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Chapter 55, ZONING

ARTICLE 1, Title; Legislative Findings; Declaration of Purpose

§ 55-1.1. Title.

This chapter shall be known and may be cited as the "Zoning Code of the Village of Sag Harbor."

§ 55-1.2. Legislative findings and determinations.

A. The Village of Sag Harbor enacted its first Comprehensive Zoning Plan, Zoning Ordinance and Zoning Map on August 2, 1949. It amended and readopted the Comprehensive Zoning Plan, Zoning Ordinance and Zoning Map on November 16, 1971. These documents have been the subject of further amendment since the re adoption as a result of the Planning Study of the Sag Harbor Business District and other comprehensive planning and zoning studies. The most recent Comprehensive Plans are the Planning Strategies for the Inc. Village of Sag Harbor (With an Emphasis on the Commercial District) prepared by Inter-Science Research Associates, Inc. and dated July 21, 2008.

B. The Board of Trustees finds that there are certain characteristics of the Village of Sag Harbor which are significant in establishing its Comprehensive Zoning Plan and guiding future development of the village. They are as follows:

(1) The Village of Sag Harbor is uniquely situated on a navigable arm of Peconic Bay and tributaries thereof. As a result of its unusually extensive water frontage development, it is of necessity closely related to valuable marine environmental resources. Preservation and enhancement of these marine resources will continue to be important in the village's future.

(2) The village has a long history beginning with its settlement in the early 18th century and development soon thereafter as a major port. It has an unusually rich and varied architecture and an environment reflecting its development stages.

(3) The economic base of the village in recent years has relied primarily on the tourist and second-home activity that its history and marine environment generate in the South Fork resort subregion. It is important to assure the continued availability of this economic base. Nevertheless, the village also serves another important role as a year-round home for families, including young and old householders. Every effort should be made to maintain the year-round community, including

its community facilities, services and convenience shopping, service businesses and employment.

(4) The Village of Sag Harbor's remaining vacant land resource is limited. The pattern of existing land use is generally well defined. With the increased awareness of the potential impact of development on the marine environment and economic resources of the village, the control of development and redevelopment will be critical. As a result, careful consideration must be given to the practices and needs of established businesses and industries and to the needs of future businesses and industries, particularly as they relate to appropriate use of the waterfront for water-dependent uses, and to the designation of other areas for existing and future residential development for those at various economic levels. To this end, it is important that the Comprehensive Zoning Plan reflect a balanced, sound and well ordered concept for the village's future environment and private and public land uses.

(5) In general, the Comprehensive Zoning Plan is designed to protect the established character and the social and economic stability of the village and to be compatible with the planning and zoning of the surrounding unincorporated residential areas of the Towns of East Hampton and Southampton.

#### § 55-1.3. Declaration of purpose.

This chapter is adopted for the purpose of promoting the health, safety, morals or the general welfare of the Village of Sag Harbor and in the furtherance of the following related and more specific objectives:

A. To guide and regulate the orderly growth, development and redevelopment of the village in accordance with a comprehensive plan and with the more long-range objectives, principles and standards expressed in the legislative findings and determinations which are deemed to be beneficial to the interests and welfare of the people.

B. To protect the established character and the social and economic well-being or both private and public property.

C. To promote, in the public interest, the utilization of land for the purposes for which it is most appropriate.

D. To promote, in the public interest, the preservation of natural areas.

E. To secure the maximum recharge of the village's fresh groundwater reservoir to assure both the maintenance of the natural environment and the ecosystems essential to its

continued well-being and the optimum groundwater resource for the human community through the protection of such features of the watersheds as the woodlands, streams and ponds, and to so regulate the ultimate land use and consequent freshwater consumption that the potential demand for freshwater shall not exceed the reasonable safe yield of that fresh groundwater reservoir.

F. To protect and promote the fisheries and the resort industries of the village by preserving a healthful biological and chemical balance in the adjacent bays, estuaries and all tributary watercourses and drainage lines.

G. To secure safety from fire, panic, flood, storm and other dangers; to provide adequate light and air and convenience of access; and to prevent environmental pollution.

H. To prevent overcrowding of land or buildings, avoid undue concentration of population, and provide privacy for families.

I. To conserve the value of buildings, and to enhance the value of land throughout the village.

J. To provide affordable housing sites for residents of the community compatible with their economic means.

K. To lessen and, where possible, to prevent traffic congestion on public streets and highways.

L. To eliminate nonconforming uses gradually.

M. To facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements.

N. To conserve and reasonably protect the natural scenic beauty and cultural and historic resources of the village and its environs.

O. To ensure that the distinctive and historical character of the Historic District of the village shall not be injuriously affected, that the value to the village of these structures having architectural and historical worth shall not be impaired and that said Historic District shall be maintained and preserved to promote its use for the education, pleasure and welfare of the citizens of the village and others.

P. To guide land and water use and development in accordance with the policies, purposes and projects set forth in the local waterfront revitalization program.

Q. To protect against changes in the character of the commercial district which would threaten the local identity of this area of commerce, including unexpected changes in the type and size of uses present.

## ARTICLE 2. Word Usage and Definitions

### § 55-2.1. Word usage.

A. Unless the context clearly indicates the contrary, words used in the present tense include the future, the singular number includes the plural, and the plural the singular.

B. The word "person" includes a profit or nonprofit corporation, company, partnership, association, trust, estate or individual, or any other legally cognizable entity.

C. The word "shall" is mandatory and not directory; the word "may" is permissive.

D. The word "lot" includes the word "plot" and the word "land."

E. The word "structure" includes the word "building."

F. The word "use" refers to any purpose for which a lot or land or part thereof is arranged, intended or designed to be used, occupied, maintained, made available or offered for use; and to any purpose for which a building or structure or part thereof is arranged, intended or designed to be used, occupied, maintained, made available or offered for use or erected, reconstructed, altered, enlarged, moved or rebuilt with the intention or design of using the same. Any separate business shall be considered a separate use. Any change of use from any use described on the Table of Uses herein to another use on said Table or to any other use shall be deemed a change of use. By way of illustration, not limitation, any change from a use or activity listed on the Table of Uses to any other use separately listed or unlisted shall be a change of use.

G. The word "used" refers to the actual fact that a lot or land or building or structure, or part thereof, is being occupied for a particular use.

H. The word "village" means the Incorporated Village of Sag Harbor.

I. The word "town" means the unincorporated area of either the Town of East Hampton or the Town of Southampton, or both such towns.

J. As a general rule of construction, words not specifically defined in this Article shall be accorded their common meanings as set forth in any authoritative dictionary in general use.

§ 55-2.2. Definitions.

As used in this chapter, the following words and phrases shall have the meanings indicated in this section:

ACCESSORY APARTMENT -- A use accessory to a one family detached owner occupied dwelling in the R-20 District or to a nonresidential principal use in the VB District consisting of a grouping of rooms arranged and designed with provisions for cooking, living, sanitary and sleeping facilities such that it is suitable for occupancy by a single family on a long-term basis as their principal residence during the period of such occupancy or which, however arranged or designed, is in fact being used on such a basis for such purpose and where in all cases the tenant of an accessory apartment shall have no ownership interest in the property, building, apartment or the entity that is the owner of the property, building or apartment in the R-20 District. An entire "single-family residence," as herein defined, regardless of its actual occupancy or use, shall not constitute an apartment. An accessory apartment in the VB District shall be located only on a second floor or above and in all cases above a nonresidential use, and all new accessory apartments in the VB District shall be subject to the provisions of the § 55-11.6 but legal preexisting apartments in the VB District shall not be subject to said provisions.

ACCESSORY USE, BUILDING OR STRUCTURE -- A subordinate use, building or structure customarily incidental to and located on the same lot occupied by the main use, building or structure. The term "accessory use, building or structure" shall include, but is not limited to, a private garage, garden shed, playhouse, detached trellis, pergola, swimming pool, air conditioning compressor, pool heater, filter and similar equipment, cabana, terrace or deck, private greenhouse and a tennis court, platform tennis, racquetball, volleyball or similar game court. An "accessory building" shall not be designed or used for sleeping purposes or contain cooking facilities. The term "accessory use" shall not include a heliport, helipad or the taking off or landing of helicopters or aircraft except in a legitimate emergency. 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.

ADULT CARE FACILITY -- A building or part thereof housing more than 16 persons, on a 24-hour basis, who because of age, mental disability or other reasons, live in a supervised residential environment that provides personal care services. The occupants are capable of responding to an emergency situation without physical assistance from staff.

ALTERATION -- As applied to a building or structure, a change or rearrangement of the structural parts or the exit facilities; or an enlargement, whether by extending on a side or by increasing in height; or moving from one location or position to another, whether interior or exterior. The term "alter" in its various modes and tenses and its participle form refers to the making of an alteration. The term alteration includes any change, rearrangement or addition to a building or structure and includes any modification in construction or in building equipment.

AMBULATORY CARE CLINIC -- The establishment of a licensed medical doctor engaged in the practice of general medicine that accepts patients on a "walk-in" basis and does not maintain appointments for all patients.

ANTIQUÉ SHOP -- A use that involves as its primary purpose the sale of works of art, pieces of furniture or decorative objects originally made and sold at an earlier period of time.

APARTMENT BUILDING -- A building used for residential purposes and containing more than two (2) dwelling units.

ART GALLERY -- A use that involves as its primary purpose the sale of visual art created by one or more artists including but not limited to paintings, drawings, photographs and sculptures.

ASSISTED-LIVING FACILITY -- A development providing the housing, food and skilled nursing needs of more-dependent senior citizens. Assisted-living facilities include congregate housing for seniors who are less able to function independently in all aspects of their daily lives.

ATTIC -- An unfinished, non-habitable space, used for storage purposes only, which is situated between the top of the uppermost floor construction and the underside of the roof. An attic shall be deemed a story when it contains any habitable space.

BANK -- A financial institution that is open to the public and engaged in deposit banking and that performs closely related functions such as making loans, investments and fiduciary activities.

BANK, DRIVE-THRU OR DRIVE-IN -- A financial institution where services may be provided through a window, automated machine, or other facility to customers remaining in motorized vehicles that are in a designated stacking lane.

BAR or TAVERN -- An establishment primarily engaged in the sale and service of beverages for on-premises consumption, which is also subject to regulatory authority of the New York State Liquor Authority, with the sale or service of food being incidental thereto. Such establishments may also have hours of operation which extend beyond the normal dining times for breakfast, lunch or dinner. A bar or tavern shall not include a restaurant as defined herein or any form of cabaret, disco or nightclub.

BASEMENT -- That space of a building which is partly below grade, which has more than one-half (1/2) of its height, measured from floor to ceiling, above the average established finished grade of the ground adjoining the building wall. A "basement" shall be counted as a story in determining building height. "Basement" space shall not be used as a dwelling unit.

BED AND BREAKFAST -- An owner-occupied residence, resulting from the conversion of a single-family residence, used for providing overnight accommodations and a morning meal to not more than 6 transient lodgers, and containing not more than three (3) bedrooms for such lodgers.

BLUFF -- A bank or cliff with a precipitous or steeply sloped face lying landward of the beach or body of water and having a bluff line at least 2 feet higher than its base or toe. A "bluff" may extend across all or part of a parcel.

BOATYARD -- A facility for servicing all types of water craft, as well as providing supplies, storage and fueling facilities, and with facilities for the retail sale, rental or charter of boats, motors and marine equipment. The term "boatyard" shall not be deemed to include outdoor multi-storied racks for the storage of boats.

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

BUILDING COVERAGE -- The area computed at the maximum horizontal cross sections of the main and accessory buildings on a lot, including the area of all roofed porches, terraces and similar features.

BUILDING INSPECTOR -- The official Building Inspector of the Incorporated Village of Sag Harbor or any person duly appointed or designated to act as such Inspector.

CABARET, DISCO or NIGHTCLUB -- An establishment primarily engaged in the sale and service of beverages for on-premises consumption and the providing of musical entertainment, singing, dancing or other forms of amusement and entertainment, with the sale or service of food being incidental and accessory thereto. Such establishment may also have one or more of the following characteristics: age restrictions, cover charges, charges for admission, disc jockeys, jukeboxes, amplified sound systems, live entertainment and the like; the hours of operation extend beyond the normal dinner hours. A cabaret, disco or nightclub shall not include a restaurant as defined herein or any form of bar or tavern.

CELLAR -- A story partly underground and having one-half (1/2) or more of its clear height below finished grade. A "cellar" shall not be counted as a story in determining the building height.

CERTIFICATE OF APPROPRIATENESS -- A certificate issued for a building or structure which definitively states that a particular improvement or change conforms to the requirements of Article 14 of the Zoning Code.

CLUB, BEACH OR TENNIS -- A property in single ownership improved with buildings and accessory structures established for the principal purpose of members engaging in bathing or tennis, or any combination of those activities. The term "club, beach or tennis" shall not be deemed to include sleeping quarters or dwelling units, except for one (1) dwelling unit to be used by the owner or manager, nor shall it include any dining facility, retail or personal service shop made available to the general public.

CLUB, YACHT -- A not-for-profit corporation, as defined by § 102 of the Not-For-Profit Corporation Law of the State of New York, established for the principal purpose of engaging in recreational boating. The activities of such a "yacht club" shall be limited to its members and their guests and shall not be extended to the general public. The term "yacht club" shall be deemed to include the term "marina," but shall not be deemed to include the term "boatyard."

CUSTOM WORK, SHOP FOR -- A business premises used for the making of clothing, millinery, shoes or other personal articles to individual order and measure, for sale at retail on the premises only, and not including the manufacture of ready-to-wear or standardized products.

DAYCARE FACILITY -- A facility that provides supervision and personal care on a less than 24 hour basis for more than five (5) children.

DISH ANTENNA -- A structure having as its main purpose the reception of radio signals from orbiting satellites or terrestrial sources. The term shall include all satellite earth stations of whatever configuration. Any base, pedestal, foundation, reflector, amplifier, lens, prism or other device located out of doors and connected to or used in conjunction with a "dish antenna" shall be deemed to be a part thereof.

DRIVE-IN BUSINESS or DRIVE-IN ACCESSORY USE -- A nonresidential use or an accessory use to a non-residential use which has a need for a vehicular queue or parking spaces to accommodate persons to whom it serves or transfers products or materials outside its building, if any, or to accommodate persons consuming its service, products or materials in a vehicle on the premises.

DWELLING -- A building designed exclusively for residential purposes and arranged or intended to be occupied by one (1) or more families living independently of each other.

DWELLING, ONE-FAMILY DETACHED -- A dwelling containing one (1) dwelling unit for the occupancy of one (1) family and its domestic servants.

DWELLING, TWO-FAMILY DETACHED -- A dwelling containing two (2) dwelling units for the occupancy of two (2) families and their domestic servants.

