The Board of Trustees evaluated the minimum lot area requirement for all business uses within the Village Business District in the context of maintaining a density and diversity of retail opportunities. After a review of the data which tabulated size (sq. ft.) of 160 existing first floor uses within what is considered the core commercial district, the Board concluded that a 2,000 sq. ft. maximum gross floor area per business use was an appropriate limitation. In acknowledgment of the potential need for expansion for growing businesses, the Board of Trustees determined that an allowance of a 50% expansion (allowing business uses to expand up to 3,000 sq. ft.) would be appropriate. Accordingly, provisions were placed in §55-6.3(D) of the Proposed Zoning Code as follows:

*“Enlargement of gross floor area or width or frontage shall be permitted provided such enlargement is limited to no more than 50% of the existing gross floor area or frontage or width and the resultant gross floor area shall not in total exceed 3,000 sq. ft. or a frontage or width of 75 feet. . . .”*

These limitations apply to a pharmacy/drug store use along with other commercial uses.

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**Written Comment No. 6:**

*February 2, 2009 Letter from Timothy Culver, Esq. on behalf of the Sag Harbor Business Association, Inc. with attached unsigned, undated comments from Ehrenkrantz, Eckstut & Kuhn Architects.*

**Summary:**

The following summarize the comments contained in the February 2, 2009 letter. The responses to these comments are provided thereafter.

1. “The most important goal in a historic district is to preserve. None of us can predict and/or control the future. Times change. Markets change. We have to set rules that are meant to last. We are not writing rules for the next project. Instead, we are guiding the next 50-100 years.”
2. “The [Planning Strategies] suggests trying to keep the Village affordable. Rules controlling sizes of shops can easily backfire and result in rentals that can only be paid by boutique, expensive shops that do not cater to the residents of Sag Harbor.”

3. “It could be the existing amount of frontage for these uses is the limit. This would have to be calculated.”
4. “In a historic district, zoning is even less needed, given the extraordinary design review that goes on in preserving what exists.”
5. “Restricting the upper floors [of the Village Business District] from accommodating the very uses that are considered objectionable on the ground floor, are counterproductive.”
6. “[H]aving a mix of uses is the goal of every development project and district plans. It insures activity day and night, during the week and on weekends. [...] We have on Main Street, today, a built in density and architecture that encourages a more sustainable approach to development. We shoot ourselves in the foot by limiting uses. The most ambitious new plans are calling for above grade floors to be used by offices, residences, etc.. [sic] Offices, not residences, are considered by some to be a preferable use for a Main Street. Offices promote a more public use of the street [...] and office tenants share parking best with restaurant customers.”
7. “If the goal is truly to preserve Main Street, as well as the historic Village, everyone has to look beyond Zoning. Zoning is not a plan. It is a tool for implementing a plan. With all due respect to the fine work that has been produced to date, I have not been able to find a plan. Instead, I have found goals, some facts. But, no plan.”

### Responses:

The responses to each of the seven comments are provided below.

#### Response to Comments No. 1 and 7:

As described in the Planning Strategies and the Draft GEIS, the Planning Strategies were prepared to address specific issues in the Village Business District that threatened the special character of the VB District. As was described in Section II(A) of the Draft GEIS:

*“This project began in the summer of 2007 when the public—which includes Village residents and commercial property owners, as well as people who live in nearby and surrounding communities—voiced their concerns regarding new development on several occasions. Two instances in particular are important to mention. At the August 14, 2007 Board of Trustees meeting, two petitions were submitted to the Board: 1) a petition signed by hundreds of individuals was submitted to the Board of Trustees under the heading of ‘Save Sag Harbor’, appealing to the Board to ‘vigorously defend our community’; and 2) a petition signed by local Village*

*business owners and commercial property owners who have requested the Village Board of Trustees use caution in developing restrictions that would manage future growth in the Village.*

*“While there have also been other public outcries for protection of the Village<sup>4</sup>, the two petitions mentioned above that were submitted to the Board of Trustees are of particular importance. Inasmuch as they are from representatives of both the residential and commercial sectors, the petitions show that future development may have an effect on both the lifestyles and livelihoods of the people of Sag Harbor. By protecting those lifestyles and livelihoods, the proposed action will serve a public benefit.”*

Because the Planning Strategies and the Proposed Zoning Code were mainly focused on issues related directly to the core commercial district, a plan to address other issues within the Village was not deemed necessary at this time.

The Planning Strategies is consistent with the requirements of §7-722-3 of the Village Law of New York State, an excerpt of which is provided below:

**§ 7-722. Village comprehensive plan.**

3. *Content of a village comprehensive plan. The village comprehensive plan may include the following topics at the level of detail adapted to the special requirements of the village:*
  - (a) *General statements of goals, objectives, principles, policies, and standards upon which proposals for the immediate and long-range enhancement, growth and development of the village are based.*
  - (b) *Consideration of regional needs and the official plans of other government units and agencies within the region.*
  - (c) *The existing and proposed location and intensity of land uses.*
  - (d) *Consideration of agricultural uses, historic and cultural resources, coastal and natural resources and sensitive environmental areas.*

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<sup>4</sup> “Including, but not limited to, input from the Sag Harbor Chamber of Commerce, the Coalition of Neighborhoods for the Preservation of Sag Harbor (CONPOSH) and various other citizens’ and environmental groups (such as the Sag Harbor Noyack Citizens’ Advisory Committee, the Sag Harbor Progressive Coalition, and the Group for the East End), who have spoken publicly about the concerns of the development pressures and changes threatening to change the very fabric of the Village.” (This footnote was also quoted from Section II(A) of the Draft GEIS.)

(e) *Consideration of population, demographic and socio-economic trends and future projections.*

[...]

(g) *Existing and proposed general location of public and private utilities and infrastructure.*

(h) *Existing housing resources and future housing needs, including affordable housing.*

[...]

(k) *The present and potential future general location of commercial and industrial facilities.*

(l) *Specific policies and strategies for improving the local economy in coordination with other plan topics.*

(m) *Proposed measures, programs, devices, and instruments to implement the goals and objectives of the various topics within the comprehensive plan.*

(n) *All or part of the plan of another public agency.*

(o) *Any and all other items which are consistent with the orderly growth and development of the village.*

Thus, the Planning Strategies may not “*plan for the next 50-100 years,*” but it must meet the requirements of New York State law.

Furthermore, the Village followed the recommended outline of planning and preparing a zoning code overhaul that the American Planning Association (APA), a nationally-recognized organization which supports and promotes proper and comprehensive planning, suggested in its December 2008 issue of Zoning Practice in an article entitled, *Overhauling Your Zoning Code*. Though the article was published after the Planning Strategies and Proposed Code were completed, the process recommended by the APA is nearly identical to the process taken by the Village, as guided by the Village Planning Consultant and the Village Attorney. The author of the article, V.Gail Easley, FAICP suggested the following steps be taken when overhauling a zoning code:

1. *Diagnose the problem*

As described above and in Section II(A) of the Draft GEIS, the problems and issues that existed in the Village Business District were identified based on public input and input from the Village’s elected officials. These problems

were listed by Inter-Science in the chart entitled Issues of Significant Concern, which threatened the character of the VB District.

In addition to those Issues, Anthony Tohill, Esq. identified several aspects of the existing Zoning Code that were outdated or inappropriate. Numerous references to recently adopted county and state laws were missing and, for the safety of the Village, also had to be included in the new zoning code.

2. *Identify potential solutions*

In response to the Issues of Significant Concern, Inter-Science prepared the Planning Strategies which, through its twenty-two (22) recommendations, identified potential solutions to the Issues of Significant Concern.

3. *Develop a detailed working outline*

After formulating those recommendations and identifying the references that would need to be included to bring the Zoning Code legislatively up-to-date, Inter-Science and Anthony Tohill, Esq. prepared an outline for the Zoning Code Update. This outline was similar to the Table of Contents of the existing Zoning Code, except where some whole articles were removed (e.g., those dealing with the MIR and MA Zoning Districts, which were proposed to be eliminated), and where the article pertaining to the Planning Board (new Article 14) was relocated to follow those articles about the Zoning Board of Appeals (new Article 12) and Board of Historic Preservation and Architectural Review (new Article 13). The structure of the existing Zoning Code worked well and was familiar to many people, so it was generally left intact.

4. *Write, review and rewrite*

Following the reorganization of the Articles of the Zoning Code, Anthony Tohill and Inter-Science, with input from the Village Trustees, wrote the first draft of the Proposed Zoning Code. As is fully described in later sections of this Final GEIS, two phases of reviewing and revising the Proposed Zoning Code followed the release of the first draft.

Many of the revisions to the Code during the two phases of review were made based on comments of the public, and additional input from the Village's elected officials, the Board of Trustees.

Section 3.0 also includes a detailed list and summary of the revisions made to the Proposed Zoning Code to date.

5. *Keep track of 'leftovers.'*

As the Code is revised, Easley suggests keeping track of sections of the Code that may be removed as a result of those revisions.

This was also done in the revision phases of the Village's Zoning Code. This proved to be an important step because, in the first phase of revisions, the language of the proposed §55-10.8 was restored to the language that appeared in §55-12.8 of the existing Zoning Code. See Revision 11, as discussed in Section 3.1. While this was not exactly what the author had in mind (i.e., restoring language from the existing Zoning Code), it did serve an important purpose.

6. *Test the revised code against the diagnosis.*

The "diagnosis" in the case of the Proposed Zoning Code refers to the Issues of Significant Concern. The Proposed Zoning Code and the Planning Strategies were tested against those issues in Section II(A) of the Draft GEIS. This test evaluated the ability of the Proposed Zoning Code and the Planning Strategies (i.e., the proposed action) and the existing Zoning Code (i.e., the No Action Alternative) to satisfy and address the Issue of Significant Concern.