DWELLING UNIT -- A group of rooms separate and set apart from any other group of rooms, including at least one (1) bathroom, with provisions for cooking, living, sanitary and sleeping facilities arranged for the exclusive use of one (1) family.

EXCURSION BOAT -- A vessel employed on a commercial basis for party-fishing trips, commonly called a party boat. This includes vessels similarly used for sightseeing trips, whale watching, tours, dinner cruises, gambling and any similar form of recreation. An excursion boat does not include a vessel carrying fewer than five (5) passengers used on an occasional basis only.

EXTERIOR ARCHITECTURAL FEATURE -- The architectural style and general arrangement of such portion of the exterior of a structure as is designed to be open to view from a public way, including kind and texture of building materials, type of all windows, doors, lights, signs and other fixtures appurtenant to such portion.

FAMILY -- One or more persons, whether or not related to each other by blood, marriage or adoption, all occupying a single, legal one-family dwelling unit as a traditional family or the functional equivalent of a traditional family, having access to and utilizing the whole of such dwelling unit, including but not limited to all rooms and housekeeping facilities, in common. In determining whether individuals are living together as the functional equivalent of a traditional family, the following criteria must be present:

A. The group is one which in structure and function resembles a traditional family unit.

B. The occupants must share the entire single or one-family dwelling unit and live and cook together as a single housekeeping unit. A unit in which the various occupants act as separate roomers may not be deemed to be occupied by the functional equivalent of a traditional family.

C. The occupants share expenses for food, rent, ownership costs, utilities and other household expenses.

D. The occupancy is permanent, or tantamount to permanent, and stable. Evidence of such permanence and stability includes, but is not limited to:

(1) The presence of minor children regularly residing in the household who are enrolled in local schools.

(2) Members of the household have the same address for purposes of voter registration, drivers' licenses, motor vehicle registration, filing of taxes and delivery of mail.

(3) Members of the household are employed in the area.

(4) The household has been living together as a unit for a year or more whether in the current dwelling unit or in other dwelling units.

(5) Common ownership of furniture and appliances among the members of the household.

E. Any other factor reasonably related to whether or not the occupants are the functional equivalent of a family.

#### FAST-FOOD EATING ESTABLISHMENT

A. A type of eating establishment where food and beverages are ordered and purchased over counters (without table service by waiters or waitresses) in a ready-to-consume state for consumption within the building, elsewhere on the premises

and/or for carryout and whose design or method of operation includes one (1) or both of the following characteristics:

(1) Food and beverages are usually served in edible containers or in paper, plastic or other disposable containers.

(2) There are two (2) or more cashier stations available to patrons.

B. A restaurant, as defined in this chapter, shall not be construed to be a "fast-food eating establishment." A retail shop or store (such as a grocery store, a delicatessen, a neighborhood convenience grocery store, a retail bakery store, a retail ice cream or frozen dessert store and any similar retail shop or store) which does not provide for consumption on the premises shall not be construed to be a "fast-food eating establishment."

FENCE -- A structure bounding an area of land designed to either limit access to the area or to screen such area from view, or both. The term "fence" shall include tennis court enclosures or backstops and similar structures.

FERTILIZED VEGETATION -- Areas of vegetation cultivated by man which require irrigation or the application of fertilizers, pesticides, herbicides or other substances in order to grow or maintain their existence.

FERTILIZER -- Any substance containing one (1) or more recognized plant nutrients which is used for its plant nutrient content and which is designed for use or claimed to have value in promoting plant growth.

FILLING STATION -- A building or lot, or part thereof, used for supplying and selling gasoline or other equivalent fuel for motor vehicles at retail direct from pumps and storage tanks. A "filling station" may include accessory facilities for rendering limited service for motor vehicles, such as lubrication and minor repairs, and incidental, but not automated, car washing and may include a convenience store of six hundred (600) square feet or less.

FITNESS CENTER OR GYM -- A use of a building or portion thereof intended to provide members of the public with facilities for exercises, aerobics, fitness training, dance, martial arts, pilates, yoga, self-defense or instruction thereof.

FLOOD or FLOODING -- A general and temporary condition of partial or complete inundation of normally dry land areas from:

A. The overflow of inland or tidal water; and/or

B. The unusual and rapid accumulation of runoff of surface waters from any source.

FLOOR AREA, GROSS -- The cumulative area in square feet of every story of a building measured from interior wall to interior wall, excluding stairways, cellars (used for storage only) and areas used solely for mechanical equipment.

FLOWER SHOP -- A retail store for the sale of cut flowers, floral arrangements and plants including accessory supplies.

GENERAL VARIETY STORE -- A retail store for the sale of a large variety of merchandise for personal use including but not limited to housewares, sewing materials, deodorants, toys, arts and crafts, clothing, nonperishable food items, fabric, yarn, sewing patterns, seasonal holiday supplies and the like.

GROCERY STORE -- Any retail store, operation or enterprise in which food, beverages and household goods constitute the predominant goods offered for sale. Compare "superstore."

HABITABLE FLOOR AREA -- Space occupied by one (1) or more persons for living, sleeping, eating or cooking, which conforms to all the requirements of this Code and all other applicable codes and regulations promulgated by the village or any other agency of government that has jurisdiction; exclusive of that area used for laundry, locker, storage, utility, heater and boiler rooms, and other spaces for service, storage and maintenance of the building, and those spaces used for access and vertical travel between stories.

HARDWARE STORE -- A retail store for the sale of hardware and home improvement products, equipment and supplies.

HEIGHT OF STRUCTURE OR BUILDING-- The vertical distance measured from the average elevation of the existing natural grade (before any fill has been or is proposed to be placed thereon), as established on a plan prepared by a licensed professional surveyor, at and along the side of the building or structure fronting on the nearest street to the highest point of the highest roof or, in the case of a structure, to the highest point. On all flag lots and lots utilizing a right of way, the flag pole access or right of way shall be considered the street front.

HERBICIDE -- Any substance used to destroy or inhibit plant growth or which does so as a secondary consequence of its application to plant growth.

HISTORIC DISTRICT -- Those areas of the Village of Sag Harbor which have a special character, historic or aesthetic interest

or value and represent various eras in the history of the village and, as a result, constitute a distinct section of the village and are designated as an Historic District pursuant to this chapter.

HOME FURNISHINGS - A retail store with an inventory limited to residential furnishings and furniture.

HOME OCCUPATION -- Any gainful occupation customarily conducted within a dwelling solely by the residents thereof that is clearly secondary to the residential use and that does not change the character of the structure as a residence. Said activity shall not occupy more than one-third (1/3) of the ground floor area of the dwelling or its equivalent elsewhere in the dwelling if so used, and further provided that there shall be no external evidence other than an announcement sign and that no mechanical or electrical equipment is used except customary household equipment. However, "home occupation" shall not be construed to include such uses as the following: clinic or hospital, barbershop or beauty parlor, restaurant, breeding kennel or antique dealer.

HOME PROFESSIONAL OFFICE -- The office or studio of a resident physician, surgeon, dentist or other person licensed by the State of New York to practice a healing art, a lawyer, architect, artist, engineer, real estate broker or salesman, insurance broker or agent or teacher, as herein restricted, provided that not more than two (2) persons are employed who are not members of the family and that such office shall be in the main building and shall not occupy more than the equivalent of one-half (1/2) of the area of one (1) floor of said building. For the purposes of this definition, a teacher shall be restricted to a person giving individual instruction in academic or scientific subjects to a single pupil at one time. A "home professional office" shall not include the office of any person professionally engaged in the purchase or sale of economic goods. Dancing instruction band instrument or piano or voice instruction, tearooms, tourist homes, beauty parlors, barbershops, hairdressing and manicuring establishments, convalescent homes, mortuary establishments and stores, trades or businesses of any kind not herein excepted shall not be deemed to be "home professional offices." The "home professional office" of a physician shall not include a biological or other medical testing laboratory.

HORIZONTAL PLANE - See Appendix L-1 Figure A.

HOTEL - A building containing individual guest units providing sanitary and sleeping facilities for tourists and vacationers on a transient basis.

HOUSE TRAILER -- A movable one-family dwelling originally equipped with or having a vehicular chassis but lacking one (1) or more of the following mechanical systems and equipment: plumbing, heating, electrical, cooking and refrigeration. See "mobile home."

JUNK SCRAP YARD -- Any land or structure, or part thereof, exceeding three hundred (300) square feet in area and used for collecting, storage or sale of wastepaper, rags, scrap metal or other scrap or discarded materials or for the collecting, dismantling, storage or salvage of machinery or vehicles not in running condition or for the sale of the parts thereof.

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.

LANDMARK, HISTORIC OR CULTURAL -- A site recognized as having a quality of significance in American history, architecture, archaeology or culture as may be found in a district, site, building, structure or object of state and local importance that possesses integrity of location, design, setting, materials, workmanship, feeling and association. In order to constitute an "historical or cultural landmark" within the meaning of this chapter, the authenticity of the landmark must be acknowledged by the Board of Historic Preservation and Architectural Review and/or by the Village Historian or such other expert or experts as may be designated for this purpose by the Village Board of Trustees.

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-cutoff 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.

LOT -- A parcel of land occupied or capable of being occupied by a main building and accessory buildings, structures or uses in accordance with the provisions of this chapter, including such open spaces as are required by this chapter.

LOT, AREA OF -- The total horizontal area of a lot, exclusive of land in the bed of any street or right-of-way or waterway. "Lot area" shall not include land which is any existing water surface, any area periodically or ordinarily submerged beneath the waters of a stream, pond, lake or other freshwater body, whether natural or man-made, all land lying seaward of the mean highwater line of any tidal waters and all lands consisting of beach, wetland or watercourse including all lands seaward of a bluff.

LOT, CORNER -- A lot at the junction of the fronting on two (2) or more intersecting streets having an interior angle of less than one hundred thirty-five degrees ( $135^{\circ}$ ) at their intersection. A lot abutting upon a curved street shall also be considered a "corner lot" if the tangents to the curb at the points of intersection of the side lot lines intersect at an interior angle of less than one hundred thirty-five degrees ( $135^{\circ}$ ).

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.

LOT FRONTAGE -- The lot line common with the street line.

LOT, INTERIOR -- A lot other than a corner lot.

LOT LINE, FRONT -- The street right-of-way or easement line at the front of a lot, except that:

A. In the case of a flagpole lot, the "front lot line" used for the determination of lot width and the required front yard shall be one of the internal lot lines designated by the owner.

B. In the case of a waterfront lot:

(1) A waterfront lot line shall be considered the "front lot line." The line opposite the "front lot line" shall be considered the rear lot line.

(2) When a lot is formed by a waterfront lot line and a street right-of-way or easement line intersecting, such lot shall be considered a corner lot.

(3) When a rear lot line is a street or right-of-way, the required rear yard setback for accessory buildings and structures shall be the same as the required rear yard for a principal building in the applicable district.

LOT LINE, REAR -- The lot line opposite the front lot line.

LOT LINE, SIDE -- Any lot line not a rear lot line nor a front lot line shall be deemed a "side lot line."

LOT, THROUGH -- A lot extending from one street frontage through to another street frontage or to a municipal off-street parking lot frontage.

LOT WIDTH -- The dimension measured from side lot line to side lot line along a line parallel to the street line at the required minimum front yard depth.

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 -- A facility for the berthing and fueling of all types of recreational watercraft. The term "marina" shall be deemed to exclude the terms "yacht club" and "boatyard" and out-of-water storage of boats, repair facilities, restaurant or similar activities.

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).

MOBILE HOME -- A movable one-family dwelling originally equipped with or having a vehicular chassis and provided with all of the following mechanical systems and equipment: plumbing, heating, electrical, cooking and refrigeration. See "house trailer."

MOTEL, RESORT -- A building or group of buildings, whether detached or in connected units, containing individual guest units consisting of a principal room and a bathroom arranged or designed to be suitable for year-round use as a sleeping or living quarters for transients on a daily rental basis or for vacationers or other persons on a weekly rental basis, provided that one (1) such unit shall not connect directly with more than one (1) other such unit. Guest units shall not have cooking facilities. Each unit shall have a door on the exterior of the building or on a common hallway leading to the exterior. A "resort motel" may include such accessory uses as a restaurant, swimming pool or an accessory convenience shop, barber- or beauty shop or a manager's office, provided that such facility has no external sign or display and has off-street parking facilities. The term "resort motel" shall not be construed to include an assemblage of mobile homes. A "resort motel" shall be deemed to be a transient dwelling. In the event any resort motel is owned in a cooperative or condominium form, no record owner shall occupy any such unit except on a transient basis, it being intended all resort motels be available only for transient use at all times.

NATURAL VEGETATION -- Existing and naturally occurring indigenous vegetation which grows and is maintained without the need for irrigation or applications of fertilizers, pesticides, herbicides or other substances.

NEWSPAPER OFFICE -- The offices of a newspaper excluding printing services.

NONCONFORMING BUILDING OR STRUCTURE -- A building or structure lawfully existing at the effective date of this chapter, or any amendment thereto affecting such building or structure, which does not conform to the dimensional regulations of this chapter for the district in which it is situated, irrespective of the use to which such building or structure is put.

NONCONFORMING LOT -- Any lot lawfully existing in single and separate ownership at the effective date of this chapter, or any amendment thereto affecting such lot, which does not conform to the dimensional regulations of this chapter for the district in which it is situated. If such lot shall thereafter be in the same ownership as an adjoining parcel and such lot shall be less than the required area or width for the district in which it is situated, it shall be deemed merged with the contiguous parcel in common ownership and lose its status as a nonconforming lot, except to the extent that the lot created by the merger of the two (2) parcels shall remain nonconforming in the same respect.

NONCONFORMING USE -- Any use of a building, structure, lot or land, or part thereof, lawfully existing at the effective date of this chapter, or any amendment thereto affecting such use, which does not conform to the use regulations of this chapter for the district in which it is situated. A temporary authorization of a permit for a prohibited use granted by the Board of Appeals prior to the adoption of this chapter shall not be construed to establish a "nonconforming use" as herein defined, and therefore any such authorization and its related use shall terminate upon the expiration thereof.

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

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

PERMITTED USE -- A specific use of a building, structure, lot or land, or part thereof, which this chapter allows in a particular district in accordance with the provisions of this chapter.

PESTICIDE -- Any substance used to destroy or inhibit pests, such as rodents and insects.

PHARMACY -- A retail business primarily for the sale of medicines, drugs, cosmetics, medical supplies, health products, and similar goods where the foregoing use occupies no less than 70% of the floor area by said business and where the revenues from sales of the foregoing equal or exceed 70% of gross revenues.

PROHIBITED USE -- A use of a building, structure, lot or land, or part thereof, which is not listed as a permitted, special exception or accessory 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.