Section X of the Draft GEIS concluded that the documents of the proposed action are better equipped to satisfy the Issues of Significant Concern identified by the Village Board of Trustees than the existing Zoning Code.

The remaining two steps suggested by V. Gail Easley, FAICP in her article have not occurred yet because the SEQR process is not yet completed. These steps include adopting the code, and "review for unexpected 'glitches' and make adjustments." The final step is very important to note because, following the adoption of the Planning Strategies, Zoning Code Update and the Zoning Map, issues will inevitably arise which will require amendments to make it "work." As with any Code update or amendment, if in the future it is found that sections of the Proposed Zoning Code do not work as intended, the Board of Trustees can/should consider revisions to resolve the problems.

Based on the foregoing discussion of the Village Law of New York State and the Zoning Practice article, the Board of Trustees conclude that the Planning Strategies were, for all intents and purposes, a plan—though not as large in scope as believed necessary by the author of Written Comment No. 6. Furthermore, the process taken to develop the Proposed Zoning Code was just another step in the overall planning process, whose overall goal was to protect the character of the Village for years to come.

Response to Comment No. 2:

The Board of Trustees finds that the Village Business (VB) District has a special character that is partly defined by the relatively small size of the existing buildings, and the uses that are housed within those buildings. This district is more or less entirely built-out; no vacant land is available. Thus, expansion of the existing small buildings and uses likely requires that two or more of those uses be merged. Under the existing Zoning Code there are virtually no regulations that would enable the Village to maintain the small size of the existing stores, thereby leaving the special character of the VB District vulnerable to dramatic change. Merging of the existing stores could occur, which could change the face of the Village core commercial district. Because of this one of the most important factors that currently defines the VB District character could effectively be merged away, potentially leaving the Village with only large stores.

As was described in the Planning Strategies and the Draft GEIS, the proposed regulations that provide for maximum gross floor areas and street width frontages of shops (§55-6.4(D)) were created to preserve the special character of the VB District. These maximum regulations were not created arbitrarily; they were the result of an extensive inventory of the existing uses and commercial spaces within the VB District by the Southampton Town Tax Assessor's Office and an evaluation of this data by Inter-Science. Therefore, the proposed "rules controlling the size of shops" only reflect the size of shops that currently exist in the VB District—a large diversity of smaller retail shops that have been successful. Thus, the Planning Strategies and the Proposed Zoning Code do not propose radical new regulations—they only seek to preserve what has thus far allowed the Village to be as successful as it is today.

Response to Comment No. 3:

The street width frontage was measured and calculated and provided in the Planning Strategies. This was the source of the proposed maximum frontage of 50 feet<sup>5</sup>, as provided in §55-6.4(C) of the Proposed Zoning Code.

Response to Comment No. 4:

The design review process for development within the Village Historic District is contained almost entirely within Chapter 55, the Village Zoning Ordinance. This Chapter of the Code includes the review standards and processes by which the various regulatory agencies of the Village - the Zoning Board of Appeals, the Planning Board, and the Board of Historic Preservation and Architectural Review - receive their authority as well as their guidelines for

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<sup>5</sup> A maximum of 50 feet, with an allowable expansion of up to 50% as per §55-6.4(D) of the Proposed Code. Thus, the actual maximum width would be 75 feet, as long as that use secures approval from the Board of Historic Preservation and Architectural Review.

the consideration of site plan applications. The Board of Trustees finds that the enactment of the Proposed Zoning Code would strengthen the authority of the various agencies to make decisions that will benefit and preserve the character of the VB District and the Village as a whole.

Response to Comment No. 5:

As provided in Section 3.2 of this Final GEIS, Revisions 24 and 31 show that the Proposed Zoning Code has been amended pursuant to comments received during the public hearing process to allow office uses on the second and third floors of buildings within the VB District.

Response to Comment No. 6:

It has been observed in other villages on the East End of Long Island that offices and banks have begun to encroach into what have traditionally been considered retail shopping districts. This reduces the commercial space available for the retail and service uses. In some instances, these changes appear to be affecting the long-term viability of commercial shopping districts. In an effort to control the overall extent of the expansion of non-retail uses within the core commercial district area for the Village, the Proposed Zoning Code would prohibit non-retail uses (e.g., offices, banks and the like) from being on the first floor.

Furthermore, the Village Board of Trustees have simultaneously recognized the importance of these non-retail uses for a balanced community. For that reason, the Proposed Zoning Code: 1) includes provisions for the creation of an Office District to provide a place for offices to develop within walking distance to Main Street; and 2) has been revised since the first version of the Proposed Code was released in April 2008 to permit offices on the second and third floors of buildings in the VB District.

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***Written Comment No. 7:***

*February 4, 2009 Memorandum from Timothy Culver, Esq.*

**Comment No. 1:**

Under the proposed §55-6.4(D), the term “use” could “present a problem.” It should be revised to say “exterior alteration.” (Note that this letter references this section as §55-6.3(D), but the language quoted therein is from §55-6.4(D).)

### Response No. 1:

The Board of Trustees agreed with this comment and made a revision to §55-6.4(D) of the Proposed Zoning Code, to now read as follows:

*“. . . Any such enlargement shall be subject to approval of the Board of Historic Preservation and Architectural Review who shall affirmatively find, among other things, that the enlargement and any resultant **exterior alteration** is consistent with the historic character of the existing structures within the VB District. . .” [emphasis added]*

### Comment No. 2:

The proposed §55-17.3(B) should be revised. The originally proposed section reads:

*“B. Any change of ownership of any property containing any building or structure shall require that the successor owner obtain a new current certificate of occupancy prior to any use or allowance of use of the property.’ (emphasis added)”*

“The word ‘prior’ creates an issue. A literal or plain reading of this provision would mean that if one bought a property on a Friday afternoon, he or she would not be able to use it until at least the subsequent Monday when the Building Department issued the new [Certificate of Occupancy]. [...] I suggest the following [revision]:

*“B. Any change of ownership of any property containing any building or structure shall require that the successor owner ~~obtain~~ apply for a new current certificate of occupancy within five (5) business days of the conveyance of ~~prior to any use or allowance of the use of the property.~~”*

### Response No. 2:

Although not revised specifically as suggested, the Board of Trustees found this to be an appropriate suggestion and worthy of change. Revision 30 provided in Section 3.2 shows that the revised §55-17.3(B) now requires the successor owner to obtain a new certificate of occupancy within thirty (30) days, instead of the suggested five (5) business days.

### Comment No. 3:

In addition to the above two comments, several comments were suggested for §55-11.11, which provides the special standards for the special exception use, Communication Towers.

**Response No. 3:**

The Board of Trustees find that the special standards for the special exception use, Communication Towers provided in §55-11.11 fully comply with the purpose stated in subsection (A) therein. A portion of said purpose is quoted below:

*“The Telecommunications Act of 1996 affirmed the Village of Sag Harbor's authority concerning the placement, construction and modification of wireless telecommunications facilities. The Village finds that wireless telecommunications facilities may pose significant concerns to the health, safety, public welfare, historic character, aesthetic qualities and environment of the Village and its inhabitants.”*

Thus, the Board of Trustees do not feel that revisions to any part of §55-11.11 is warranted at this time.

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**Written Comment No. 8:**

*February 13, 2009 Letter from JoAnne Pahwul, resident of the Sag Harbor area.*

**Summary:**

This letter included several comments, which have been grouped into two categories. Portions of Ms. Pahwul’s letter are paraphrased and quoted below.

**Comment No. 1 - Affordable Housing:**

Affordable rental units are needed by employees of local businesses and the youth of the community. If affordable apartments are allowed to be converted to commercial space, those apartments will eventually be lost. As cited from this letter, this conversion will “*tear at the fabric of the community.*” The conversion is also inconsistent with the goal stated in §55-1.3(J): “*To provide affordable housing sites for residents of the community compatible with their economic means.*”

The letter goes on to state that:

*“While the [Proposed Zoning Code] contains provisions to allow for accessory apartments in residences there is no guarantee that this housing will actually be created.”*

In addition:

*“The [Proposed Zoning Code] also requires payment into an affordable housing fund, but the land necessary to actually provide this housing is scarce and expensive and likely will not be located in the downtown area. This Code change has the potential to have significant impacts on the fabric of the community.”*

**Response No. 1:**

As is described at the end of Section 3.2 of this Final GEIS, after considerable comment and discussion, the Board of Trustees determined it appropriate to revise the Proposed Zoning Code to allow offices in the VB District on the second and third floors in order to give commercial property owners within the Village Business District additional options for locating tenants within their buildings.

According to the Commercial District Study conducted by Inter-Science utilizing data received from the Town of Southampton Tax Assessor’s office, it was determined that the existing VB District contains approximately 61 second floor spaces and 19 third floor spaces. Apartments currently make up 36 of the 61 second floor spaces (approximately 59 percent of the space) and 15 of the 19 third floor spaces (approximately 79 percent of the space). Offices, on the other hand, take up a smaller percentage with only 13 second floor spaces (or 21 percent) on the second floor, and only 2 offices within the third floor spaces (or approximately 10 percent of the total available space). (See Appendix C, Table 4 of the Planning Strategies and Appendix C, Table 4 of the Draft GEIS for the source of this information.)

Insomuch as apartments already fill the majority of the available spaces on the second and third floors of the existing VB District, and further that the existing VB District (like the proposed VB District) does not prohibit commercial stores on the second and third floor, the Board of Trustees finds that permitting retail and office uses on the second and third floor of the VB District will not have a significant adverse impact on the fabric of the community, the VB District or the Village.