RESTAURANT -- A use in a building having as its sole purpose the preparation and serving of food for consumption on the premises within furnished dining areas, and including as a possible accessory the serving of alcoholic beverages with meals, but not including any form of live entertainment or dancing for guests. A "restaurant" shall not be construed to include any form of drive-in, open-front, curbservice or fast-food eating establishment or any form of tavern, bar, nightclub, discotheque or similar entertainment establishment. Take out service is a permitted accessory use of a restaurant provided it is typical, subordinate and customary.

RETAIL FOOD STORE -- A retail store for the sale of food, including delicatessen, mini market, bakery, specialty food product or products shop and/or sandwich shop, but not including a restaurant, fast-food eating establishment, drive-in, open-front or curbservice eating establishment, tavern, bar, nightclub or discotheque. A retail food store shall not include tables or chairs or counters for on-premises consumption, and on-premises consumption in any form shall not be permitted as an accessory use to a retail food store, except as otherwise provided in § 55-11.47.

RETAIL STORE -- A use of land, within a building, in which goods are offered for sale to the general public as takeout items. Goods sold at a "retail store" may include hardware, drugs, food and beverages, furniture and furnishings, apparel, appliances, sporting goods, office products, books or other media, and similar products or merchandise. Minor repair service within the establishment may be undertaken in connection with product sales.

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.

SIGN, BILLBOARD -- A sign which directs attention to a business, commodity, service, entertainment or attraction sold, offered or existing elsewhere than upon the same lot where such sign is displayed or only incidentally sold, offered or existing upon such lot.

SIGN, IDENTIFICATION -- A sign which directs attention to a business or profession conducted upon the property.

SIGN, PROFESSIONAL OR ANNOUNCEMENT -- A temporary or permanent sign which directs attention to a resident's home, a home professional office or a public or semipublic building.

SIGN, REAL ESTATE OR CONSTRUCTION -- A sign advertising land or improvements thereto or describing construction activity or a firm doing work related to construction on the premises on which the sign is located.

SIGN, TEMPORARY -- A temporary sign which directs attention to a special activity or entertainment or one which indicates the location of a real estate subdivision.

SOLAR AND ALTERNATIVE ENERGY SYSTEMS -- Those components of a system designed to collect, store and distribute solar energy or wind energy considered individually or collectively as a system. A solar energy system or wind energy system component shall be deemed to be accessory structures except where they are attached to a building, in which case they shall be deemed to be an integral part of such building. In either case such installations shall comply with the applicable dimensional requirements of this chapter.

SPECIAL EXCEPTION USE -- A use in one (1) or more districts for which the Planning Board may grant a permit, pursuant to the provisions of Article 11, as a special permit use.

STORY -- That portion of a building between the surface of any floor and the surface of the floor next above it; if there is no floor above it, then the space between the floor and ceiling next above it. A basement shall be counted as a "story," but a cellar shall not be counted as a "story." In the Tidal Flood Hazard Overlay District, that portion of a structure required to raise the lowest floor above the base flood elevation shall not be counted as a "story" unless it is floodproofed and enclosed.

STREET -- Any federal, state, county or village highway or road, or any street shown upon a subdivision plot filed in the County Clerk's office, or any street within definition of street as contained in § 46-4 of the Village Code.

STREET LINE -- The dividing line between a lot and a street right-of-way.

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

SUPERSTORE -- Any retail store, operation or enterprise, which retail store, operation or enterprise has a combined gross floor area of 10,000 square feet or more, whether housed in all or part of a single building or in all or parts of multiple buildings. For the purposes of this definition, a retail business housed in multiple units of the same building (where said units historically were generally used and occupied by

different business uses) or multiple buildings on the same lot or on adjacent lots shall be considered a single retail store, operation or enterprise, if the business or businesses within the individual units or buildings are owned, operated or controlled by a single entity, either directly or through affiliates. In addition, any building whose gross floor area equals or exceeds 10,000 square feet shall be considered a "superstore" if it contains one or more retail stores even if the building also contains a use or uses not classified as retail stores. A use defined otherwise in this section shall not be a superstore.

SWIMMING POOL -- An artificial pool of water having a depth at any point of more than eighteen (18) inches and a surface area of greater than twenty-five (25) square feet, designed or intended for the purpose of bathing or swimming and including all appurtenant equipment. A "swimming pool" shall be deemed a structure.

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.

TENNIS COURT -- A structure constructed at grade on the ground consisting of a hard base and finished playing area of whatever consistency and the approximate regulation dimension used to engage in the game of tennis or similar court games, and having a permanent or temporary net. A backstop consisting of netting, fencing or similar material and design to prevent the passage of tennis balls shall also be deemed part of a "tennis court."

TENT -- A structure composed of poles or other structural elements which support a covering of fabric or similar material designed as a temporary or movable shelter.

THEATRE -- A building or buildings devoted to showing motion pictures or stage productions on a paid admission basis.

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.

VENDING MACHINE OR EQUIPMENT, OUTDOOR -- A box, container, machine, device or other coin-operated or attended dispenser of

goods or products, such as but not limited to cigarette machines, soda coolers, ice houses and milk dispensers, whether designed for or merely utilized on the exterior of buildings and stores and whether a part of the exterior of the main building or an auxiliary building or the sole occupant of the lot, regardless of the size of the machine or equipment unit. "Outdoor vending machine or equipment" shall be deemed to be an accessory building or a part of a building where attached to a building.

WALL -- A structure of wood, stone or other materials or combination thereof intended for defense, security, screening or enclosure or for the retention of earth, stone, fill or other materials as in the case of retaining walls or bulkheads.

WAREHOUSE -- A building for the mere storage of goods and merchandise.

WETLANDS -- All natural and manmade tidal wetlands, freshwater wetlands, and underwater lands, including all swamps, bogs, kettlehole bogs and the like, regardless of the particular types or amounts of vegetation growing thereon or therein or the absence of same and wetlands shall also include all wetlands as defined under 6 NYCRR Parts 661 and 663, as amended. Artificial lined ponds which are not situate in the groundwater table shall be deemed excluded from this definition.

YACHT SALES AND CHARTER -- An office for the sale or brokerage or rental of boats.

YARD, FRONT -- An open, unoccupied space on the same lot with a building, situated between the nearest roofed portion of the principal building and the front lot line of the lot and extending from side lot line to side lot line in the case of interior lots. Corner lots shall have two (2) such "front yards" situated between the nearest roofed portion of the principal building and the front lot line along each street. The depth of the "front yard" shall be measured between the front line of the main building and the street line. Any lot bounding on tidal waters and maintaining a bluff shall exclude any area seaward of the crest of said bluff in measuring the front yard setback. (See definition of Lot Line, Front). The front yard setback of any lot bounding on tidal waters and maintaining a bluff shall be taken from the crest of said bluff.

YARD, REAR -- A space on the same lot with a building, situated between the nearest roofed portion of the principal building or buildings and the rear lot line of the lot and extending from side lot line to side lot line.

YARD, SIDE -- A space on the same lot with a building, situated between the nearest roofed portion of the principal building or buildings and the side lot line of the lot and extending through from the front yard, or from the front lot line where no front yard exists, to the rear yard, or to the rear lot line where no rear yard exists.

### ARTICLE 3. Districts; Boundaries

#### § 55-3.1. Designation of districts.

For the purpose of this chapter, the Village of Sag Harbor is hereby divided into five (5) zoning districts and two (2) overlay districts, which shall be designated as follows:

R-20 One-family Residence District

OD Office District

RM Resort Motel District

VB Village Business District

WF Waterfront District

Historic Overlay District

Tidal Flood Hazard Overlay District

#### § 55-3.2. Zoning Map.

Zoning Map. The boundaries of each of said districts shall be as shown on the duly adopted Zoning Map which accompanies this chapter and which, with all notations, references and other matters shown thereon, is hereby declared a part of this chapter.

#### § 55-3.2. Conformity Required.

Except as otherwise herein provided, no building or land shall hereafter be used or occupied and no building or part thereof shall be erected, moved, altered, enlarged or extended unless in conformity with the regulations herein specified for the district in which it is located.

### ARTICLE 4. R-20 One-Family Residence District

#### § 55-4.1. Intent.

The R-20 One-Family Residence District is to be the principal residence district in the village. As a result of the village's long development history, it is anticipated that there may be

some nonconforming residence and nonresidence uses. No new such uses shall be established, and every effort shall be exercised to contain those nonconforming buildings and uses that now exist.

§ 55-4.2. Permitted and Special Exception Uses.

Within the R-20 One Family Residence District, any building, structure, lot or land shall be utilized only in accordance with the Table of Uses.

§ 55-4.3. Dimensional regulations.

Dimensional regulations within the R-20 District any building, structure, lot or land shall be utilized only in accordance with the Table of Dimensional Regulations.

ARTICLE 5. RM Resort Motel District.

§ 55-5.1. Intent.

It has been determined that recreational activities and tourism are major factors in the composition of the Village of Sag Harbor's economic base. The RM Resort Motel District seeks to further encourage these factors by providing potential sites for resort motels which accommodate short term vacationers and transient travelers. It is anticipated that, with a reasonable number of resort motel rooms clustered in close proximity to each other and to the village business center and waterfront, there would be an opportunity to develop off season miniconferences and business seminars. Recognizing the impact of the resort motel use's intensity in this district, it shall be located only on sites easily accessible to supporting facilities and served by both public water and sewerage systems. It is not intended that the resort motel use be converted into multiple dwellings for long term residents. The Resort Motel District shall promote the objectives of this Article and of § 55-1.3, Declaration of purpose, and the site plan shall be coordinated with the surrounding land uses and enhance the village business center and waterfront.

§ 55-5.2. Permitted and special exception uses.

The Resort Motel District Table of Use Regulations is included at the end of this chapter.

§ 55-5.3. Dimensional regulations.

The Resort Motel District Table of Dimensional Regulations is included at the end of this chapter.

§ 55-5.4. Resort motel standards.

- A. There shall be no more than 20 guest units per acre;
- B. Each guest unit shall be a transient guest unit, i.e., for use and occupancy of tourists and vacationers on a transient basis excepting one unit which may be used and occupied as a residence by a manager provided said unit is no less than 800 square feet and no more than 1,500 square feet;
- C. Each guest unit shall be connected to a public water supply and to the Village of Sag Harbor sanitary sewerage system;
- D. No guest unit excepting a manager's residence shall contain cooking facilities;
- E. All intensive outdoor activities shall be so located on the property with reference to surrounding properties that they shall be reasonably screened from view and compatible with the existing or potential use of neighboring properties;
- F. Outdoor lighting shall not project light onto, nor shall light sources be visible from, neighboring properties. No outdoor light source shall be more than 10 feet above the ground level underneath it;
- G. There shall be no outdoor public-address system; and
- H. Each guest unit shall be no less than 400 square feet and no more than 500 square feet.

§ 55-5.5. Resort motel, accessory uses.

- A. Retail convenience shop not exceeding 250 square feet;
- B. Personal service shop not exceeding 250 square feet;
- C. Health club and/or spa provided its use is limited to guests at the premises.
- D. Swimming pool; and
- E. Tennis court.

§ 55-5.6. Resort motel minimum landscaped areas.

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

ARTICLE 6. VB Village Business District.

§ 55-6.1. Intent.

The Village Business District is the downtown central business district of the Village. The district is intended for daily retail shopping, on-premises food consumption and visitor, tourist and resort shopping, all with a strong pedestrian orientation. A variety of mixed retail uses is encouraged where feasible to provide the synergy necessary to maintain the vitality and attractiveness of this district for the Village resident and visitor alike. Also permitted are restaurants and similar eating places that rely on the local resident population and downtown workers as well as visitors, tourists, and resort vacationers for clientele.

The Village Board of Trustees seeks to promote the VB Village Business District as the economic center of the village, providing retail shopping for convenience goods as well as for shoppers goods, business services, and public and semipublic facilities. Having determined that recreational activities and tourism are significant factors in the village's economic base, site plan review procedures and all other procedures that influence the quality of land use and development in this district shall emphasize accessibility for pedestrians as well as for vehicles, adequate off-street parking and an attractive business center environment, including the provision of some landscaped open space. A particular concern in site plan review shall be the coordination of public accessways and views through properties in this district to the WF Waterfront District and shoreline. Recognizing the potential intensity of the uses in this district, provision shall be made for on-site storm drainage facilities, as needed to protect the surface water quality of the natural water bodies, as well as for public water supply and sewerage systems.

§ 55-6.2. Permitted and special exception uses.

The Village Business District Table of Use Regulations is included at the end of this chapter.

§ 55-6.3. Dimensional regulations.

The VB District Table of Dimensional Regulations is included at the end of this chapter, except as dimensional regulations are also provided in this Article.

§ 55-6.4. VB District special conditions.

A. Minimum gross floor area of any use shall be no less than 800 square feet;

B. Maximum gross floor area of any use shall not exceed 2,000 square feet;

C. Maximum width or frontage of any use shall not exceed 50 feet;

D. Enlargement of gross floor area or width or frontage shall be permitted provided any 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 square feet or a frontage or width of 75 feet. 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. Any such enlargement shall be conditioned upon the provision of off street parking in compliance with § 55-9.6(D), any such enlargement shall not require area variances equal to or in excess of 30% of any dimensional requirement in the Table of Dimensional Regulations and the use within any such enlargement shall not be a special exception use.

E. Offices on a second floor within the VB District are permitted.

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.

#### ARTICLE 7. OD Office District.

##### § 55-7.1. Intent.

The Board of Trustees intends that the Office District serve as the primary location of destination oriented uses different from the retail uses and the pedestrian oriented uses in the Village Business District. The OD District would serve as a location for businesses supportive of the retail uses, for example, real estate offices, new banks, professional offices and the like. With the development of new uses in the OD District it is expected there would be new and additional parking which would during non-office hours serve the needs of the adjacent VB District.

##### § 55-7.2. Permitted and special exception uses.

The OD District Table of Use Regulations is included at the end of this chapter.

§ 55-7.3. Dimensional regulations.

The OD District Table of Dimensional Regulations is included at the end of this chapter except as dimensional regulations are also provided in this article.

ARTICLE 8. WF Waterfront District.

§ 55-8.1. Intent.

A. From its founding through the 20th Century, the Village of Sag Harbor has derived the essence of its character and vitality from the surrounding marine environment. The source of this strength is focused on the harbor and shoreline in the village's seaport area. The WF Waterfront District is established to assure that this physical manifestation of the village's tradition will continue to be available for future generations to appreciate and enjoy. In addition, the Village Board of Trustees finds that, as a port of entry for many persons engaged in recreational and tourist activities, its appearance and how it relates to the village business center are important to the village's economic health, as well as to that of individual businesses.