With regard to the Sag Harbor Community Housing Trust Fund, §55-11.5(A), *“any applicant for an apartment building in the [Office District] shall be required to design any such project so as to include one of the following:*

*“(1) Set aside to be built on site no fewer than ten (10%) percent of the units as affordable units under § 55-11.6(B) either for sale or for rental; or*

*“(2) Payment of a sum of money to the Sag Harbor Community Housing Trust Fund incident to issuance of any approval which said sum shall equal \$186,000.00 of units otherwise times twice the number of units otherwise to be built under subdivision (1) above or such other per unit sum as is fixed from time to time by resolution of the Board of Trustees, so that by way of illustration, not limitation, if the actual density on any such project is ten (10)*

*units requiring one (1) to be affordable and if built on site the Trust Fund contribution would be \$372,000.00.”*

While the Board of Trustees agrees that there are few vacant parcels available to purchase and develop with affordable housing, the Board finds that the Proposed Zoning Code has the potential to help create more accessory apartments and affordable housing. This conclusion is based on the fact that the Proposed Code includes other methods to utilize the money collected in the Sag Harbor Community Housing Trust Fund. In particular, §55-11.6(C) provides the following:

**§55-11.6. Accessory Apartments in the R-20 District and New Accessory Apartments in the VB District.**

- C. *Incentives. Approval of an accessory apartment permit hereunder shall qualify the owner of the principal dwelling in the R-20 District for a low interest loan from the Sag Harbor Community Housing Trust Fund for capital improvements required to allow such accessory apartment. Approval of a new accessory apartment in the VB District shall qualify the owner of premises in the VB District to a waiver of any sewer rent in a sum equal to the percent of space at the premises used and occupied by any such accessory apartment(s).*

In this instance, the Sag Harbor Community Housing Trust Fund will enable those people wishing to construct an accessory apartment in the R-20 Residence District to apply for low interest loans for those capital improvements. By doing this, the Village will help facilitate the construction of new accessory apartments, which will provide some people with a place to live in the Village and others with an additional source of income. Though the apartments will not be in the downtown area, they will still be in the Village of Sag Harbor, thus providing the Village with the benefits that come with having additional local residents, such as additional people for the workforce.

**Comment No. 2 - Definition of Lot Coverage:**

The definition of lot coverage should include areas of pavement, except for walkways and access driveways. The Proposed Zoning Code defines lot coverage as

*LOT COVERAGE — The portion of the lot area covered by the area of all buildings and structures thereon, whether temporary or otherwise, and including areas of open storage of more than an incidental transitory character and including patios, terraces and decks whether roofed or not and whether at grade or otherwise.*

Ms. Pahwul goes on to suggest that unless “paving for parking spaces and access aisles is included in these coverage restrictions, the Code would not prevent 100% coverage of a lot.”

**Response No. 2:**

The Board of Trustees determines that at the present time, the definition of lot coverage is acceptable and appropriate for the relatively small lots that are encountered within the Village.

Section 55-2.2 of the existing Zoning Code defines “lot coverage” as follows:

*“LOT COVERAGE— The portion of the lot area covered by the area of all buildings and structures thereon.”*

The definition within the Proposed Zoning Code (identified above) aids in the determination of areas that are to be included within lot coverage.

The definitions for both “Building” and “Structure” also aid in the determination of what is included in lot coverage. In the Proposed Zoning Code, these are as follows:

*“BUILDING - A structure with a roof supported by columns of walls and intended for shelter, housing, or enclosure of persons, animals or chattels.”*

*“STRUCTURE - Anything constructed or erected on or under the ground or upon another structure or building, excluding at-grade walkways and access driveways.”*

In specific reference to parking and access aisles, based upon the definitions contained in the Proposed Zoning Code, parking spaces themselves would be included within the definition of lot coverage, but the access driveways would not.

In response to the concern that “the Code would not prevent 100% coverage of a lot,” the Board of Trustees notes that the proposed Table of Dimensional Regulations establishes a maximum lot coverage for each of the Village Zoning Districts as follows:

	R20 Residence	RM Resort Motel	VB Village Business	OD Office District	WF Waterfront
Lot Coverage					
Building coverage maximum (percent)	20	50	70	70	40
Total lot coverage	25	50	70	70	40

In order to ensure that lots are not coverage in their entirety by hardscape, the Proposed Zoning Code includes provisions that requires that there be a minimum percentage or area of a property be covered by natural or landscaped areas in the following sections:

**§55-5.6. Resort motel minimum landscaped areas.**

*At least 25% of the lot area shall be preserved as natural or landscaped open space.*

**§55-6.4. VB District special conditions.**

F. *Any construction of a new building including construction of a replacement building shall require a landscaped area not less than **20% of the lot area.***

**§55-8.4. WF District, Special Conditions.**

C. *Any site plan approval of premises without a functional bulkhead and bounded by tidal wetlands shall include a condition providing for landscaped areas equal to **30% of the lot area** or where such a percentage cannot reasonably be achieved a landscaped area to the maximum extent feasible.*

**§55-11.20. Convenience Store at a Filling Station.**

- B. *Landscaping.*
1. *At least **thirty-five (35%) percent of any site** at which a convenience store and filling station is located shall be maintained with landscaping.*
  2. *At least **ten (10') feet along the front lot line** shall be landscaped.*

The Proposed Zoning Code also includes a provision to ensure that any proposed fast food eating establishment cover no more than 50% of a site with impervious surfaces, which includes paving surfaces. This section is provided below.

**§55-11.14. Fast food establishment**

B. *No more than **fifty percent (50%) of a site or lot** devoted to a fast-food restaurant shall be covered by buildings, paving or other impervious surfaces. All non-impervious areas of the site shall be landscaped or otherwise vegetated by means of lawn, ground cover, shrubs, trees and other plantings. However, as much of the natural and existing ground-cover shall be preserved. Plantings shall be native vegetative species, not ornamental, and shall be such species that require little irrigation or watering.*

Therefore, the Board of Trustees finds that the Proposed Zoning Code sufficiently controls the amount of pavement on a property without including pavement into the definition of Lot Coverage.

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**Written Comment No. 9:**

*March 9, 2009 Letter from Louis Grignon of the Sag Harbor Yacht Yard to Mayor Ferraris and the Board of Trustees*

*[Please refer to Written Comment No. 13 for the summary of and response to the majority of the substantive comments of this letter. Other comments are summarized below.]*

**Summary:**

The Planning Strategies document “ignored the express policies requiring the village to protect the existing maritime uses in the LWRP by omitting them from its discussion of the LWRP policies.”

**Response:**

The Board of Trustees finds that the Planning Strategies document itself did not have to address all of the policies of the LWRP because it is not required content for a comprehensive plan pursuant to §7-722-3 of the Village Law of New York State.

Furthermore, the Board of Trustees finds that Section VI of the Draft GEIS specifically addressed all twelve policies of the LWRP—as well as their respective sub-policies—and concluded that the Planning Strategies, Zoning Code Update and Zoning Map (i.e., the documents of the proposed action) were all consistent with the policies of the LWRP.

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**Written Comment No. 10:**

*March 9, 2009 Letter from Louis Grignon to the Village of Sag Harbor*

*[Please refer to Written Comment No. 13 for the summary of and response to the majority of the substantive comments of this letter. Other comments are summarized below.]*

**Summary:**

Mr. Grignon’s letter included several suggestions for and comments about the Proposed Zoning Code. They include:

- 1) Sewage treatment plants should not be a Permitted Use in the Waterfront District.
- 2) Why are art galleries Permitted in the Waterfront District?
- 3) What use definition would the Sag Harbor Yacht Yard fall under?
- 4) Under §55-9.1(A)(8), “[r]equired accessory off-street parking areas or truck loading space shall not be encroached upon by buildings, open storage or any other use, whether temporary or otherwise.” This effectively curtails the use of a property for the storage of boats during the off season.

**Response:**

The Board of Trustees offers the following responses to the above comments:

- 1) Sewage treatment plants are not listed as a Permitted Use because they are not included on the Table of Uses. As provided in §55-2.2 of the Proposed Zoning Code, the definition of a Prohibited Use is as follows:

*“PROHIBITED USE -- All uses not listed on the Table of Uses as a permitted or special exception use or not contained within the definition of accessory use as a permitted use are considered a prohibited use.”*

Like all other facilities owned and operated by the Village of Sag Harbor, a municipal Sewage Treatment Plant is not regulated by the municipality’s zoning code.

- 2) The designation of an “art gallery” was merely a scrivener’s error in the original draft of the Proposed Zoning Code. The latest version of the Proposed Zoning Code now lists “art gallery” as a prohibited use in the WF District.
- 3) The owner of the Sag Harbor Yacht Yard should obtain a copy of the Certificate of Occupancy and or Certificate of Compliance for his facility and consult with his own counsel to determine the specific use definition into which his facility falls.
- 4) Pursuant to §55-11.9(B), “*outdoor storage of boats may be permitted*” at a boatyard. Assuming that the uses found on-site are legal and represented by an appropriately issued Certificate of Occupancy and/or Certificate of Compliance, the Sag Harbor Yacht Yard will be considered a pre-existing use under the Proposed Zoning Code, and would not need to prove compliance with the special standards for a special exception use.

For the establishment of a new boatyard, or the expansion of an existing boatyard or marinas, the consideration of upland boat storage during the off season would be discussed during the Site Plan and Special Exception review process. Two specific standards are contained within both the existing and Proposed Zoning Codes that relate to the parking issue. In the Proposed Code, these are identified in §55-11.3 (the Special Exception general standards) as follows:

*“B. Lot Area. The plot is sufficient, appropriate and adequate for the use and the reasonably anticipated operation and expansion thereof.”*

*“I. Parking. There are off-street parking and truck loading spaces at least in the number required by the provisions of 55-9.6(C)(D) and (E), but in any case an adequate number for the anticipated number of occupants, both employees and patrons of visitors; and, further, that the layout of the spaces and driveways is convenient and conducive to safe operation.”*

Section 55-14.3B(1)(b) of the Proposed Zoning Code (Site Plan Review) includes the following language, as one of the sixteen objectives of the site plan procedure and review:

*“(b) Interior circulation and parking. Adequate off-street parking is provided to satisfy the parking needs of the proposed uses on the site, and interior circulation system is adequate to provide convenient access to such spaces consistent with pedestrian safety.”*

The Board of Trustees finds that the process as proposed—Site Plan and Special Exception Review before the Village Planning Board—allows an applicant to discuss the needs for off-season usage of the parking areas for boat storage should said applicant demonstrate that parking for patrons and employees will be adequately provided.

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**Written Comment No. 11:**

*April 13, 2009 Letter from the Sag Harbor Yacht Club to the Harbor Committee.*

**Response:**

Note that Written Comment No. 13 is also from the Sag Harbor Yacht Club and expresses similar concerns to those detailed in the letter above. As such, please refer to Written Comment No. 13 for the summary of and response to the majority of the substantive comments of this letter.

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**Written Comment No. 12:**

*Letter from the Sag Harbor Business Association, Inc. (Received by the Village on April 15, 2009).*

**Summary:**

As quoted from this letter:

*“The SHBA is made up of building owners and merchants that created and make up the Village Business District and for obvious reasons has been focuses and active in the public process [of reviewing the Proposed Zoning Code and Draft GEIS]. In sum the SHBA wishes to acknowledge and thank the Board for their diligent efforts in the process.”*

The letter goes on to thank the Board of Trustees for their diligent efforts in the process and for the specific revisions that have been made to the Proposed Zoning Code based upon the comments made by the public and the Sag Harbor Business Association. One such particular recommendation made and implemented by Village is the revision that permitted offices on the second and third floor in the Village Business District.

**Response:**

The Board of Trustees acknowledges that the drafting and review process for a Proposed Zoning Code is an arduous task. The Board has attempted to fairly evaluate all comments received in context with the overall objectives of the Planning Strategies document and has made amendments to the Proposed Code where such amendments were appropriate but follow through with the spirit and intent of the Planning Strategies.

Based on the contents of Written Comment No. 12, the majority of the concerns of the SHBA regarding the Proposed Zoning Code have been addressed during the public comment period.

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**Written Comment No. 13:**

*April 16, 2009 Letter from the Sag Harbor Yacht Club to the Board of Trustees.*

**Summary:**

Written Comments 9, 10, 11 and 13 all contained similar criticism of the Proposed Zoning Code with respect to its regulation of uses within the Waterfront District. Specifically, the argument was made that reclassifying and downgrading maritime, water-dependent uses<sup>6</sup> such as “Club, Yacht” and “Marina” from permitted to special exception is deficient for the following reasons:

- 1) This change fails to comply with Policy 2 of the Local Waterfront Revitalization Program (LWRP)—specifically the change does not “protect existing water-dependent uses” and does not “avoid actions which would adversely impact or interfere with existing water-dependent uses;”
- 2) This change will subject existing yacht clubs, marinas and boatyards to a more cumbersome and expensive process, which would be subject to the personal, individual and subjective views of future boards; and

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<sup>6</sup> Note that Written Comments 9 and 10 suggest that a boatyard is a permitted use under the Existing Zoning Code. However, pursuant to §55-9.3(A)(1) and 10.3(A)(1) a “Boatyard, including boat sales, rentals, indoor and outdoor storage; marine supplies and hardware; boat service and repairs, provided that major repairs are not found to be incompatible with the use of adjacent properties,” is a special exception use in both the Waterfront and Marine Districts.

- 3) This change may have an adverse economic effect on the business and property values along the waterfront.

In formulating responses to these written comments, it became evident that a single, detailed response would suffice to answer the substantive comments mentioned therein. That response is provided below.

**Response:**

The Board of Trustees finds that the claim that a classification of “Special Exception Use” is a downgrade from a “Permitted Use” classification is incorrect.

In the Matter of G & P Investing Company v. Brian X. Foley (a copy of which can be found in Appendix D) the concept of a special exception use was explained using the following four (4) points:

- 1) A special exception use<sup>7</sup> is “expressly permitted”;
- 2) The use is subject to conditions;
- 3) The listing of a use as a special exception, “*is tantamount to a legislative finding that the permitted use is in harmony with the general zoning plan*”; and
- 4) The conditions cannot be so general or imprecise as to give a board, “*unfettered discretion in granting or denying permits.*”

In other words, a special exception use is a permitted use that must meet additional conditions in order to be approved. These additional conditions give the Planning Board specific criteria for reviewing particular uses which will guide their decisions and ensure that those decisions are consistent. Further, providing those additional conditions for special exception uses will also:

- *Help to guide an applicant’s design and planning process.* If the proposed designs are in compliance with those regulations specified in the Zoning Code, it would facilitate the review of the project in a joint review of the special exception use (proposed Article 11) and its site plan (proposed §§55-14.3 to 14.7).
- *Protect the Village and justify its decisions and findings.* Inasmuch as the Planning Board’s decisions regarding those special exception uses have a set of specific conditions attributed to them, it is unlikely that an applicant could successfully argue that the Board would have, “*unfettered discretion in granting or denying permits.*”

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<sup>7</sup> It should be noted that the referenced court decision discusses the granting of a “special permit.” In legal terms, a special exception approval is identical to a “special permit.” As such, the decision still applies to special exception uses and the approvals thereof.

The Board of Trustees believe that requiring special exception review for marina and yacht clubs will protect the existing water dependent uses. Pursuant to the proposed §55-11.3, for every proposed special exception use, the Planning Board shall determine that the project complies with at least thirteen (lettered A through M under §55-11.3) general standards. Those standards are meant to ensure that the proposed special exception use is compatible and in harmony with the surrounding area. In the case of proposed uses in the Waterfront district, the surrounding area would include the existing water dependent uses.

As for the concern that expansion of an existing marina or yacht club will require compliance with the special exception use criteria, those uses are pre-existing. As long as the property owner has a valid Certificate of Occupancy for that use, special exception approval would not be required. Section 55-11.1 specifically states that:

*“The Planning Board is hereby authorized to act on **proposed** special exception uses which are specifically provided for in this chapter.” [emphasis added]*

Based on the above, the Planning Board is authorized to act on *proposed* special exception uses—i.e., vacant land to be developed by a special exception use, or a change-of-use from any other use to a special exception use. If there is no change-of-use proposed in the application, and the applicant has proof that the existing use is legal (e.g., a valid Certificate of Occupancy, a valid sewer use permit, etc.), that pre-existing use shall be allowed to expand its area without having to meet the general special exception use conditions stated in §55-11.3. However, an applicant would need to secure site plan approval from the Planning Board pursuant to Article 14 of the Proposed Zoning Code. Such an expansion of gross floor area would require the same site plan approval under the existing code as it would under the Proposed Code.

Lastly, it should be noted that calling the uses “pre-existing” should not be construed to mean that those pre-existing uses are non-conforming to the Proposed Zoning Code. As stated above, special exception uses are expressly permitted, which does not make them non-conforming under the Proposed Zoning Code. The term “pre-existing use” only means that the use was established prior to the adoption of the Proposed Zoning Code. Therefore the use was not and is not subject to the general standards of special exception uses.

### 2.3. Approval of the Proposed Action by the Suffolk County Planning Commission.

In a letter dated March 4, 2009, the Suffolk County Planning Commission stated that, “pursuant to the requirements of Sections A14-14 thru A14-23 of the Suffolk County Administrative Code, the Suffolk County Planning Commission on March 4, 2009 reviewed the [documents of the proposed action and the Draft GEIS] and after due study and deliberation resolved to **Approve** the action subject to the following **Conditions**:

- “1. The proposed code amendments and comprehensive plan update should provide further details concerning the treatment of affordable housing units consistent with Suffolk County Planning Commission Guidelines.
- “2. The Inc. Village of Sag Harbor is encouraged to continue its comprehensive planning efforts. It is recommended that these efforts include analysis of potential traffic and parking impacts associated with the proposed changes to the Village Business District.
- “3. References to Suffolk County Planning Commission jurisdiction contained within the Comprehensive plan and code amendments should be verified.
- “4. Substantive amendments to the comprehensive plan and draft code amendments should be referred to the Commission for review consistent with Commission guidelines.”

Following this decision, the Village’s Harbor Committee informally recommended that the Board of Trustees include additional permitted uses in the WF District. Inasmuch as Condition No. 4 of the Commission stated that substantive amendments to the Proposed Code should be referred to the Commission for review, Anthony Tohill, Esq. sent a facsimile to the Commission on March 17, 2009 requesting a determination on whether that proposed change would be substantive and would thus require a rehearing by the Commission.

In response to that facsimile, Andrew Freleng, Chief Planner sent an e-mail to Mr. Tohill on March 19, 2009 stating the following:

*“Pursuant to your facsimile correspondence dated March 17, 2009 please be advised that the additional permitted uses to the Waterfront (WF) District recommended by the Village’s Harbor Committee to the Comprehensive Plan and zoning code, are not considered substantive amendments to the presentation and material reviewed by the Suffolk County Planning Commission at their regular meeting of March 4, 2009. As such, no re-referral or re-hearing would be required by the Suffolk County Planning Commission.”*

#### **2.4. Approval of the Proposed Action by the New York State Office of Parks, Recreation and Historic Preservation (OPRHP).**

The Incorporated Village of Sag Harbor was established as a Certified Local Government in May of 1989 by the New York State OPRHP.