B. Public access to the shoreline is a planning objective in this district. Other objectives include: protect views of the harbor and/or shore from vantage points in both districts; and restrict uses and development along the shoreline to those that would benefit most from a waterfront location and that would serve to enhance its character and advance the village's tradition. In keeping with these aspects, the WF Waterfront District characteristically will be a relatively open land use area along the shoreline. It is intended that the site plan review procedure particularly will assure that the environmental quality and specific details of the harbor and shoreline development will be thoroughly considered and coordinated with adjacent development.

§ 55-8.2. Permitted and special exception uses.

The WF Waterfront District Table of Use Regulations is included at the end of this chapter.

§ 55-8.3. Dimensional regulations.

The WF Waterfront District Table of Dimensional Regulations is included at the end of this chapter.

§ 55-8.4. WF District, Special Conditions.

A. Except as expressly provided herein, or within the Table of Uses, all uses within the WF District shall be water dependent uses and no use shall unduly impede access of the public to the foreshore.

B. Excursion boats and ferry boats for cars and/or pedestrians are prohibited uses in the WF District.

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.

D. The provisions of the Local Waterfront Revitalization Plan and the Harbor Management Plan shall be considered and implemented wherever feasible incident to any site plan review in the WF District.

E. Any use within the WF District shall provide off street parking as required under § 55-9.6(D).

ARTICLE 9, Supplemental Use and Dimensional Regulations.

§ 55-9.1. Placement of accessory buildings, structures and uses.

A. In all districts.

(1) Accessory buildings, including garages, if connected only by an open breezeway-type structure, shall not be less than 10 feet from the main building and in all events shall not be less than 10 feet from other accessory buildings.

(2) A private garage may be constructed as a structural part of a main building, provided that when so constructed the garage walls shall be regarded as the walls of the main building in applying the front, rear and side yard regulations of this chapter.

(3) No accessory building shall be constructed upon a lot or plot unless a main or principal building already exists on said lot or plot and has a valid certificate of occupancy, or a valid building permit has been issued and is in effect, for the construction or erection of a main or principal building.

(4) Accessory buildings, including private garages, shall not be placed within a required front yard, and shall not occupy more than thirty (30%) percent of any rear yard.

(5) An access driveway may be located within a required yard.

(6) No access driveway shall be permitted through a lot to provide access to a second lot, which lot is used or may be used for any use prohibited in the district in which the first lot is located.

(7) Accessory off-street parking or truck loading areas shall be improved in accordance with village specifications except that, upon written certification by the Village Engineer that a plot or parcel of land cannot comply with the standards for drainage due to the topography of the plot or parcel and such condition cannot be remedied without injury or damage to adjoining parcels, the Building Inspector may waive such requirement.

(8) Required 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.

(9) The storage of manure or of odor- or dust-producing substances as an accessory use shall not be permitted within fifty (50) feet of any side or rear lot line or within one hundred (100) feet of any front lot line.

(10) The keeping of more than two (2) dogs more than six (6) months old in outdoor shelters or pens or the keeping of any horses, farm animals or fowl shall not be permitted as accessory uses.

(11) Swimming pool equipment, including pumps and heating elements, shall be located in conformance with the applicable regulations set forth in this chapter for accessory buildings and structures. All such equipment shall be housed in closed structures which shall prevent noise, sound or vibration caused by the equipment from crossing property lines and in all events shall be screened on all sides facing adjacent properties or visible from any street with evergreen vegetation.

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.

(2) No commercial vehicle, except for a three-fourths-ton or smaller pickup truck or van or a contract school bus accommodating not more than twelve (12) passengers, nor any house trailer, mobile home, recreation vehicle or camp trailer, boat or boat trailer or any similar equipment, shall be parked

or stored on any lot, except that not more than one (1) camping trailer or recreation vehicle not over twenty-five (25) feet in length and not more than one (1) boat, including a boat trailer on which it rests, may be stored per dwelling unit on the same lot with such dwelling unit, provided that no such vehicle, trailer, mobile home, boat or similar equipment shall be used for living or sleeping purposes while so located, and further provided that it is not located in any front yard or in any required side yard or within ten (10) feet of any property line in any required rear yard.

C. In nonresidential districts.

(1) Accessory off-street parking areas in the RM Resort Motel and WF Waterfront Districts may be located in required front, side or rear yards, provided that they are set back at least ten (10) feet from all property lines, and further provided that they do not encroach on required transitional yards established in accordance with § 55.9.2(C). In the VB District, accessory off-street parking areas may be located in required front, side or rear yards, provided that they do not encroach on required transitional yards established in accordance with § 55-9.2(C).

(2) No house trailer, mobile home, camping trailer or similar equipment shall be parked or stored on any lot.

§ 55-9.2. Lot frontage; yards; transition yards; courts.

A. Frontage. The minimum road frontage of a lot at the street line shall be at least twenty (20) feet in all districts, except in those districts where there are no minimum lot area requirements. The minimum frontage of any lot on a public street and the minimum access width of any lot shall be 20 feet. If frontage is provided by means of a flag strip access, width shall be measured perpendicular to the sides of the flag strip. Notwithstanding this requirement, the Planning Board may approve the creation of a new lot not having such frontage if the new lot will have access to a public street by means of a common driveway easement or access easement which is 20 feet or more in width at all points and which easement is the subject of a duly recorded legal instrument which cannot be revoked or terminated without Planning Board approval.

B. Yards.

(1) The following accessory structures may be located in any required front or rear yard;

(a) Awning or movable canopy not exceeding ten (10) feet in height, provided that it does not exceed twenty (20) percent of the required yard area.

(b) Open arbor or trellis.

(c) Retaining wall, fence or masonry wall, subject to § 55-9.4.

(d) Unroofed steps, patio or terrace not higher than one (1) foot above ground level.

(2) The space in a required front yard shall be open and unobstructed, except for structures provided for in Subsection B(1) and the following:

(a) An unroofed balcony projecting not more than three feet into the yard. A balcony, for purposes of this chapter, shall not be greater than eight feet in width and projecting no more than three feet in depth.

(b) Other projections specifically authorized in Subsection B(3) and (4) below.

(3) Every part of a required yard shall be open to the sky, unobstructed except for retaining walls and for accessory buildings in a rear yard and except for the projection of sills, belt courses and ornamental features projecting not to exceed six (6) inches. Cornices and eaves shall not project more than eighteen (18) inches.

(4) Open or lattice-enclosed fireproof fire escapes or stairways required by law, projecting into a yard not more than three (3) feet, and the minimum required projections of chimneys and pilasters shall be permitted by the Building Inspector when placed so as not to obstruct light and ventilation.

(5) Where a lot extends through from street to street, the applicable front yard regulations shall apply on both street frontages.

C. Transitional yards. The following minimum required transitional yards and screening shall be provided within nonresidential districts:

(1) Adjoining residential districts.

(a) The minimum required transitional side and rear yards shall be fifteen (15) feet.

(b) The minimum required screening within such transitional side and rear yards shall be a six-foot-high stockade-type fence or equal and landscape plantings shall be erected and maintained by the nonresidential property owner along the side and rear property lines; provided, however, that the Planning Board may waive or modify these requirements for screening where the same screening effect is accomplished by the natural terrain or foliage.

D. Courts and spacing between principal buildings.

(1) Outer courts or spaces.

(a) The least width at the lowest level of an outer court or of a space between building walls shall be not less than the largest of the following three (3) dimensions:

[1] One-third (1/3) of the maximum building height above such lowest level of the building walls erected on the same lot and bounding such court or space.

[2] Two-thirds (2/3) of the horizontal depth of such court or space.

[3] Fifteen (15) feet.

(b) The horizontal depth of an outer court or of a space between building walls shall not exceed one and one-half (1 1/2) times the least width.

(2) Inner courts or spaces. The least horizontal dimension of an inner court at its lowest level shall be not less than the larger of the following two (2) dimensions:

(a) Two-thirds (2/3) of the maximum building height above such lowest level of the building walls erected on the same lot and bounding such court or space.

(b) Fifteen (15) feet.

§ 55-9.3. Height; Exceptions; Pyramid Law.

A. Nothing herein contained shall restrict the height of the following architectural and structural features beyond any applicable limitation in the Table of Dimensional Regulations.

(1) On any public or semipublic building, a spire, cupola, dome, belfry or clock tower.

(2) Flagpole, chimney flue, elevator or stair bulkhead as accessory facilities to permitted or special exception uses in a given district.

(3) Radio or television tower, transmission line or tower or similar structure necessary as a public service facility, only after approval as a special exception use by the Planning Board.

(4) The total height permitted under this section shall not exceed 125% of the permitted height of the structure on which the feature is placed.

B. No structure excepting a public service facility erected pursuant to Subsection A to a height in excess of the height limit for the district in which it is situated shall:

(1) Exceed ten percent (10%) of the building or structure area.

(2) Be used for residence or occupancy purposes.

(3) Have any sign, nameplate display or advertising device of any kind whatsoever inscribed upon or attached to such structure.

C. No private radio or television antenna, mast or tower shall exceed the maximum permitted height prescribed for the district in which such proposed structure is to be located.

D. In the R-20 One-Family Residence District, all buildings and structures, except chimneys and decorative railings, must remain inside the sky plane of the lot. The sky plane shall begin at the front and rear property lines at the average elevation of the existing natural grade, and at the side property lines five feet above the average elevation of the existing natural grade and extend to the building or structure at an angle of 45°. The height limitation in the Table of Dimensional Regulations shall not be exceeded.

§ 55-9.4. Fences, walls and gates.

A. In residence districts.

(1) No fence or wall in a front yard shall have a height greater than four (4) feet.

(2) In no case shall any fence or wall have a height greater than six (6) feet.

(3) Any fence or wall having a height four (4) feet or less shall be exempt from building permit requirements, provided that it shall be constructed of standard materials used for such purposes, with the finished side facing the adjoining lot. The exemption herein shall not apply to any property designated a landmark under § 55-14.4.

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

B. In nonresidence districts.

(1) No fence or wall within ten (10) feet of a lot line in a required front yard shall have a height greater than four (4) feet.

(2) No fence or wall within ten (10) feet of a lot line in a side yard or rear yard shall have a height greater than six (6) feet.

(3) In no case shall a fence or wall have a height greater than six (6) feet.

(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.

C. The height of a fence or wall shall be measured from the ground level at the base of the fence, except that, where there is a retaining wall, the height shall be measured from the average of the ground levels at each side of the retaining wall, and further except that any fence or wall on the uphill side of such retaining wall may be at least four (4) feet high, notwithstanding the provisions of Subsection A and B.

D. Gates located in any front yard shall not exceed four (4') feet in height above natural grade and gates located in any side or rear yard shall not exceed six (6') feet in height above natural grade.

§ 55-9.5. Visual clearance at intersections.

A. Purpose. Visual clearance shall be provided and maintained at all intersections of streets and of driveways and streets.

B. Clearance standards. On a corner lot in any district or at any driveway intersection with a street, within the triangular area determined as provided in this section, no wall or fence or other structure shall be erected to a height in excess of two feet; no vehicle, object or any other obstruction of a height in excess of two feet shall be parked or placed; and no hedge,

shrub or other growth shall be maintained at a height in excess of four feet, except that trees whose branches are trimmed away to a height of at least 10 feet above the curb level, or pavement level where there is no curb, shall be permitted. Such triangular area shall be determined by two points, one on each intersecting street line, each of which points is 15 feet from the intersection of such street lines or 15 feet along such driveway lines.

C. With respect to any lot in the VB Village Business District, the Planning Board may modify the requirements of § 55-9.5(B) by reducing such requirements, incident to site plan review and approval, where the Planning Board finds that reasonable visual clearance would be accomplished by such modification, after considering the particular circumstances relating to such lot.

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

A. General. Off-street parking and truck loading spaces shall be provided and kept available as an accessory use to all buildings, structures and uses in amounts not less than those specified in this section. Except as otherwise expressly provided, the requirements of this section shall apply under the following circumstances:

(1) All new buildings and structures erected for use on a property shall be subject to these requirements.

(2) Any building and/or structure which is hereafter enlarged shall be subject to these requirements.

(3) All new uses of a property shall be subject to these requirements.

(4) Any use of a property which is hereafter changed shall be subject to these requirements.

B. Method of determining off-street parking space requirements.

(1) The requirement for a single use (e.g., a one-family dwelling or a retail store) shall be determined directly from the schedule of such requirements which is a part of this section.

(2) The requirement for a combination use made up of several component uses (e.g., a bowling alley combined with an auditorium; a restaurant and bar; or a retail store combined with an office building) shall be determined by establishing the requirement for each component use for the schedule of such

requirements, which is a part of this section, and adding them together.

(3) When the required number of spaces is determined to result in a fraction, it shall be increased to the next highest whole number.

(4) If the use is not specifically listed in the schedule of such requirements, the requirements shall be the same as for the most similar use listed.

(5) A garage or carport may be used to meet the requirements of this section. A driveway may only be used to meet the requirements of this section where it serves a one-family or two-family dwelling.

(6) Uses which require approval pursuant to the special exception use procedure set forth in Article 11 may be required to provide off-street parking spaces in excess of the requirements of § 55-9.4(C), (D) and (E), as indicated in § 55-11.3(I).

(7) "Floor area" or "gross floor area," as these terms are used in this § 55-9.6 shall have the meaning provided under § 55-2.2 for Floor Area, Gross.

(8) When the schedule under Subsection D below requires the number of spaces to be calculated per employee and employees are on the premises in shifts, the number to be used is the number of employees present during the largest shift; in all other cases, it shall mean the total number of employees on the premises or who will use the premises for parking at any time.

(9) No garage or other parking area shall be located in violation of the New York State Uniform Fire Prevention and Building Code. Any garage or parking area under a multiple dwelling, motel, apartment building or other use (excepting a single family or two family residence) containing residential improvements shall require the prior written express approval of the Fire Marshal.