As a Certified Local Government, the Village is required to obtain input on the Proposed Zoning Code from the State Historic Preservation Office, which is a part of the OPRHP. Julian Adams is the Certified Local Government Program Coordinator for the State Historic Preservation Office. As stated in Section 1.2.1 of this Final GEIS, a copy of the Draft GEIS and the documents of the proposed action were forwarded to him as part of the public comment process under SEQRA. On March 4, 2009, Anthony Tohill, Esq. spoke with Mr. Adams, who stated that Article 13 of the Proposed Zoning Code is “altogether appropriate for the special needs of Sag Harbor.” Mr. Adams indicated that he approved the content of Article 13. A copy of the March 4, 2009 letter prepared by Anthony Tohill that reported his conversation with Julian Adams to Mayor Gregory Ferraris and Trustee Tiffany Scarlato is provided in Appendix C.

### **3.0. History of Revisions to the Zoning Code Update.**

There have been two major phases of revisions and changes made to the Zoning Code Update since its first draft was delivered to the Board of Trustees on April 15, 2008 and, thereafter, was made available for public view and comment. These phases, as described in the following section, encompass the time periods of April 15, 2008 to August 28, 2008 (Phase 1) and December 29, 2008 to April 16, 2009 (Phase 2).

#### **3.1. Phase 1 – Revisions Between April 15, 2008 and August 28, 2008.**

The first phase followed a series of public meetings held during the summer of 2008. As quoted from Section II(A)<sup>8</sup> (pg. 6) the Draft GEIS:

*“[A] series of public meetings occurred on May 8<sup>th</sup>, May 15<sup>th</sup>, June 3<sup>rd</sup>, June 19<sup>th</sup>, July 12<sup>th</sup> and August 4<sup>th</sup>, 2008. On June 24<sup>th</sup>, an afternoon session was held to allow the public to discuss one-on-one their questions or issues. During the course of these meetings, public comment was received regarding the changes being considered with the draft Zoning Code. The extensive series of meetings held at the second floor meeting room of the Village Hall resulted in a series of revisions to the Comprehensive Plan (Planning Strategies), the Zoning District Map and Chapter 55, with the last revisions circulated for public review as of August 28, 2008.”*

As stated above, following the period of seven public meetings, the revisions made to the Proposed Zoning Code were circulated to the public and made available on the Village of Sag Harbor website<sup>9</sup> on August 28, 2008. The changes made to the Proposed Zoning Code between April 15 and August 28, 2008 are provided below.

#### **Revisions to the Proposed Zoning Code – Apr. 15, 2008 to Aug. 28, 2008.**

##### ***Revision 1***

##### **§ 55-2.2.**

All of the following definitions were added to the above section, placed in their respective alphabetical order. These new definitions all related to lighting.

*HORIZONTAL PLANE - See Appendix L-1 Figure A.*

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<sup>8</sup> Section II(A) of the Draft GEIS (pg. 3-6) provides a history of the drafting of the Planning Strategies, Zoning Code Update and the Zoning Map, beginning in the summer of 2007 and concluding on August 28, 2008 when the revised versions of those documents were circulated for public review.

<sup>9</sup> [www.sagharborny.gov](http://www.sagharborny.gov)

*KELVIN - (K) A unit of measurement of the redness or blueness of white light. The lower the Kelvin number the more yellow and red will be seen, the higher the Kelvin number the bluer the light will look.*

*LIGHT - Radiant energy in the visible spectrum, artificially generated by electricity or gas flame.*

*LIGHT BULB - The origin of light and its housing, such as an electric filament in a glass bulb.*

*LIGHT FIXTURE - A complete lighting unit consisting of one or more light bulbs together with the parts designed to distribute light, position and protect the lamp, and connect the lamp to the power supply. A light fixture may include a ballast, the mounting apparatus, and photocells or sensors, if any. Also known as a "luminaire."*

*LIGHT FIXTURE, FULL CUTOFF - A classification for a light fixture designed and installed so that no light is emitted at or above a horizontal plane running through the lowest point of the fixture. No more than 10% of the light output can be emitted within the first 10 degrees below the same horizontal plane as determined by a photometric test or certified by a manufacturer. See Appendix L-1, Figure A.*

*LIGHT FIXTURE, FULLY-SHIELDED - A light fixture with an opaque shield above the light source so that, as designed and installed, the light fixture projects all its light below the horizontal plane. Full cutoff fixtures are considered fully-shielded. See Appendix L-1, Figure B.*

*LIGHT FIXTURE, UNSHIELDED (or UNSHIELDED LIGHT) - A light fixture which is not fully-shielded and, as installed, emits at least some light above the horizontal plane. Also classified as a cut-off, semi-cut-off or non-cut-off light fixture. See Appendix L-2.*

*LIGHT SOURCE - The light-emitting parts of a light fixture, consisting of the bulb, filament and any transparent, translucent or frosted elements (covering over the light bulb) as well as any refractors, reflectors, prismatic lenses, mirrors, or diffusers which emit or transmit light.*

*LIGHTING - As used in this Chapter, and unless otherwise specified, shall mean exterior lighting produced by artificial means.*

*LUMEN - A measure of light energy generated by a light source. The initial lumen rating of a lamp or light bulb is provided by the lamp manufacturer.*

*MARINA POWER PEDESTALS - A unit that is mounted to a dock to provide multiple services such as electrical power, television, water, telephone services, and lighting to a docked boat at a marina or recreational marina. Any new marina power pedestal light fixture must be louvered or low brightness option and may not exceed 900 initial lumens (approximately two seven watts or one 13 watts fluorescent).*

*“PAR” BULB LIGHT- Parabolic Aluminized Reflector. Commonly referred to as a “spotlight” or “floodlight.” See Appendix L-2.*

*TEMPORARY LIGHTING - Lighting which is used for a specified purpose and for a limited time and is removed thereafter. The length of time that temporary lighting is to be used is not longer than ninety (90) consecutive days in any calendar year. “PAR” bulbs, spotlights and floodlights are not considered temporary lighting.*

*UPLIGHTING - Lighting which is directed above the horizontal plane.*

*UTILITY POLE MOUNTED LIGHT - A lighting fixture which is installed on a pole owned or maintained by a public utility, but which is designed or intended to illuminate private property.*

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**Revision 2**

**§ 55-5.4(A).**

Changed 15 to read 20 on number of guest units per acre in RM District.

Original

§55-5.4. Resort motel standards.

A. There shall be no more than 15 guest units per acre;

Revised

§55-5.4. Resort motel standards.

A. There shall be no more than 20 guest units per acre;

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**Revision 3**

**§ 55-5.4(G).**

Language deleted regarding music audible beyond property limits.

Original §55-5.4(G)

G. *There shall be no outdoor public-address system or music system audible beyond the limits of the property.*

Revised §55-5.4(G)

G. *There shall be no outdoor public-address system;*

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**Revision 4**

**§ 55-9.1(B)(1).**

Language was deleted and added.

Original §55-9.1(B)

B. *In residence districts.*

- (1) *Accessory off-street parking areas shall not be located in a required front yard and shall not be less than five (5) feet from any property line in a required side or rear yard.*

Revised §55-9.1(B)

B. *In residence districts.*

- (1) *Accessory off-street parking areas shall not be less than five (5) feet from any property line in a required front, side or rear yard.*

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**Revision 5**

**§ 55-9.4(A)(4).**

Language was deleted from this section, as shown below.

Original §55-9.4(A)

§ 55-9.4. *Fences, walls and gates.*

A. *In residence districts.*

- (4) *In all events, all fences shall be erected with the finished side facing the adjoining lot. or is otherwise completely screened with evergreen or equal landscaping.*

Revised §55-9.4(A)

§ 55-9.4. *Fences, walls and gates.*

A. *In residence districts.*

- (4) *In all events, all fences shall be erected with the finished side facing the adjoining lot.*

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**Revision 6**

**§ 55-9.6(C).**

The parking requirement for accessory apartments was deleted, as shown by the strike-out below.

§ 55-9.6. *Off-street parking and truck loading.*

C. *The schedule of off-street parking space requirements for residential uses shall be as follows:*

~~*Accessory apartment—1 per accessory apartment, plus 1 per bedroom over 2 bedrooms*~~

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**Revision 7**

**§ 55-9.7(B)(5).**

Language was deleted and added.

Original §55-9.7(B)

§ 55-9.7. *Signs.*

B. *Professional signs and announcement signs.*

- (5) *Such signs may be lighted only by shielded light sources attached to the sign of any intensity not exceeding fifteen (15) watts of power.*

Revised

§ 55-9.7. *Signs.*

B. *Professional signs and announcement signs.*

- (5) *Lighting for such signs shall be mounted on the top of or above the sign, directed downward, and positioned or shielded so that the light source is not visible beyond the boundary of the property on which the sign is located.*

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**Revision 8**

**§ 55-9.7(F)(4).**

Language was deleted and added.

Original §55-9.7(F)

*F. General provisions.*

- (4) *Illumination of signs shall be accomplished by means of shielded light sources and in such a means that no glare shall extend beyond the property lines, disturb the vision of passing motorists or constitute a hazard to traffic.*

Revised §55-9.7(F)

*F. General provisions.*

- (4) *Illumination of signs shall be accomplished by means of a fully shielded light source mounted on top of or above the sign directed downward and positioned or shielded so that the light source is not visible beyond the property lines, disturb the vision of passing motorists or constitute a hazard to traffic.*

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**Revision 9**

**§ 55-9.8.**

This section and its language were entirely new.

*§ 55-9.8. Buildings or Land in the VB District With Multiple Uses. Notwithstanding any other provisions of this Chapter, any building or land within the VB District that is benefitted by more than one certificate of occupancy or compliance or a single certificate allowing multiple uses upon the effective date of enactment of this amendment that allow for more than one use in or upon the building or land shall be allowed the uses as are represented by such certificate(s), although the building or land owner may elect to combine one or more such uses, or to redistribute, among the various*

*uses, the floor areas previously allocated to such uses, provided that the total floor area of all uses allowed by such certificate(s) is not exceeded. Any such combination of uses or reallocation of floor areas among uses shall not require site plan review or any special exception or other discretionary approval or authorization from any Village board or agency provided that any use or uses is permitted under the certificate(s) of occupancy or compliance for that building or land.*

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**Revision 10**

**§ 55-9.9: All language of this section is new.**

This section and its language were entirely new.

§ 55-9.9.      *Lighting.*

A.      *Residential standards.*

1.      *Exterior lighting shall be designed, installed, and maintained to minimize glare.*
2.      *Irrespective of any other provision herein, all lighting on new construction for which a building permit is issued after the effective date of this chapter must be fully shielded.*
3.      *No light source shall be visible beyond the boundary of the property on which it is located including from a body of water or roadway.*

B.      *Commercial lighting standards and requirements.*

*Exterior commercial lighting which is improperly designed, insufficiently shielded or unnecessarily intense can have a detrimental effect on many of the qualities which the Village seeks to foster and protect. Therefore, in reviewing site plans the Planning Board shall consider the impacts of any proposed exterior lighting on public safety, adjacent property (especially residential property), the natural environment and the general appearance of the Village. To this end, the Planning Board is directed to apply the specific standards and requirements of this section to any proposed exterior lighting. The Planning Board shall have the power to vary or modify any standards or requirements, where appropriate, provided the Board finds that doing so will not negate the purposes of this section.*

1. *Location of light fixtures. All exterior light fixtures shall be located so as to minimize or avoid glare and the adverse effects of exterior lighting on nearby properties, especially residential property.*
2. *Mounting Height. Light fixtures shall be mounted at the lowest practical height, taking into account the area to be illuminated and the relationship between the mounting height and the number of fixtures required to illuminate that area unless a greater mounting height is required by the nature of the use or the size of the structure (e.g. boat storage buildings, multiple dwelling units and commercial garages), light fixtures shall not be mounted at a height greater than twelve (12) feet above natural grade.*
3. *Type of lamp. The following types of lamps shall not be permitted:*
  - (a) *Mercury Vapor;*
  - (b) *Neon, unless legally pre-existing;*
  - (c) *Laser; and*
  - (d) *Any light source with a color temperature greater than 3000 Kelvin (K).*
4. *Utility pole mounted lighting is prohibited.*
5. *Shielding of light source. Full cut-off light fixtures shall be used for all light sources.*
6. *Landscape lighting is discouraged. Façade lighting is also discouraged.*
7. *Installation of automatic lighting controls is recommended. Motion sensors should be aimed and adjusted such that lights are not triggered by motion off the property.*
8. *All lights are to be extinguished no later than one half hour after close of business. "Dusk-to-dawn" sensors, without a shut off control are prohibited.*
9. *Light levels at the property line shall not exceed 0.1 footcandles adjacent to property zoned for commercial use, and 0.05 fc at residential property boundaries.*
10. *Light levels shall not be in excess of 5 footcandles on any lit surface.*
11. *Exceptions. The following types of lighting are exempt from the foregoing provisions:*
  - (a) *Temporary lighting;*

- (b) *Lighting which the Village Board has expressly allowed in connection with a special event;*
- (c) *Flag uplighting, provided any such flag is not used for advertising purposes, and has a fixture as close to the pole as possible and has a light source that emits a narrow beam of light. The light source must be recessed within a fixture with an opaque shield so that as designed and installed, the light fixture projects all its light above the horizontal plane and is aimed directly at the flag. The light source must not be visible across the property line;*
- (d) *U. S. Coast Guard approved maritime navigational lighting, and all temporary emergency lighting needed by Fire, Ambulance, or Police departments, or other emergency services;*
- (e) *Municipal street lighting;*
- (f) *All essential lighting for emergency facilities; and*
- (g) *Marina power pedestal lighting.*

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**Revision 11**  
**§55-10.8.**

This revision restored the language of §55-10.8 to the language that appeared in §55-12.8 of the existing Zoning Code.

Originally Proposed §55-10.8

§ 55-10.8. *Determination of nonconforming use.*

*The following procedures must be followed prior to the determination of a legally preexisting, nonconforming use by the Building Inspector:*

- A. *The applicant shall submit to the Building Inspector proof of the existence of said use prior to November 16, 1971 which may include a certified tax search prepared by a title company showing the assessment for said use prior to said date or an original survey dated prior to said date showing said use or an original Board of Fire Underwriter's Certificate showing said use and dated prior to said date or a public record of any type showing such use and dated prior to said date. In all events any such application shall include two (2) affidavits of persons with personal knowledge other than the owner or applicant attesting to such use prior to November 16, 1971.*

- B. *Upon the completion of these requirements, the Building Inspector shall make a determination as to the status of the applicant's application.*

Revised §55-10.8 – Restored to language of existing Code  
§ 55-10.8. Determination of nonconforming use.

*The following procedures must be followed prior to the determination of a legally preexisting, nonconforming use by the Building Inspector:*

- A. *At least 10 days prior to the issuance of a certificate of occupancy for a legally preexisting, nonconforming use, the Building Inspector shall cause notice of the application filed by the applicant to be published in the official newspaper of the Village. The notice shall state that comments or objections to a finding of a legally preexisting, nonconforming use shall be made no later than 10 days from the date of the appearance of the notice in the official newspaper (the "notice date").*
- B. *The applicant must send a copy of the application filed with the Building Department to the owners of record of every property which touches or abuts the applicant's property and to the owners of record of every property which is directly across any public or private street from the property involved in the application. The provision shall require that such notice be given to all such owners, including the owners of underwater land or within another governmental jurisdiction, excepting only the following entities: the State of New York, the County of Suffolk and the Village of Sag Harbor. Such notice shall be made by certified mail, return receipt requested, posted at least 10 days prior to the date upon which such determination is to be made and addressed to the owners of record at the latest addresses listed for them on the current Village tax roll. The applicant shall file with the Building Department an affidavit stating that he has complied with this provision, together with the postal receipts evidencing notification of the property owners.*
- C. *Upon the completion of these requirements, the Building Inspector shall make a determination as to the status of the applicant's application.*

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**Revision 12**

**§ 55-11.6(B).**

This revision deleted the language regarding the requirement of accessory apartments to be affordable, as would be defined by the U.S. Department of Housing and Urban Development. That deleted language was replaced with language stating that low or moderate income occupants—as well as members of the local fire or police departments, any ambulance corps volunteers or civil servants or hospital or school employees or any employee of a local business supplying services or products to the local community—would be given *preference* for occupancy of the accessory apartments, thus affordability is no longer a *requirement*.

Original §55-11.6(B)

B. *Affordable requirement. No permit for an accessory apartment shall be approved unless the tenant (individual or family) earns no more than eighty (80%) percent of the area median income as established annually by the U.S. Department of Housing and Urban Development (HUD) based upon household size and the annual rent including utilities does not exceed thirty (30%) percent of said median income based upon household size. By way of illustration, not limitation, a single individual earning in 2008 \$52,550.00 would pay a rent not in excess of \$15,765.00 per annum or \$1,313.00 per month.*

Revised §55-11.6(B)

B. *Low or moderate income requirement. Preference for occupancy of any accessory apartment under this section shall be given to low or moderate income occupants as well as members of local fire or police departments, any ambulance corps volunteers or civil servants or hospital or school employees or any employee of a local business supplying services or products to the local community.*

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**Revision 13**

**§ 55-11.6(D)(7).**

Language was deleted from this section that would have required accessory apartments in the R-20 District to be provided off-street parking. Now, after the revision, only a good faith effort to seek to provide at least one off-street parking space for an accessory apartment is required by the applicant.

Original

*§ 55-11.6. Accessory Apartments in the R-20 District and New Accessory Apartments in the VB District.*

D. Standards

7. Off Street Parking. *One off-street parking space shall be provided for each bedroom in an accessory apartment, in addition to off street parking required for the principal dwelling. This requirement shall not apply in the VB District.*

Revised

§ 55-11.6. *Accessory Apartments in the R-20 District and New Accessory Apartments in the VB District.*

D. Standards

7. Off Street Parking. *Any applicant hereunder shall in good faith seek to provide at least one off street parking space for any such accessory apartment but no off street parking spaces shall be required for an accessory apartment hereunder.*

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**Revision 14**

**§ 55-11.8(L).**

Language was deleted from this section.

Original

§ 55-11.8. *Bed and Breakfast*

- L. *Any sign at the premises shall be limited to a sign no greater than two (2) square feet stating “B and B.”*

Revised

§ 55-11.8. *Bed and Breakfast*

- L. *Any sign at the premises shall be limited to a sign no greater than two (2) square feet.*

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**Revision 15**

**§ 55-11.20.**

Multiple changes were made throughout this section, which provides the special standards for the special exception use “Convenience Store at Filling Station”. The revisions included amendments to the section to provide greater regulation of landscaping, parking and access, lighting, and signage at the sites where such a convenience store is proposed, as well as deletion of language throughout the section. The revisions were too numerous and complicated to include them all herein.

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**Revision 16**

**§ 55-12.6(B)(3).**

Language was added to this section, as is indicated by the double-underlined text below.