C. The schedule of off-street parking space requirements for residential uses shall be as follows: [Amended 11-5-1986 by L.L. No. 12-1986; 11-10-2003 by L.L. No. 10-2003; 1-13-2004 by L.L. No. 1-2004]

| Use                                | Number of Spaces Required                      |
|------------------------------------|--|
| One-family and two-family dwelling | 2 per dwelling unit, plus 1 per bedroom over 3 |

|                                     |  |
|-------------------------------------|--|
| Multiple dwelling<br>and apartments | 1.5 spaces per efficiency unit;<br><br>1.75 spaces per 1 bedroom<br>unit;<br>2 spaces per 2 bedroom unit;<br>2.5 spaces per units with<br>3 bedrooms or more |
|-------------------------------------|--|

D. The schedule of off-street parking space requirements for nonresidential uses shall be as follows:

| Use   | Number of Spaces Required   |
|---|---|
| Auditorium, church,<br>convention hall,<br>gymnasium, theater,<br>studio or other place of<br>public assembly not other-<br>wise classified | 1 per 3 permanent seats or 1<br>per each 40 square feet of seat-<br>ing area where fixed seating is<br>not provided, plus 1 per each<br>employee  |
| Bank, savings and loan<br>association   | Same as for offices plus a 10-<br>space queuing line for each<br>drive-in teller's window   |
| Delicatessen, retailer<br>of prepared food  | 1 per 100 square foot of<br>gross floor area  |
| Exercise studio<br>and spa  | 1 per 100 square foot of<br>gross floor area  |
| Fast-food eating estab-<br>lishment   | 1 per 40 square feet of gross<br>floor area (excluding the<br>kitchen area), plus a minimum<br>of 5 spaces for employees, plus<br>1 additional space for each<br>employee over 5 persons  |
| Filling station, repair<br>garage   | 5 per bay plus 1 per each<br>person employed on the site  |
| Funeral home  | 1 per 40 square feet of public<br>room floor area   |
| Home occupation, home<br>professional office  | 2 for the first 150 square feet<br>of area given over to this com-<br>ponent of the land use, plus 1<br>for each additional 150 square<br>feet or fraction thereof, but in<br>no case less than 2 spaces, plus<br>1 per each employee |

|   |   |
|---|---|
| Hotel, motel  | 1 per guest bedroom, plus 1 per each 5 transient guest units  |
| Manufacturing or industrial establishment, research institute or laboratory | Parking area equivalent to the total ground coverage of the use, with a minimum of 2 improved spaces per each 3 employees on the premises at one time, but in no case less than 2 spaces  |
| Marina, boatyard, yacht club, commercial fishing charter                    | 1 per each boat slip, mooring, dock space or similar unit of capacity, plus 1 per employee or, with respect a commercial fishing charter, 1 per each 2 persons of rated capacity  |
| Office, office building, medical arts or ambulatory care clinic             | 1 per 200 square feet of gross floor area   |
| Public or semipublic art gallery, library or museum                         | Same as for auditoriums, etc.   |
| Real estate office  | 1 per 200 square feet of gross floor area   |
| Restaurant, club  | 1 per 3 permanent seats and bar seats or stools or the floor area equivalent, plus 1 per each employee  |
| Retail store, personal service store  | 1 per 200 square feet of gross floor area   |
| School  | 1 per each 5 students or 1 per each employee plus 1 per each 8 students in the 12th grade, or the parking requirement for the auditorium or gymnasium component of the use, whichever of the foregoing calculations is the greatest in number |
| Shop for custom work  | 1 per 400 square feet of gross floor area   |

|                                    |  |
|------------------------------------|--|
| Storage                            | 1 per 500 square feet of gross floor area              |
| Tavern, bar                        | 2 per each 3 persons of rated capacity                 |
| Veterinarian, veterinary hospital  | 1 per 400 square feet of gross floor area              |
| Wholesale establishment, warehouse | Same as for manufacturing or industrial establishments |
| Yacht sales and Charter            | Same as office   |

E. Off-street truck loading space requirements. Every building or structure or lot used for nonresidential purposes shall be provided with off-street truck loading spaces in accordance with the following schedule:

| Floor Area<br>(square feet) | Number of Spaces Required   |
|-----------------------------|---|
| Under 8,000                 | 1, except upon waiver in discretion of Planning Board if by the commercial use of site a truck loading space is unwarranted |
| 8,000 to 25,000             | 1   |
| Over 25,000                 | 1 for each additional 25,000 square feet  |

F. Supplemental regulations for private garages and off-street parking areas in residence districts.

(1) Not more than two (2) parking spaces per dwelling unit may be rented to persons living off the premises in the case of a one-family or two-family dwelling use, and not more than one (1) parking space per each two (2) dwelling units may be rented to persons living off the premises in the case of any other residence use.

(2) Not more than one (1) commercial vehicle shall be housed or parked in a private garage and any such use shall be subject to § 55-9.1(B)(2) above.

G. Access driveway requirements.

(1) Private garages, public parking areas, filling stations and repair garages may have separate or combined entrances.

(2) Every separate entrance or exit driveway shall have a minimum unobstructed width of ten (10) feet on local roads and fifteen (15) feet on county and state highway routes. Every combined entrance and exit driveway shall have a minimum unobstructed width of twenty (20) feet. Parking areas with twenty (20) spaces or more shall have at least two (2) separate entrance and exit driveways.

(3) The intersection of a separate or combined exit and entrance driveway of a public parking area with the public street shall have the corner clearance prescribed in § 55-9.5.

(4) The gradient of driveways shall be such as to facilitate entrance and exit traffic flow.

H. Design requirements for nonresidential parking and truck loading areas.

(1) All accessory off-street parking and truck loading areas shall be located in accordance with the provisions of § 55-9.1. For all properties and uses subject to site plan review pursuant to Article 14 of this chapter, off-street parking and truck loading spaces shall be located only as said spaces are indicated and approved by the Planning Board. Any changes to the spaces shall require the further review and approval of the Planning Board.

(2) The physical improvements of off-street parking and truck loading areas shall include:

(a) Curbs, paving, sidewalks and drainage facilities complying with the standards established in village codes, regulations or specifications.

(b) No parking area shall be so designed as to cause surface drainage to flow into a public street.

(c) Adequate lighting in public parking areas to assure the general safety and convenience of the public.

(d) Appropriate screening for the protection of adjacent properties, particularly along district boundary lines as provided in § 55-9.2(C).

(3) All aisles within parking areas shall have a minimum width of twenty-four (24) feet when the parking spaces are at an angle of ninety degrees (90°) with the aisle; eighteen (18) feet when the parking spaces are at sixty degrees (60°); and twelve (12) feet when the parking spaces are at forty-five degrees (45°).

(4) Aisles and turning areas shall provide good internal circulation with adequate radii to assure ease of mobility, ample clearance and convenient access and egress. Sufficient area for maneuvering into and out of all parking spaces shall be provided and shall allow for a minimum backing out area of at least ten (10) feet beyond any parking space for end of row parking spaces. No off-street parking spaces shall be designed or permitted which back directly out onto any through street. Aisles permitting two-way traffic flow shall have a minimum width of twenty-four (24) feet. Aisles permitting one-way traffic flow shall have a minimum width of twelve (12) feet. In all events and under all circumstances, the design of any parking spaces and truck loading spaces is subject to the approval of the Planning Board.

(5) Center-line gradients of aisles shall not exceed eight percent (8%).

(6) Accessory off-street parking areas shall be marked off into spaces with a minimum width of nine (9) feet and a minimum length of twenty (20) feet, or a minimum width of ten (10) feet and a minimum length of eighteen (18) feet. The dimensions of the parking spaces shall be determined by the Planning Board based upon the design and type of improvements to be made to the parking area. Spaces nine (9) feet by twenty (20) feet as a policy shall only be considered where the parking areas are to be substantially improved with asphalt or concrete paving and the parking area consists of fifty (50) or more spaces. Spaces ten (10) feet by eighteen (18) feet shall be used for all other instances, including, in particular, where the parking area is improved merely with oil and bluestone or gravel. The dimensions of parking spaces for trucks or special equipment shall be determined by the Planning Board.

(7) An accessory off-street truck loading space shall have a minimum width of twelve (12) feet, a minimum length of thirty-three (33) feet and a minimum clear height of fourteen (14) feet. The related aisles or driveways shall have the same minimum width and clear height.

(8) All accessory off-street parking areas shall provide for handicapped access and parking. A minimum of five percent (5%) of the total number of parking spaces required for any site

shall be allocated to handicapped parking; provided, however, that in no case shall the number of handicapped spaces be greater than five (5) spaces unless additional spaces are required under New York Vehicle and Traffic Law § 1203-c, as amended. Handicapped spaces shall be marked off into spaces with the same minimum width as required for regular parking spaces plus an adjacent five (5) feet wide unloading area, in effect providing for a fourteen- or fifteen-foot-wide parking space. Each such space shall be striped with blue paint and shall contain the international handicapped symbol and a sign approved by the Planning Board at the head of each space.

(9) To improve the aesthetics of a site, promote public safety, moderate climatic effects and minimize nuisances such as noise and glare, accessory off-street parking areas shall include appropriate landscaping at the perimeter and within the interior of the parking areas. The Planning Board shall determine the amount, location and type of landscaping: provided, however, that accessory off-street parking areas with a requirement of over twenty (20) spaces shall have at least twenty-five (25) square feet of interior landscaping for each parking space. Additionally, interior parking islands shall allow ample room for plantings without disturbance from vehicular and pedestrian traffic. Landscaped areas shall be so designed as not to obstruct a driver's view.

(10) Pavement markings.

(a) Traffic pavement marking shall be provided on various internal roadways and parking areas which may include parking stalls, stop bars, crosswalks, lane lines, fire zones, handicapped parking stalls, directional arrows and other miscellaneous markings. Signs may also be provided along said roadways to identify these areas. Pavement markings and signs shall conform to the New York State Manual of Traffic Control Devices or as directed by the Planning Board.

(b) Where striping can be accomplished, all parking spaces shall be striped in accordance with the approved plan. All striping shall be four-inch-wide lines except handicapped spaces, which shall be four-inch blue lines. Specifications of the paint and method of application shall be determined by the Planning Board.

(c) Traffic islands separating opposing flows of traffic shall be bordered by two (2) four-inch-wide yellow lines and crosshatched with twelve-inch-wide yellow bars.

(d) Fire zones shall be installed in accordance with the directions of the Planning Board and advisory recommendations of the Sag Harbor Fire Marshal.

I. Exemptions and variances.

(1) Existing buildings and uses in the Village Business District, Office District and Waterfront District are exempt as follows:

(a) The provisions of § 55-9.6 shall not apply to any land use, buildings or structure lawfully existing on the effective date of this subsection (for purposes of this subsection this date shall be September 4, 1984), whether continued as a legal nonconforming use or thereafter converted or changed without enlargement to a different lawful use having an equal or lesser number of parking and truck loading spaces, except as provided otherwise in § 55-12.6(B)(1)(b). Preexistence may be established by any one or more of the following:

[1] A valid certificate of occupancy or certificate of compliance.

[2] An original sealed survey of the premises (not a photocopy).

[3] A date-verified aerial photo.

[4] A valid sewer use permit containing such proof of such preexistence.

[5] An original Sanborn map of the premises or equivalent.

[6] An affidavit or other proof acceptable to the Building Inspector.

(b) Requirements for preexisting buildings, structures or lots; change of use.

[1] No building, structure or lot lawfully existing shall be enlarged unless the off-street parking and truck loading space requirements of this §55-9.6 are complied with to the same extent as would be required if the entire preexisting building or structure or lot and the proposed enlargement were being submitted as a new application for a building permit for the entire project, except that credit shall be given for the off-street parking and truck loading spaces that would have been required for the existing building or structure if the premises did not have preexisting status. Any credit shall, however, be limited in application to the preexisting building, and new spaces shall be supplied and installed for any enlargement. It is intended by this provision that additional off-street parking and truck loading spaces shall be provided with respect to the proposed enlargement, but

no additional spaces shall be required with respect to the preexisting building or structure. By way of illustration, and not limitation, a legal preexisting building with a parking requirement of eight spaces which supplies five spaces shall, upon enlargement, supply as many new spaces as the enlargement requires, and the five preexisting spaces shall be credited against the eight required and shall satisfy only said requirement of eight spaces.

[2] No lawfully existing use shall be changed to a use with greater off-street parking or truck loading space requirements unless the off-street parking and truck loading space requirements of this §55-9.6 are complied with to the same extent that would be required if the proposed change of use were being submitted as a new application for a building permit, except that credit shall be given for the off-street parking and truck loading spaces that would have been required for the lawful preexisting use if said use did not have preexisting status. Any credit shall, however, be limited in application to the preexisting building, and new spaces shall be supplied and installed for any change of use. It is intended by this provision that additional off-street parking and truck loading spaces shall be provided with respect to the change of use subject to the aforesaid credit. By way of illustration, and not limitation, a legal preexisting building with a parking requirement of eight spaces which supplies five spaces shall, upon change of use, supply as many new spaces a the change of use requires, and the five preexisting spaces shall be credited against the eight required and shall satisfy only said requirement of eight spaces.

[3] Conforming spaces actually provided on the premises, even if informal and unpaved, shall be allocated to the preexisting portions only or to the prior use but shall be formalized and paved as a condition of issuance of any site plan approval, building permit, certificate of compliance or certificate of occupancy, whichever shall apply.

(2) Where the Planning Board shall determine that dedication of land or an easement in perpetuity to the village is desirable to facilitate improvement of existing or proposed public parking facilities and said dedication of land or easement is voluntarily and unconditionally offered to the village for said purposes, the off-street parking requirements hereunder may be waived in whole or in part by the Planning Board. The number of spaces that may be waived shall be calculated on the basis of one (1) space per each two hundred (200) square feet of land area covered in the dedication or easement.

(3) The Board of Appeals subject to the applicable provisions of § 55-12.6(E) may grant a variance from the requirements, in whole or in part, for the off-street parking and truck loading spaces stipulated in this section.

J. Standards for parking variances. Upon any application for variances to the provisions of § 55-9.6, the Board of Appeals shall utilize the standards provided under Village Law § 7-712-b(3), as amended from time to time.

§ 55-9.7. Signs.

A. Schedule of permitted signs. The following schedule of permitted signs shall apply according to the district in which the lot is located on the Zoning Map, whether such lot is used for a permitted use or for a special exception use:

Permitted signs

| Type of District   | Professional and Temporary                               | Announce-ment Signs   | Identification signs  | Real Estate For-Sale or For-Rent Signs and Con-struction Signs  | Signs  |
|--|--|---|---|---|--|
| All residence districts pursuant to § 55-9.7(B) in the Village Business District and Office District | 1 on each public street frontage pursuant to § 55-9.7(B) | Prohibited  | 1 on each public street frontage pursuant to § 55-9.7(B)                                    | 1 on each public street frontage for single lots or build-ings; 2 subdivision signs on each public street frontage for each approved sub-division pursuant to § 55-9.7(E) | Pursuant to § 55-9.7(E)  |
| Pursuant to § 55-9.7(B) or § 55-9.7(E) when in the applicable  | 1 on each public street pursuant to § 55-9.7(C)          | 1 wall sign on each public street or mu-nicipal off-street parking lot and 1 de-tached or ground sign | 1 on each public street or mu-nicipal off-street parking lot and 1 de-tached or ground sign | 1 on each public street frontage for single lots or build-ings pursuant to § 55-9.7(E)  | 1 on each public street frontage for single lots or build-ings pursuant to § 55-9.7(E) |

pursuant to  
§ 55-9.7(C)

|                                     |                  |                       |
|-------------------------------------|------------------|-----------------------|
| All other Prohibited 1 wall sign on | 1 on each public | Pursuant              |
| to                                  |                  |                       |
| districts                           | each public      | street frontage for   |
| § 55-9.7(E)                         |                  |                       |
|                                     | street or        | single lots or build- |
|                                     | municipal off-   | ings pursuant to      |
|                                     | street parking   | § 55-9.7(E)           |
|                                     | lot and 1        |                       |
|                                     | detached or      |                       |
|                                     | ground sign      |                       |
|                                     | pursuant to      |                       |
|                                     | § 55-9.7(D)      |                       |

B. Professional signs and announcement signs.

(1) A professional sign or an announcement sign for a home professional office or home occupation shall bear only the name and profession or occupation of the resident. Such sign shall have a maximum area of two (2) square feet and may be located on the building wall or in the required front yard, provided that it is set back at least ten (10) feet from all property lines and is not more than six (6) feet above the natural ground level at its location.