Original §55-12.6(B)(3)

§ 55-12.6. *Specific variance standards.*

B. *With respect to nonconforming uses, buildings, structures and lots:*

(3) *To grant approval for a change in a nonconforming use, provided that:*

(a) *The Board of Appeals shall have made a determination that such change will be beneficial to the general neighborhood.*

(b) *Such change is made subject to such reasonable conditions and safeguards as the Board of Appeals may stipulate.*

(c) *In no event shall the Board of Appeals approve any application to change a nonconforming use to a cabaret, disco, nightclub or superstore.*

Revised §55-12.6(B)(3)

§ 55-12.6. *Specific variance standards.*

B. *With respect to nonconforming uses, buildings, structures and lots:*

(3) *To grant approval for a change in a nonconforming use, provided that:*

(a) *The Board of Appeals shall have made a determination that such change will be beneficial to the general neighborhood. Any such determination shall require that the Board affirmatively find (i) the change of use will not be the introduction of an undesirable use in the neighborhood; (ii) the owner is without any reasonable alternative; (iii) the owner's hardship is unique; (iv) the change of use will not cause or result in detriment of any kind to nearby properties; (v) the owner's difficulty is not self-created; (vi) the grant of any change of use will not adversely change the existing character of the area;*

- and (vii) the new use will not be an intensification of use.
- (b) Such change is made subject to such reasonable conditions and safeguards as the Board of Appeals may stipulate.
- (c) In no event shall the Board of Appeals approve any application to change a nonconforming use to a cabaret, disco, nightclub or superstore.
- (d) Any application under this subsection shall require that the notice of the hearing be provided by the applicant as required under § 55-12.3(D)(1) except said notice shall be given to all owners within a five hundred (500') foot radius.

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**Revision 17**  
**§ 55-13.3(A).**

Language was added to this section, as indicated by the double-underlined text below.

Original §55-13.3(A)

§ 55-13.3. Review procedures.

- A. Prior to the commencement of any activity requiring a certificate of appropriateness, the owner shall file an application for such a certificate with the Board of Historic Preservation and Architectural Review. A complete application shall contain:

[...]

- (2) The location, Tax Map designation and photographs of the property and all adjacent properties clearly indicating all public views.

- (3) Elevation drawings showing existing conditions and proposed changes, including relationship to adjacent properties, if necessary in the Board's view.

[...]

- (5) Sample of color or materials to be used.

[...]

- (8) *Any other information which the Board may deem necessary in order to determine the appropriateness of the proposed changes.*

Revised §55-13.3(A).

§ 55-13.3. *Review procedures.*

- A. *Prior to the commencement of any activity requiring a certificate of appropriateness, the owner shall file an application for such a certificate with the Board of Historic Preservation and Architectural Review. Prior to the filing of an application, all applicants, together with design or other consultants and contractors, are encouraged to meet informally with the Board to discuss the process, the regulatory requirements and any means to enhance the efficient disposition of any application, it being understood however that any such informal meeting is not binding and is intended merely to assist an applicant to avoid delay, expense and a delayed understanding of the provisions of this Article. A complete application shall contain:*

[...]

- (2) *The location, Tax Map designation and photographs of the property and all adjacent properties clearly indicating all public views and including any trees which the applicant intends to remove or relocate or to prune in a manner other than ordinary trimming or ordinary maintenance as well as a site drawing showing in an Historic District the location of any proposed tree installations, including the species and caliper for each.*

- (3) *Elevation drawings showing existing conditions and proposed changes, including relationship to adjacent properties, and if necessary in the Board's view, axonometric drawings.*

[...]

- (5) *Sample of color and materials to be used.*

[...]

- (8) *Any other information which the Board may deem necessary in order to determine the appropriateness of the proposed changes, including by way of illustration, not limitation, the location of any temporary toilets to be maintained during any construction, awnings and any landscape design features, that is, sidewalks, aprons, driveways, terraces regulated*

*under this Chapter, retaining walls, curbing and similar features.*

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**Revision 18**

**§ 55-13.7(C)(9)(e).**

Language was deleted and added.

Original §55-13.7(C)

*§55-13.7. Additional Criteria*

C. *In applying the principle of compatibility, the Board shall consider the following factors:*

(9) *Approval of any alteration or new construction shall require consideration of the use and inclusion of the following:*

(e) *Continuity in the rhythm of window and doors on the proposed building(s);*

Revised §55-13.7(C)

*§ 55-13.7. Additional Criteria Applicable to applications in an Historic District.*

C. *In applying the principle of compatibility, the Board shall consider the following factors:*

(9) *Approval of any alteration or new construction shall require consideration of the use and inclusion of the following:*

(e) *Continuity in the fenestration of windows and doors on the proposed building(s);*

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**Revision 19**

**§ 55-14.3(A).**

The two (2) sentences were added to the end of this section to provide the criteria a change-of-use would have to meet to be exempt from site plan review. See the Appendix E for a flow chart of the expected process for a change-of-use under the Proposed Zoning Code.

*§ 55-14.3. Site Plan Review.*

A. *Applicability of site plan procedure and standards. Any application for a building permit for any use, building or structure and any*

*change of use from any use described in the Table of Uses herein to another use on said Table or to any other use and any enlargement of an existing use shall require site plan approval by the Planning Board. In all cases where this article requires site plan review, no building permit shall be issued by the Building Inspector and no use of premises may be maintained except upon authorization of and in conformity with plans approved by the Planning Board. This article shall not apply to a one or two-family dwelling but shall apply to any apartment use. Any provision in this subsection or in § 55-14.6(A) to the contrary notwithstanding, the following changes of use are not subject to site plan review: any change of a permitted use to another permitted use where the use is 3,000 square feet or less, the change of use does not at any time include any common use or occupancy or combination or consolidation of adjacent or nearby space so as to total in excess of 3,000 square feet, the change of use does not have a parking space requirement greater than the parking requirement for the existing use and the change of use does not include an increased number of gallons per day of sewage flow rate as set forth on the Suffolk County Department of Health Service Standards for Approval of Plans and Construction for Sewage Disposal Systems for Other Than Single-Family Residences as amended or any equivalent reference then in use by the Suffolk County Department of Health Services for determination of sewage flow rate.*

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**Revision 20**

**§ 55-14.4(A)(5).**

This subsection of §55-14.4(A) was a completely new section that would require site plan applicants to include detailed information on the proposed lighting in the event that the site plan proposes additional lighting or a change in the existing lighting.

§ 55-14.4. *Site plan elements.*

A. *Submission. A complete site plan application shall consist of:*

- (5) *For site plans in which additional lighting or a change in existing lighting is proposed, a plan showing existing lighting and proposed exterior lighting that is depicted on a site plan shall be submitted. The following additional information may also be required as deemed necessary by the Planning Board:*

- (a) *A lighting fixture schedule indicating manufacturer name, catalog number, lamp source type (i.e. High pressure sodium), wattage and initial lumens, photometric distribution type (full cut-off), mounting height and shielding descriptions;*
- (b) *Types of controls and control schedule with proposed hours of operation for each luminaire;*
- (c) *Iso-footcandle plots for the proposed fixtures if there are a limited number of fixtures. For many fixtures (more than four) or areas of overlap it may be necessary to include a point by point illuminance calculation as noted below;*
- (d) *Depending on the size of the area to be illuminated and the number of fixtures proposed, the Board may request a point by point illuminance (lighting levels in footcandles) calculation at a 10 foot grid (maximum) with summary indicating all initial footcandle levels on the lighting plan, noting the maximum, average and minimum. All exterior luminaries on the property shall be included in the calculation. Property line illuminance calculations must also be shown. Light loss factor (LLF) must equal 1.0 for these calculations; and*
- (e) *Lighting manufacturer-supplied product information sheets that include photographs of the fixture and indicate the photometric distribution type “full cut off” of the luminaire (light fixture).*

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**Revision 21**

**Appendix L1 and L2.**

Two figures were added to the appendix of the Zoning Code to illustrate the light fixtures that would be permitted (Appendix L1) and prohibited (Appendix L2) under the Proposed Zoning Code.

### 3.2. Phase 2 – Revisions Between December 29, 2008 and April 16, 2009.

Once this second draft was finalized and circulated, Inter-Science Research Associates, Inc. (“Inter-Science”), with input from Anthony Tohill, Esq., began preparation of the Draft GEIS for the proposed action.

On December 22, 2008 the Draft GEIS was submitted to the Village Board of Trustees, who subsequently accepted the document as complete on December 29, 2008. With the Draft GEIS completed, the Board of Trustees opened the public comment period as required as part of SEQRA under §617.9(4). This public comment period signifies the start of the second phase of revisions to the Proposed Zoning Code.

As discussed in Section 1.2.1 of this Final GEIS, after four public hearings were held, the Board of Trustees closed the public comment period on April 16, 2009. During that time period, several public comments were received, both in written and verbal form. Comments were collected from Sag Harbor Village property and business owners, as well as the Sag Harbor Business Association, the non-profit groups Save Sag Harbor and the Sag Harbor Yacht Club, the Village Harbor Committee and the Suffolk County Planning Commission. A summary of the comments gathered at the public hearings and the written comments, as well as their responses, can be found in Section 2.1 and 2.2, respectively. The decision made by the Suffolk County Planning Commission regarding the documents of the proposed action can be found in Section 2.3.

The revisions made during that time period are provided below, presented in the order in which they appear in the Zoning Code:

#### **Revisions to the Proposed Zoning Code – Dec. 29, 2008 & Apr. 16, 2009**

##### ***Revision 22***

##### **§55-2.2. Accessory Use, Building or Structure**

A new sentence was added at the end of this definition as follows:

*“The term ‘tennis court’ shall be a playing area with a net on the ground partly or entirely surrounded by fencing or netting designed to deter the passage of balls, and shall not include any roof, equivalent feature or other structure and no other structural improvements.”*

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##### ***Revision 23***

##### **§55-6.4(D).**

Deleted the word “use” in the second sentence, replacing it with “exterior alteration.” New section reads as follows:

*“Any such enlargement shall be subject to approval of the Board of Historic Preservation and Architectural Review who shall affirmatively find, among other things, that the enlargement and any resultant exterior alteration is consistent with the historic character of the existing structures within the VB District.”*

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**Revision 24**

**§55-6.4(E).**

Deleted all language after the word “permitted.”