(2) A church or other place of worship may have one (1) announcement sign, not over eighteen (18) square feet in area, on each public street frontage of its property, either fixed on the main wall of the building or located in the required front yard, provided that it is set back at least ten (10) feet from the front property line and at least twenty-five (25) feet from all other property lines. A church or other place of worship may also have one (1) temporary announcement sign, not over thirty-two (32) square feet in area, on each public street frontage of its property, located in the required front yard, for a period not to exceed thirty (30) days, for the purpose of announcing a special event, provided that it is set back at least ten (10) feet from the front property line and at least twenty-five (25) feet from all other property lines. No detached or ground sign shall exceed an overall height of eight (8) feet. The sign permit for such temporary sign shall automatically be deemed revoked thirty (30) days after the date of issuance of such permit, and such temporary sign shall be removed from the premises upon the revocation of such permit. There shall be no fee for the permit for such temporary sign.

(3) A parish house, club, school or public or semipublic building may have one (1) announcement sign, not over six (6) square feet in area, on each public street frontage of its property, either fixed on the main wall of the building or

located in the required front yard, provided that it is set back at least ten (10) feet from the front property line and at least twenty-five (25) feet from all other property lines. A parish house, club, school or public or semipublic building may also have one (1) temporary announcement sign, not over thirty-two (32) square feet in area, on each public street frontage of its property, located in the required front yard, for a period not to exceed thirty (30) days, for the purpose of announcing a special event, provided that it is set back at least ten (10) feet from the front property line and at least twenty-five (25) feet from all other property lines, No detached or ground sign shall exceed an overall height of eight (8) feet. The sign permit for such temporary sign shall automatically be deemed revoked thirty (30) days after the date of issuance of such permit, and such temporary sign shall be removed from the premises upon the revocation of such permit. There shall be no fee for the permit for such temporary sign.

(4) Such signs may be double-faced.

(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.

C. Village Business District identification signs.

(1) A wall identification sign shall be attached to or incorporated in a building wall. Such sign shall not:

(a) Exceed in total area two (2) square feet for each horizontal foot of such wall on which it is mounted.

(b) Exceed in width seventy-five percent (75%) of the horizontal measurement of the wall on which it is mounted.

(c) Project more than one (1) foot from such wall.

(2) An awning identification sign on a properly adjustable awning constructed of cloth on an iron-tube frame, the lowest point of which shall be at least seven (7) feet above the sidewalk or ground elevation at the base of the wall on which it is mounted. Such sign shall not:

(a) Exceed a total area of one (1) square foot for each two (2) horizontal feet of the window or door opening which it protects.

(b) Exceed a depth of ten (10) inches.

(3) A detached or ground identification sign may only be erected where the building is set back from the street line a distance of twenty-five (25) feet or more. Such sign shall not:

(a) Exceed in total area eighteen (18) square feet.

(b) Exceed eight (8) feet in height measured from the ground level.

(c) Have less than three (3) feet of clear space between the ground level and the bottom of the signboard, provided that necessary supports may extend through such clear space.

(d) Be set back less than twenty (20) feet from any property line, except that, if the average front setback of existing buildings within the same block is less than ten (10) feet, then the average setback so established shall be applied to such sign.

D. All other nonresidential district identification signs.

(1) A wall identification sign shall be attached to or incorporated in a building wall. Such sign shall not:

(a) Exceed in total area one (1) square foot for each horizontal foot of such wall on which it is mounted.

(b) Exceed in width seventy-five percent (75%) of the horizontal measurement of the wall on which it is mounted.

(c) Project more than one (1) foot from such wall.

(2) A detached or ground identification sign may only be erected where the building is set back from the street line a distance of forty (40) feet or more. Such sign shall not:

(a) Exceed in total area forty (40) square feet.

(b) Exceed ten (10) feet in height measured from the ground level.

(c) Have less than four (4) feet of clear space between the ground level and the bottom of the signboard, provided that necessary supports may extend through such clear space.

(d) Be set back less than twenty (20) feet from any property line, except that, if the average front setback of existing buildings within the same block is less than ten (10)

feet, then the average setback so established shall be applied to such sign.

E. Real estate and construction signs.

Real estate and construction signs shall be set back at least twenty (20) feet from any property line. Such signs shall have a maximum area of four (4) square feet, except that subdivision signs shall have a maximum area of twenty-four (24) square feet. Such signs shall not be illuminated in any residence district.

F. General provisions.

(1) The area of a sign shall be determined by the smallest rectangle that encompasses all of the letters or symbols that make up the sign, together with the area of any background of a color or material different from the general finish of the building, whether painted or applied.

(2) The outlining by direct illumination of all or part of a building, such as a gable, roof, wall, side or corner, is prohibited, except for holiday display.

(3) No flashing or moving signs, except time and temperature information, or rooftop signs shall be permitted in any district.

(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.

(5) Temporary or permanent signs resting on or attached to vehicles shall not be used as a means to circumvent the provisions of this chapter.

(6) No sign shall be so located as to detract from or obstruct historical buildings from public view.

(7) Billboards are prohibited in all districts, except that the village may establish special public information centers wherein directional signs for businesses which are approved by the Village Board of Trustees may be located.

(8) No neon sign shall be permitted in any district.

(9) Nothing contained in this chapter shall be construed to prohibit the village or any other governmental agency from

erecting and maintaining public signs deemed to be necessary in the public interest.

(10) Any sign to be erected in any part of the Historic District shall be allowed only upon an express, affirmative finding of the Board of Historic Preservation and Architectural Review that said sign is consistent with the historic character of the area including historic materials and features.

G. Procedures, permits and fees.

(1) No sign shall be erected in the Village of Sag Harbor without first obtaining a permit from the Building Inspector and paying the required fee set forth in this section, except that a residence nameplate, street number, "for sale," "for rent," "beware" or "caution" sign not exceeding a gross area, inclusive of frame, of two (2) square feet elevated not to exceed two (2) feet above existing natural grade and accessory to a one- or two-family residential building shall not require such a permit.

(2) Applications for sign permits shall be made upon forms provided by the Building Inspector and shall include plans, specifications and other such information as the Building Inspector may require.

(3) The Building Inspector shall determine that such proposed sign complies with all the requirements of this chapter and all other applicable laws and regulations of the Village of Sag Harbor before authorizing issuance of a sign permit. Nonconforming signs shall be designated as such on the sign permit issued.

(4) No sign permit shall be issued prior to payment of the required fee. The fee for a sign permit application and for issuance of a sign permit shall be as established from time to time by the Board of Trustees.

(5) Each sign shall be assigned a permit number.

(6) Each sign for which a sign permit has been issued may be inspected for adequate maintenance, freedom from any hazardous condition and structural soundness. If such sign is found to be unsafe, the Building Inspector shall revoke the sign permit until such time as satisfactory adjustments have been made.

(7) No existing sign shall be structurally altered, rebuilt, enlarged, extended, relocated or modified in any way, except in conformity with the provisions of this section.

(8) Any sign requiring a sign permit which does not have such a permit or which does not have a sign permit number shall be deemed to be an illegal sign under the provisions of this chapter. The Building Inspector shall cause a notice of such violation to be served on the owner of the building, structure or lot where said sign is located, or the lessee or tenant of the part of or of the entire building, structure or lot where said sign is located, requiring such owner or lessee or tenant to remove such illegal sign. Such notice may be served personally or by certified mail, return receipt requested. Persons found guilty of such violation shall be subject to a fine and/or imprisonment as set forth in § 55-17.6.

(9) No sign other than a sign erected by a governmental agency shall be erected or placed within the right-of-way lines of a public street, and any such sign may be removed by the Building Inspector without notice to the owner.

§ 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 benefited 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.

§ 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.

ARTICLE 10. Nonconforming Uses, Buildings and Structures

§ 55-10.1. Applicability.

These provisions shall apply to all buildings or structures and all uses of buildings or structures or lots lawfully existing prior to the effective date of this chapter or of subsequent amendments, revisions or reenactments of such chapter, which buildings or structures or uses do not conform to the provisions of said original Zoning Code or to such revisions or reenactments on their effective dates.

§ 55-10.2. Continuance.

A. Any lawful use occupying any building, structure, lot or land at the time of the effective date of this chapter or any amendment thereto which does not comply, after the effective date of this chapter or any amendment thereto, with the use regulations of the district in which it is situated may be continued in the building or structure or upon the lot or land so occupied, except as provided in § 55-10.6.

B. A conforming building or structure used by a nonconforming use shall not be reconstructed, structurally altered, restored or repaired to an extent exceeding one hundred percent (100%) of the gross floor area of such building or structure unless the use of such building or structure is changed to a conforming use.

C. A nonconforming building or structure that is devoted to a conforming use may be enlarged, reconstructed, structurally altered, restored or repaired, in whole or in part, and the provisions of § 55-12.6(B)(2) shall not apply, except that the degree of nonconformity shall not be increased.

§ 55-10.3. Single and separate; merger; Four Tenths Rule; no increase in degree of nonconformity.

The following provisions shall apply to and govern all nonconforming lots wherever located:

(1) Proof of existing single and separate ownership. A nonconforming lot may be used and a building or structure may be erected thereon for use in accordance with all other applicable provisions of this chapter, the Village Code and other laws, rules and regulations if proof that the lot has been held in continuous single and separate ownership since before the date on which it became nonconforming is submitted to the Building

Inspector. The Building Inspector may require an abstract of title to said lot, which abstract shall be in the usual form, shall be certified by an attorney or title company regularly doing such work in Suffolk County and shall contain a certification that, since the date the lot became nonconforming no contiguous property was ever owned by an owner of the subject lot.

(2) Merger of nonconforming lots. If at any time a lot with less than the area or width required in the district within which the lot is located shall be held in the same ownership as one or more adjoining parcels, the lot shall lose its status as a nonconforming lot and shall merge with the adjoining parcel. A lot created by the merger of the adjoining parcels remains nonconforming if said parcels as merged are less than the lot area or lot width requirements of the district in which said parcels are situated. No such merger shall occur, however, in the following cases:

(a) Merger by death. No merger shall hereafter result under this chapter where the ownership of a nonconforming lot becomes the same as the ownership of an adjoining parcel through the death of an individual owner of one of the parcels provided however the parcels do not remain in common ownership for a period in excess of three years from the date of death.

(b) Improved nonconforming parcels. No merger shall hereafter result under this chapter where adjacent nonconforming lots that are both improved with single family residences are held in the same ownership.

(3) Yard setback relief. For any lawfully existing single and separate nonconforming lot and solely for the purpose of siting thereon one principal building and any lawful accessory structures, except swimming pools, associated decks, slabs and patios around said pool, pool equipment and tennis courts, the required side and rear yards shall be reduced as set forth below. This setback relief shall apply automatically but is subject to the pyramid law restrictions of § 55-9.3 hereof.

(a) The total dimensions of both side yards for a principal building shall be computed on the basis of 0.4 of the lot width; however, no side yard dimension shall be less than 0.4 of the total dimensions of both side yards computed as aforesaid, and no side yard dimension shall be less than ten (10) feet.

(b) The total rear yard setback for a principal building shall be computed on the basis of 0.3 of the lot depth; however, no setback for the rear yard of a principal building shall be less than thirty (30) feet.

(4) An existing building or structure designed and used for a conforming use but located on a nonconforming lot, whether the building is conforming or nonconforming with respect to lot coverage and minimum yard requirements, may be enlarged, reconstructed, structurally altered, restored or repaired, in whole or in part, except that the degree of nonconformity shall not be increased.

§ 55-10.4. Extension.

A one-family detached dwelling held in single and separate ownership at the effective date of this chapter and/or any applicable amendment may be enlarged or extended as of right in an amount not to exceed fifty percent (50%) of the first floor area, provided that any existing nonconforming yard dimensions are not reduced further, and further provided that the lot coverage shall not exceed the present zoning requirements. No other nonconforming use shall be enlarged or extended nor shall the degree of nonconformity of a nonconforming building be increased except as provided in § 55-10.3.

§ 55-10.5. Change of use.

A nonconforming use shall be changed only to a conforming use, except as provided in § 55-12.6(B)(3). Any change of use shall require site plan approval.

§ 55-10.6. Abandonment of use.

A. A nonconforming use shall be deemed to have been abandoned:

(1) When it is changed to a conforming use.

(2) In cases where such nonconforming use is of a building or structure designed for such use, when it has been voluntarily discontinued for a period of twelve (12) consecutive months; and, in cases where such nonconforming use is of a building or structure designed for such use, when it has not in fact been actually used for a continuous period of three (3) years.

(3) In cases where such nonconforming use is of a building or structure not designed for such use or is of a lot or land whereon there is no consequential building or structure devoted to such use, when it has been voluntarily discontinued for a period of six (6) consecutive months and, in such cases, when it has not in fact been actually used for a continuous period of eighteen (18) months.

B. A nonconforming use that has been abandoned shall not thereafter be reinstated.

§ 55-10.7. Compulsory termination.

A. A nonconforming structure or nonconforming use may be subject to compulsory termination by the Village Board of Trustees when it is found detrimental to the conservation of the value of the surrounding land and improvements or to future development of surrounding lands and therefore is tending to deteriorate or blight the neighborhood.

B. In ordering the compulsory termination of a nonconforming structure or nonconforming use, the Village Board of Trustees shall establish a definite and reasonable amortization period during which the nonconforming use may continue while the investment value remaining after the date of the termination order is amortized. Determination of the amount to be amortized shall be based on the value and condition of the land and improvements for the nonconforming use less their value and condition for a conforming use, and such other reasonable costs as the termination may cause. The rate of amortization shall be in accordance with reasonable economic practice.

C. Amortization of nonconforming cabaret, disco and nightclub uses.

(1) Termination. The right to maintain a nonconforming cabaret, disco or nightclub shall be terminated either upon the date that there is a change of ownership or operation of any cabaret, disco or nightclub, including the change in any person or entity listed on a license issued by the New York State Liquor Authority, or upon the date that there is a change in the tenancy of any building or part thereof used as a cabaret, disco or nightclub or within one year of the date that a notice of termination is served upon the owner or operator of a cabaret, disco or nightclub or upon the tenant occupying the area of a cabaret, disco or nightclub or upon the owner of the premises on which a cabaret, disco or nightclub is operating.