Original §55-6.4(E)

*“Offices on a second floor within the VB District are permitted provided any said office is an accessory use to a principal use located on the first floor and does not exceed in square feet 50% of the gross floor area of the first floor use.”*

Revised §55-6.4(E)

*“Office on a second floor within the VB District are permitted.”*

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**Revision 25**

**§55-11.2(D).**

Language was added at the end of the first sentence addressing additional notices for bed and breakfast and day care facilities, as follows:

*“The applicant shall mail notice of the public hearing date, at least ten (10) days prior thereto, to every property owner, as shown on the current Village of Sag Harbor assessment rolls, or parcels abutting and/or directly opposite (by way of extension of lot lines through the street right-of-way) the property which is the subject of the public hearing excepting that such notice for use under §§55-11.8 and 55-11.12 shall also include any property owner within a five hundred (500') foot radius of the perimeter of the property which is the subject of the public hearing.”*

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**Revision 26**

**§55-11.4(B).**

Language was added to reference the Village’s Local Waterfront Revitalization Program.

Original §55-11.4(B).

B. Compliance with other laws. *The proposed use can and will comply with all provisions of this chapter and the Village Code applicable to the proposed use and can meet every other applicable federal, state, county and local law, rule or regulation.*

Revised §55-11.4(B).

B. Compliance with other laws. *The proposed use can and will comply with all provisions of this chapter and the Village Code applicable to the proposed use, the Local Waterfront Revitalization Program (LWRP) and can meet every other applicable federal, state, county and local law, rule or regulation. For purposes of this Section, compliance with the policies of the LWRP shall be determined by the referral required by §55-14.5(D)(3) to the Harbor Committee, which shall issue an advisory report prior to any action by the Planning Board.*

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**Revision 27**

**§55-11.19(4).**

Language was deleted in this section that was a remnant reference of the Parking Trust Fund, which should no longer exist in the Proposed Zoning Code.

Original §55-11.19(4)

*§55-11.19. Tables and chairs as accessory to retail food store.*

*Tables and chairs or counters and stools for on-premises consumption as an accessory use to a retail food store subject to the following special standards:*

- (4) *Additional parking shall be supplied (unless the additional parking spaces are already available on site) at the rate of one space per three seats or stools, or part thereof, or a variance, with corresponding contribution to the Trust Fund, obtained for said space(s).*

Revised §55-11.19(4)

*§55-11.19. Tables and chairs as accessory to retail food store.*

*Tables and chairs or counters and stools for on-premises consumption as an accessory use to a retail food store subject to the following special standards:*

- (4) *Additional parking shall be supplied (unless the additional parking spaces are already available on site) at the rate of one space per three seats or stools, or part thereof, or a variance obtained for said space(s).*

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**Revision 28**

**§55-12.6(E)(2).**

Subsection (b) was deleted in this section because it was a remnant reference to the Parking Trust Fund, which should no longer exist in the Proposed Zoning Code.

Original §55-12.6(E)(2)

§ 55-12.6. *Specific variance standards.*

*In all instances of the following types of variances, the Board of Appeals is hereby specifically empowered to grant the variance pursuant to the respective applicable guiding principles and the standards stated in § 55-12.5 and to the provisions which follow:*

*E. With respect to accessory parking and truck loading spaces:*

- (2) *Every decision of the Board of Appeals which grants a variance waiving, varying or modifying the requirements of § 55-9.6 for off-street parking and/or truck loading spaces, in whole or in part, shall:*
- (a) *Clearly set forth the nature and extent of such variance by specifying the number of spaces required, the number of spaces to be required by the Board of Appeals and the number of spaces thus waived by the Board of Appeals. The number of spaces so waived by the Board of Appeals shall constitute the number of spaces for which a variance is granted.*
  - (b) *Be made subject to a condition requiring a payment to the Village of Sag Harbor of a sum to be determined by the Board of Trustees for each and every space for which a variance is granted in accordance with the provisions set forth in § 55-9.6(I) and.*
  - (c) *Be preceded by the Board of Appeals' referral to the Planning Board and review of a report by the Planning Board considering all planning aspects of the variance application.*

Revised §55-12.6(E)(2)

*§ 55-12.6. Specific variance standards.*

*In all instances of the following types of variances, the Board of Appeals is hereby specifically empowered to grant the variance pursuant to the respective applicable guiding principles and the standards stated in § 55-12.5 and to the provisions which follow:*

*E. With respect to accessory parking and truck loading spaces:*

*(2) Every decision of the Board of Appeals which grants a variance waiving, varying or modifying the requirements of § 55-9.6 for off-street parking and/or truck loading spaces, in whole or in part, shall:*

*(a) Clearly set forth the nature and extent of such variance by specifying the number of spaces required, the number of spaces to be required by the Board of Appeals and the number of spaces thus waived by the Board of Appeals. The number of spaces so waived by the Board of Appeals shall constitute the number of spaces for which a variance is granted, and*

*(b) Be preceded by the Board of Appeals' referral to the Planning Board and review of a report by the Planning Board considering all planning aspects of the variance application.*

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**Revision 29**

**§55-14.3(B)(1)(d).**

Language was added to reference the Village's Local Waterfront Revitalization Program.

Original §55-14.3(B)(1)(d).

*(d) Consistency. The development proposed is at a scale and density consistent with existing development, with this Zoning Chapter, with the Comprehensive Plan of the Village, and with the policies of the Local Waterfront Revitalization Program (LWRP).*

Revised §55-14.3(B)(1)(d).

- (d) *Consistency. The development proposed is at a scale and density consistent with existing development, with this Zoning Chapter, with the Comprehensive Plan of the Village, and with the policies of the Local Waterfront Revitalization Program (LWRP). For purposes of this Section, compliance with the policies of the LWRP shall be determined by the referral required by §55-14.5(D)(3) to the Harbor Committee, which shall issue an advisory report prior to any action by the Planning Board.*

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**Revision 30**

**§55-17.3B.**

Language was added to provide the length of time that a new owner must secure a new certificate of occupancy.

Original §55-17.3B.

*“Any change of ownership of any property containing a building or structure shall require that the successor owner obtain a new current certificate of occupancy prior to any use or allowance of use of the property.”*

Revised §55-17.3B.

*“Any change of ownership of any property containing a building or structure shall require that the successor owner obtain a new certificate of occupancy within thirty (30) days.”*

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**Revision 31**

**Table of Uses.**

Office & Banks in the Village Business (VB) District were changed from “X” (prohibited) to “P” (permitted), and a footnote was added reading:

<sup>1</sup> *Prohibited on first floor. Permitted on second floor and above. See §55-6.4(E).*

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**Revision 32**

**Table of Uses.**

The following uses were added to the Table of Uses, as suggested by the Village Harbor Committee:

	R20	RM	VB	OD	WF
Fish Market	X	X	P	X	P
Sail Loft and Canvas Shop	X	X	X	X	P
Ship/Marine Chandlery	X	X	X	X	P
Marine Surveyor	X	X	P	X	P
Naval Architect	X	X	P	X	P

**Revision 33**

**Table of Dimensional Regulations.**

Under “Lot Area: Minimum per transient guest unit (motel),” in the Resort Motel (RM) District column, the square footage was changed from 2,904 square feet to 2,178 square feet. This is to reflect a change of 20 transient guest units per acre, instead of 15 transient guest units per acre. The change of from 15 units per acre to 20 was made in the Zoning Code text under § 55-5.4(A) during revision Phase 1 (see Revision 2), but the change was not carried over to the Table of Dimensional Regulations.

Most of the changes to the Proposed Zoning Code during Phase 2 were made as a direct result of the public comments. Other changes and revisions were purely administrative changes, such as Revisions 26 and 29, which added references to the LWRP. Revision 24—the change that permits any office on the second floor and above in the VB District—was made by the Board of Trustees in response to the recent global economic downturn in an effort to provide the landlords in the VB District with additional options for potential tenants.

**4.0**    **References.**

1.        6 NYCRR Part 617, the State Environmental Quality Review Act.
2.        Code of the Village of Sag Harbor.
3.        Easley, V. Gail, FAICP. “Overhauling Your Zoning Code” Zoning Practice. American Planning Association. Volume 25, Issue 12. (December 2008).
4.        Inter-Science Research Associates, Inc. “Planning Strategies for the Incorporated Village of Sag Harbor (with an emphasis on the commercial district).” (July 21, 2008).
5.        Matter of G&P Investing Company v. Brian X. Foley. Docket No. 2008-08376, Index No. 10699/08. Supreme Court of the State of New York; Appellate Division: Second Judicial Department. April 7, 2009.
6.        New York State Village Law.
7.        “North American Industry Classification System.” United States Executive Office of the President: Office of Management and Budget – National Technical Information Service. Springfield, VA. (2007).
8.        Proposed Chapter 55, Zoning for the Code of Village of Sag Harbor.
9.        Szepatowski Associates, Inc., Dunn Engineering, P.C. “Village of Sag Harbor Parking and Circulation Study.” March 1993.
10.       Village of Sag Harbor files on the various parking studies.
11.       Village of Sag Harbor records regarding 34 Bay Street (SCTM No. 0302-2-3-2).
12.       Village of Sag Harbor records regarding the properties with tax map numbers 0903-2-1-19.1, 19.2 & 19.3.
13.       Village of Sag Harbor Website. [<http://www.sagharborny.gov>].