(2) Notice of termination. The Building Inspector shall make a determination as to what business or businesses are being operated as cabarets, discos or nightclubs or what building or part thereof is being used as a cabaret, disco or nightclub. Upon making such a determination the Building Inspector shall serve a notice of termination upon the owner or operator of a cabaret, disco or nightclub or upon the tenant occupying the area of a cabaret, disco or nightclub or the owner of the premises on which a cabaret, disco or nightclub is operating. Said notice shall set forth the location of the premises where the cabaret, disco or nightclub is located, the date of termination and a statement that the owner or operator of the cabaret, disco or nightclub may within 60 days of the date the

notice is served make an application to the Board of Trustees to extend the termination date. The notice shall be sent to the owner or operator of the cabaret, disco or nightclub by certified mail, return receipt requested, at the address where the cabaret, disco or nightclub is operating. If the mailing is not accepted, then a copy of the notice shall be affixed to the property where the cabaret, disco or nightclub is located and an additional copy shall be sent by regular mail to the address where the cabaret, disco or nightclub is located. Service may also be made to the owner or operator in accordance with the provisions of the Civil Practice Law and Rules.

(3) Hearing.

(a) If an application is filed with the Board of Trustees to extend the termination date of the nonconforming cabaret, disco or nightclub, the Board of Trustees shall schedule a public hearing to consider the application. Notice of the hearing shall be sent to the applicant and to all property owners within 200 feet of the location of the cabaret, disco or nightclub. The notice of public hearing shall set forth the date, time and place of the hearing. Notice of the public hearing shall also be advertised in the official newspaper of the village.

(b) In any such hearing the owner shall have the burden of establishing that the original adjusted capital investment of the owner has not been fully amortized from the date the owner commenced operating the nonconforming cabaret, disco or nightclub or the date said uses became nonconforming, whichever date is later. The "original adjusted capital investment" as used herein is defined to mean the original cost of the owner to establish the cabaret, disco or nightclub use, less all depreciation taken for income tax purposes exclusive of the fair market value of the building or structure in which the cabaret, disco or nightclub is located.

(4) Amortization schedule. The following amortization schedule is adopted by the Board of Trustees to assist them in any hearing to determine whether the termination date of a nonconforming cabaret, disco or nightclub should be extended. It shall be presumed that the original capital investment of the owner or operator of any cabaret, disco or nightclub in existence prior to the date such use became nonconforming is amortized at a rate of \$50,000 per year. The owner shall have the burden at any hearing of establishing that the amortization schedule set forth above should not apply.

(5) Invalidity. If any section, subsection, sentence or other portion of this section is for any reason held invalid or

unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

§ 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.

ARTICLE 11. Special Exception Uses

§ 55-11.1. Delegation of authority to Planning Board.

The Planning Board is hereby authorized to act on proposed special exception uses which are specifically provided for in this chapter. Such action may include approval, conditional

approval or disapproval based on the standards set forth in this section.

§ 55-11.2. General procedures and conditions.

A. Prior to taking action on any special exception use, the Planning Board shall hold a public hearing after public notice.

B. Any approval of a Special Exception use may be subject to a condition requiring the issuance of a building permit, commencement and completion of construction within a time specified by the Planning Board.

C. For all applications for a special exception the applicant shall erect or cause to be erected a sign which shall be displayed on the parcel upon which the application is made, facing each public street to which the property abuts, giving notice that an application has been made to the Planning Board along with the time and place of the hearing. The sign shall not be located more than ten (10) feet from the street line and shall not be less than two (2) feet nor more than six (6) feet above the natural grade at the street line. The sign shall be furnished by the Planning Board and shall be the only sign to be used. The sign shall be displayed not less than ten (10) days immediately preceding the public hearing or any adjournment date. The applicant shall file an affidavit with the Planning Board that he/she has complied with the provisions of this section prior to the opening of the public hearing.

D. 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 any 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. Such notice shall be by either certified or registered mail, return receipt requested. Proof of such notice shall consist of: (1) the return receipts, and (2) an affidavit attesting to compliance with this mailing notification. Such proof shall be submitted to the Planning Board prior to the public hearing. No additional mailing shall be required for an adjournment.

E. Any violation of the limitations or special conditions and safeguards established by the Planning Board with respect to a specific authorization for a special exception use shall be deemed a violation of this chapter punishable under the provisions of § 55-17.6.

§ 55-11.3. General standards.

For every such special exception use, the Planning Board shall determine that:

A. Nature of use. Such use will be in harmony with § 55-1.2, Legislative findings and determinations, and will promote the general purposes and intent of this chapter as stated in § 55-1.3, Declaration of purpose.

B. Lot area. The plot area is sufficient, appropriate and adequate for the use and the reasonably anticipated operation and expansion thereof.

C. Adjacent properties. The proposed use will not prevent the orderly and reasonable use of adjacent properties, particularly where they are in a different district.

D. Compatibility. The site is particularly suitable for the location of such use in the village and, if sited at that location, the proposed use will in fact be compatible with its surroundings and with the character of the neighborhood and of the community in general, particularly with regard to visibility, scale and overall appearance.

E. Effect on specific existing uses. The characteristics of the proposed use are not such that its proposed location would be unsuitably near to a church, school, theater, recreational area or other place of public assembly.

F. Use definition. The proposed use conforms to the chapter's definition of the special exception use where such definition exists or with the generally accepted definition of such use where it does not exist in this chapter.

G. Circulation. Access facilities are adequate for the estimated traffic from public streets and sidewalks, so as to assure the public safety and to avoid traffic congestion; and, further, that vehicular entrances and exits shall be clearly visible from the street and not be within seventy-five (75) feet of the intersection of street lines at a street intersection, except under unusual circumstances.

H. Curb cuts. All proposed curb cuts have been approved by the street or highway agency which has jurisdiction.

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 or

visitors; and, further, that the layout of the spaces and driveways is convenient and conducive to safe operation.

J. Buffering and screening. Adequate buffer yards and screening are provided where necessary to protect adjacent properties and land uses.

K. Runoff and waste. Adequate provisions will be made for the collection and disposal of stormwater runoff from the site and of sanitary sewage, refuse or other waste, whether liquid, solid, gaseous or of other characteristic.

L. Outdoor display. No outdoor sales lot, retail equipment storage or display area shall be permitted in the required front yard area of the Village Business District or Waterfront District.

M. Specific standards. The proposed use recognizes and provides for the further specific conditions and safeguards required for particular uses in § 55-11.4.

§ 55-11.4. Special conditions.

A. Environmental protection. The natural characteristics of the site are such that the proposed use may be introduced there without undue disturbance or disruption of important natural resources.

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.

§ 55-11.5. Apartment Building in the Office District (OD).

A. Any applicant for an apartment building in the OD 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.

B. Any applicant for an apartment building in the OD District which shall contain five (5) or fewer units on any site shall not be required to set aside affordable units on site but shall be required to make payment of a sum of money to the Sag Harbor Community Housing Trust Fund as otherwise provided in Subsection (A)(2) above equal to \$186,000.00 or such other sum as is fixed from time to time by resolution of the Board of Trustees. In the event any site is a lot on a minor or major subdivision approved after the effective date of this section and in the further event there is a later application for an apartment use on a separate lot within said subdivision then and on approval of any such application the applicant shall be obliged to set aside twenty (20%) percent of allowable density as affordable units.

C. Any affordable apartment unit under this section shall not be subject to the lot area requirement otherwise applicable for apartments in the Table of Dimensional Regulations.

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

A. Allowance. Accessory apartments in the R-20 District and new accessory apartments in the VB District shall be a special exception use provided any such use complies with the requirements of this section and a permit is issued hereunder.

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.

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).

D. Standards.

1. Owner occupancy. The owner of real property issued an accessory apartment permit and located within the R-20 District shall reside within the principal dwelling on site.

2. Yield. No lot or parcel of land in the R-20 District shall be improved with more than one (1) accessory apartment. This limitation shall not apply in the VB District. At least twenty percent (20%) of any new apartments in a structure in the VB District, in no event fewer than one (1) in the event any new apartment(s) are built, shall be an accessory apartment under § 55-11.6.

3. Location. Any accessory apartment shall be located within the principal dwelling, shall occupy no more than forty (40%) percent of the principal dwelling's habitable area and shall in no event be located within an accessory structure. In the VB District, any new accessory apartment shall not be located on the first floor or below said floor.

4. Size. Any accessory apartment shall be no less than 300 square feet nor greater than 650 square feet. These limits do not apply in the VB District.

5. Bedrooms. In no event shall the number of bedrooms in an accessory apartment exceed two (2) bedrooms.

6. Exterior Appearance. Any entryway or other exterior feature of a principal dwelling in the R-20 District with an accessory apartment shall be designed and maintained so as to appear as a single family dwelling to the extent reasonably feasible. In no event shall an entry solely for an apartment face a street.

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.

8. Code Compliance. Any accessory apartment shall be improved and maintained in compliance with the Village Code, the New York State Fire Prevention and Building Code and the Suffolk County Sanitary Code.

9. Inspection. As a condition of approval of any permit for an accessory apartment, the applicant or its designated, authorized representative shall authorize the Building Inspector and/or Fire Marshal to make or cause to be made inspections, upon reasonable notice, to determine the condition of the

dwelling and compliance with the provisions of this section to safeguard the health, safety and welfare of the public.

E. Amnesty. Any owner of any dwelling within the R-20 District now unlawfully improved with an accessory apartment of any kind shall be allowed one (1) year from the date of enactment of this section without penalty provided said owner within ninety (90) days after issuance of a permit hereunder complies with all the requirements of this section including the requirements of any other agency with jurisdiction.

F. Duration. Any permit for an accessory apartment shall be initially for a period of one (1) year, shall be upon its initial renewal for a period of two (2) years and shall be on any subsequent renewal for a period of three (3) years.

G. Transferability. Any permit for an accessory apartment may be transferred by an owner of the principal dwelling to a successive owner of the principal dwelling provided written notice including the name and mailing address of the successive owner is given to the Accessory Apartment Review Board by the permit holder and in no event may any interest of a tenant of an accessory apartment be transferred to a third party tenant except upon approval of eligibility under subsection B above.

H. Accessory Apartment Review Board. Applications for permits hereunder shall be reviewed and approved or denied by the Accessory Apartment Review Board (Board). The Board shall consist of three (3) members who shall serve without compensation. The members shall be appointed by the Mayor with the approval of the Board of Trustees. One person shall be designated by the Mayor to act as chairperson for the term of that member's appointment. One member shall be appointed for one (1) year, one (1) shall be appointed for two (2) years and one shall be appointed for three (3) years. All successor appointments shall be for three (3) years. The Board shall maintain a record of its proceedings and all such records shall be public records subject to the Public Officers Law.

I. Applications. All applications shall be in forms prescribed by the Board. Any application shall include:

(1) An application to the Building Department for pre-approval of occupancy and use, together with plans by a licensed design professional and any such other plans, documents or surveys required by the Building Department, an application to the Building Department for all necessary building permits and an application to the Board for an accessory apartment permit.

(2) The applicant shall make part of any application for pre-approval of occupancy and use and building permit, an

approval of the Suffolk County Department of Health Services, if required.

(3) The Board as part of its application, may require the applicant to submit supporting documents including but not limited to floor plans, surveys, photographs, and/or exterior renderings.

(4) The application for the transfer of an accessory apartment permit to a subsequent property owner shall be completed on such forms and in such a manner as prescribed by the Board.

(5) The application must be supplied by the owners of the property and the applicant shall be required to file an acknowledgement with the Board stating that the accessory apartment permit or any extensions thereof shall terminate upon the death of the signator or the survivor of the signator upon the signator no longer occupying the premises as their principal residence or upon a conviction for a violation of this section.

(6) The applicant is required to file a form stating that the subject dwelling(s) shall conform with all requirements of this section, all applicable provisions of the Code of the Village of Sag Harbor, Suffolk County Sanitary Code and New York State Uniform Fire Prevention and Building Code. The applicant will be required to meet pertaining standards within ninety (90) days of the building permit or the accessory apartment permit will become null and void.

(7) The application shall include three (3) current surveys of the premises, a copy of a current C.O., a list of all property owners within two hundred (200) feet and a copy of the applicant's deed.

J. Hearings. Any application shall be subject to a public hearing which shall require that applicant notify property owners within two hundred (200) feet of the date, place, time and nature of the application.

K. Limitation on number. In no event may the Board approve or allow more than fifty (50) accessory apartments in use in the R-20 District at any one time.

L. Revocation. The Board shall retain the right to revoke any accessory apartment permit issued hereunder should the applicant or applicant's tenant violate any provision of this section, any condition imposed upon the issuance of the permit, or violation of the provisions of the Code of the Village of Sag Harbor. Said revocation shall be after a hearing held on notice to the applicant and, if known, the tenant. As an alternative to

revocation, the Board may continue the permit on a probationary basis and, in such event, it may revoke the permit without further notice to the applicant or tenant upon a violation of any conditions attached to the probationary permit.

M. Appeals. Any appeal from a determination of the Board shall be by an Article 78 proceeding which shall be the exclusive remedy of any aggrieved party.

§ 55-11.7. Bar/Tavern.

A. The site shall not be located within 500 feet of any church, school, playground, park, hospital or similar public and semipublic place.

B. There shall be no outdoor public-address or music system.

C. Outdoor service and/or consumption of alcoholic beverages is prohibited.

D. There shall be no live entertainment on the premises except that a tavern or bar may include a piano and/or stringed instruments.

E. No bar or tavern shall be approved unless noise attenuation improvements are installed prior to issuance of any certificate of occupancy so as to prohibit altogether the transmittal of noise off-site.

F. Septic and solid waste systems must be adequate to assure that no adverse effects will result to any water body in the vicinity of the proposed use.

G. Parking and traffic circulation shall be provided which is adequate to accommodate the peak anticipated crowding of the use.

H. All exterior lighting shall be contained on site.

I. Excessive or unreasonable noise is prohibited. Excessive or unreasonable noise is any sound that can be detected at any property line from which the noise emanates by a trained officer using his or her unaided hearing faculties that is deemed by that officer, based on his or her training or experience, to exceed the decibel limitations set forth in Section 33-3 or is unreasonable based upon the totality of the circumstances. If the sound source under investigation is a sound amplification or reproduction device, the enforcement officer need not determine the title of a song, specific words, or the artist performing the song. The detection of the rhythmic bass component of the

music shall be sufficient to constitute excessive or unreasonable noise.

§ 55-11.8. Bed and Breakfast.

A. A bed and breakfast is an owner-occupied dwelling designed, used and occupied as a one-family or two-family dwelling, managed by the property's owner and having as an accessory bedroom accommodations and breakfast provisions, served in the host's private dining room or kitchen for those accommodated as paying guests, who are referred to for the purposes of this article as "registered guests."

B. No dwelling or building shall be used as a bed-and-breakfast unless:

(1) It is in compliance with the requirements of this article and all other provisions of this chapter.

(2) A bed-and-breakfast permit has been issued for a bed-and-breakfast under this article by the Planning Board permitting the bed-and-breakfast.

C. No bed-and-breakfast shall be designed nor permitted to accommodate greater than four (4) guests and occupancy of any guest shall be limited to two (2) nights and two (2) days.

D. Any special exception permit issued hereunder shall expire two (2) years after issuance, and any renewal shall be submitted to a public hearing unless all neighboring property owners within two hundred (200) feet provide a written consent to such renewal.

E. The dwelling shall be a detached one-family or two-family dwelling with a certificate of occupancy for such use. A bed-and-breakfast may also utilize one accessory building for guest facilities only if it is approved by the Planning Board.

F. The dwelling shall be occupied as a principal residence by its owners during any period of time in which it is also being used and occupied as a bed-and-breakfast.

G. There shall be no separate kitchen facilities for the use of registered guests.

H. At least one (1) off street parking space shall be provided for each guest bedroom.

I. No meal may be served or provided in any manner except breakfast to registered guests.

J. No special exception approval shall be issued excepted after the Planning Board's receipt and consideration of written inspection reports from both the Fire Marshal and Building Inspector each stating that the premises are safe for bed-and-breakfast use and no such special exception shall be approved except with a condition authorizing continued inspections as need arises by both the Fire Marshal and Building Inspector.

K. Each floor and each guest bedroom shall be equipped with a working smoke alarm and carbon monoxide detector.

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

§ 55-11.9. Boatyard.

A. All minor and major repairs to recreational boats and commercial fishing vessels may be provided if such major repair services shall not be deemed incompatible with the use of adjoining properties.

B. Outdoor storage of boats may be permitted.

C. Commercial fishing, dockage, warehousing, outdoor storage and similar accessory uses may be permitted in connection with a boatyard, provided that such uses are located at least 50 feet from any residential district and provided that such use will not be deemed to be incompatible with the use of adjoining properties.

§ 55-11.10. Cemetery.

A. Any cemetery shall be located on a site not less than ten (10) acres.

B. Any interment at a cemetery shall be at least one hundred (100') feet or more inside any perimeter boundary or exterior lot line.

C. Any chapel or building used for public assembly at a cemetery shall not be greater than two thousand (2,000) square feet in area or sixteen (16') feet in height, shall be at least two hundred (200') feet from any property line and shall be limited in use to the conducting of services incident to burials only.

D. Any cemetery shall be designed so as to accommodate not fewer than fifteen (15) automobiles within its traffic ways and on site.

E. Service buildings shall be located at least fifty (50') feet from any side or rear lot line and shall be at least one hundred (100') feet from any public or private street.

F. A crematory is prohibited.

G. All side and rear property lines shall be planted with evergreen vegetation specified by the Planning Board with the provisos that any such plantings shall protect adjacent properties from any view of the cemetery and activities therein and any such plantings shall be subject to a maintenance covenant requiring that such planting survive and be maintained in good health.

**§ 55-11.11. Communication Tower.**

A. Purpose. 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. In order to insure that the placement, construction and modification of wireless telecommunications facilities is consistent with the Village's land use policies, the Village hereby adopts a single, comprehensive wireless telecommunications facilities application and permit process. In order to ensure that the placement, construction and modification of wireless telecommunications facilities do not threaten or endanger the health, safety and welfare of the Village's residents and visitors, and to protect the public welfare, environmental features, aesthetic values and the nature and character of the community and neighborhoods and other aspects of the quality of life specifically listed elsewhere in this article, the Village hereby adopts an overall policy and requirements with respect to a special use permit for wireless telecommunications facilities for the express intent and purpose of achieving the following goals:

1. Implementing an application process for person(s) seeking a special use permit for placement and construction and maintenance of wireless telecommunications facilities;

2. Establishing a policy for examining an application for and issuing a special use permit for wireless telecommunications facilities that is both fair and consistent to all licensed wireless telecommunications providers;

3. Promoting and encouraging the sharing and/or collocation of wireless telecommunications facilities among service providers;

4. Promoting and encouraging the placement, height and quantity of wireless telecommunications facilities in such a manner, including but not limited to the use of stealth and other innovative technology, to minimize adverse aesthetic and visual impacts on the land, property, buildings and other facilities adjacent to, surrounding, and near the requested location of such wireless telecommunications facilities;

5. Promoting and encouraging the implementation of alternative types of wireless telecommunications facilities and technology such as secondary wireless telecommunication service facilities, repeaters, and micro-cell technology to minimize the adverse visual and physical effects of wireless telecommunications facilities and to protect the natural features, aesthetics and open space character of the Village;

6. Promoting and encouraging the priority of siting of wireless telecommunications facilities to minimize the adverse visual and physical effects of wireless telecommunications facilities and to protect the natural features, aesthetics and open space character of the Village;

7. To minimize the impact of such facilities on residential properties;

8. To encourage the siting of wireless telecommunications services facilities on properties and areas which are not used for residential purposes;

9. To avoid potential damage to property caused by towers and telecommunications facilities by ensuring such structures are soundly and carefully designed, constructed, modified, maintained, and removed when no longer used or determined to be structurally unsound;

10. To ensure that towers and telecommunications facilities are compatible with surrounding land uses.

B. Word usage; definitions.

1. For purposes of this article, and where not inconsistent with the context of a particular section, the defined terms, phrases, words, abbreviations, and their derivations shall have the meanings given in this section. When not inconsistent with the context, words in the present tense include the future tense, words used in the plural include words in the singular number and words in the singular number include the plural number. The word "shall" is always mandatory, and not merely directory.

2. As used in this article, the following terms shall have the meanings indicated:

ACCESSORY FACILITY OR STRUCTURE -- An accessory facility or structure serving or being used in conjunction with wireless telecommunications facilities and located on the same property or lots as the wireless telecommunications facilities, including but not limited to, utility or transmission equipment storage sheds or cabinets.

ANTENNA -- A system of electrical conductors that transmit or receive electromagnetic waves or radio frequency or other wireless signals. Such shall include, but not be limited to radio, television, cellular, paging, personal telecommunications services (PCS), microwave telecommunications and services not licensed by the FCC, but not expressly exempt from the Village's siting, building and permitting authority.

APPLICANT -- Any wireless service provider submitting an application for a special use permit for wireless telecommunications facilities.

APPLICATION -- All the necessary and appropriate documentation that an applicant is required to submit for consideration of a special use permit for a wireless telecommunications facilities as specifically set forth in this article.

BOARD -- The Planning Board.

CO-LOCATION -- The use of a wireless telecommunications facility or other structure to support antenna for the provision of wireless services without increasing the height of such facility or other structure.

COMPLETED APPLICATION -- An application that contains all the information and/or data required by this article necessary to enable an informed decision to be made with respect to an application.

FAA -- The Federal Aviation Administration, or its duly designated and authorized successor agency.

FCC -- The Federal Communications Commission or its duly designated and authorized successor agency.

HEIGHT -- When referring to a wireless telecommunications facility or other structure, the distance measured from the preexisting grade level to the highest point on such facility or other structure, even if said highest point is an antenna or lightening protection device.

MODIFICATION -- The addition, removal, change or alteration of any of the physical and visually discernable components or aspects of a wireless telecommunications facility, such as antennas, cabling, radios, equipment shelters, landscaping, fencing, utility feeds, changing the color or materials of any visually discernable components, vehicular access, parking and/or an upgrade or changeout of equipment for better or more modern equipment. Adding a new wireless carrier or service provider to a wireless telecommunications facility or telecommunications site for purposes of this article shall be deemed as a modification. A modification shall not include the replacement of any components of a wireless telecommunications facility where the replacement is identical to the component being replaced or for any matters that involve the normal repair and maintenance of a wireless telecommunications facility without adding, removing, changing, or altering the wireless telecommunications facility in any respect.

NIER -- Non-ionizing electromagnetic radiation.

PERSON -- Any individual, corporation, estate, trust, partnership, joint-stock company, association of two or more persons having a joint common interest, or any other entity.

PERSONAL WIRELESS FACILITY -- See definition for "wireless telecommunications facilities."

PERSONAL WIRELESS SERVICES or PWS or PERSONAL TELECOMMUNICATIONS SERVICE or PCS -- Shall have the same meaning as defined and used in the 1996 Telecommunications Act.

PUBLIC UTILITY STRUCTURE -- Any structure erected for the purposes of providing a public utility service, including, but not limited to, water towers, electric transmission tower/poles and telephone poles.

REPEATER -- A small, supplementary and accessory bidirectional amplifier facility designed and limited in height and transmission power to provide service only where there is a failure of coverage and to minimize visual impacts and the need for the primary base stations which may be attached to a structure or pole.

SECONDARY WIRELESS TELECOMMUNICATIONS SERVICE FACILITY -- A small wireless telecommunications Service facility that is intended, designed and limited in its implementation to provide service only in and for an area where there is a failure of coverage that does not involve the construction of a new tower or increase the height of any existing structure to which it is attached.

SPECIAL USE PERMIT -- The official document or permit issued by the Board pursuant to which an applicant is permitted to construct, maintain and use a wireless telecommunications facility as granted or issued pursuant to this article. The Board is hereby authorized to review and approve, approve with modifications, or disapprove special use permits and site plans consistent with Village Law, §§ 7-725 and 7-725(b).

STATE -- The State of New York.

STEALTH or STEALTH TECHNOLOGY -- The use of innovative design technology to minimize adverse aesthetic and visual impacts on the land, property, buildings, and other facilities located adjacent to, surrounding, and in generally the same area as the requested location of such wireless telecommunications facilities.

TELECOMMUNICATIONS -- The transmission and/or reception of audio, video, data, and other information by wire, radio, frequency, light, and other electronic or electromagnetic systems.

TELECOMMUNICATIONS SITE -- See definition for "wireless telecommunications facilities."

TELECOMMUNICATIONS STRUCTURE -- A structure used in the provision of services described in the definition of wireless telecommunications facilities.

TEMPORARY -- Temporary in relation to all aspects and components of this article, something intended to or that does exist for less than 90 days.

VILLAGE -- The Incorporated Village of Sag Harbor.

WIRELESS TELECOMMUNICATIONS FACILITIES -- Include personal wireless facilities and antennas and associated equipment and/or a structure, tower, facility or location designed, or intended to be used as or used to support antennas or other transmitting or receiving devices. This includes, without limitation, all kinds of structures that employ stealth technology, including, but not limited to, structures such as a multistory building, church steeple, silo, water tower, sign or other structures that can be used to mitigate the visual impact of an antenna or the functional equivalent of such, including all related facilities, such as cabling, equipment shelters and other structures associated with the site. It includes towers of all types intended to accommodate wireless telecommunications facilities and secondary wireless telecommunications service facilities and repeaters. It is a structure and facility intended for transmitting and/or receiving radio, television, cellular,

paging, 911, personal and emergency telecommunications services, commercial satellite services, microwave services and services not licensed by the FCC, but not expressly exempt from the Village's siting, building and permitting authority, excluding those used exclusively for the Village's fire, police or exclusively for private, noncommercial radio and television reception and private citizen's bands, amateur radio and other similar noncommercial telecommunications where the height of the facility is below the height limits set forth in this chapter.

C. Special use permit application and other requirements. No person shall build, erect, or construct a wireless telecommunications facility upon any parcel of land within any zoning district within the Village unless a special use permit shall have been issued in accordance with this article. The Village Board of Trustees is hereby authorized to review special use permit applications submitted pursuant to this section as set forth herein.

1. All applicants for a special use permit for wireless telecommunications facilities or any modification of such facility shall comply with the requirements set forth in this section. applications for a special use permit for wireless telecommunications facilities shall be made to the Board of Trustees. Said Board is the officially designated agency that is authorized to review, analyze, evaluate and make decisions with respect to granting or not granting, recertifying or not recertifying, or revoking special use permits for wireless telecommunications facilities. The Village may, at its discretion, delegate or designate other official agencies of the Village to accept, review, analyze, evaluate and make recommendations to the Board with respect to the granting or not granting, recertifying or not recertifying or revoking special use permits for wireless telecommunications facilities.

2. An application for a special use permit for wireless telecommunications facilities shall be signed on behalf of the applicant by the person preparing the same and with knowledge of the contents and representations made therein and attesting to the truth and completeness of the information. The landowner, if different than the applicant, shall also sign the application. At the discretion of the Board, any false or misleading statement in the application may subject the applicant to denial of the application without further consideration or opportunity for correction.

3. Applications not meeting the requirements stated herein or which are otherwise incomplete, may be rejected by the Board.

4. The applicant shall include with the application a written certification:

(a) That the applicant's proposed wireless telecommunications facilities will be maintained in a safe manner, and in compliance with all conditions of the special use permit, without exception, as well as with all applicable and permissible local codes, ordinances, and regulations, including any and all applicable Village, state and federal laws, rules and regulations.

(b) That the applicant is authorized to do business in the State of New York and duly licensed by the Federal Communications Commission.

(c) That the facility will be completed and will provide service within 180 days of the date of the grant of the special use permit.

5. All applications for the construction or installation of new wireless telecommunications facilities shall contain the information hereinafter set forth. The application shall be signed by an authorized individual on behalf of the applicant. Where a certification is called for, such certification shall bear the signature and seal of a professional engineer licensed in this State. The application shall include as a minimum the following information:

(a) Documentation that demonstrates the public necessity of the wireless telecommunications facility at the location proposed to provide service primarily and essentially within the Village. Such documentation shall include, without limitation, propagation studies, in sufficient detail as determined by the Board, of the proposed site and all adjoining planned, proposed, in-service or existing sites and any alternative site proposed by the Village;

(b) The name, address and phone number of the person preparing the report;

(c) The name, address and phone number of the property owner, operator and applicant, and to include documentation of the legal formation of the applicant;

(d) The postal address and tax map designation of the property;

(e) The zoning district or designation in which the property is situated;

(f) Size of the property, stated both in square feet and lot line dimensions, and a diagram showing the location of all lot lines;

(g) The location of the nearest residential structure;

(h) The location, size and height of all structures on the property which is the subject of the application;

(i) The location, size and height of all proposed and existing antennas and all appurtenant structures;

(j) The type, locations and dimensions of all proposed and existing landscaping, and fencing;

(k) The number, type and design of the wireless telecommunications facility and antenna(s) proposed and the basis for the calculations of the facilities capacity to accommodate multiple users;

(l) The make, model and manufacturer of the wireless telecommunications facility and antenna(s);

(m) A description of the proposed wireless telecommunications facility and antenna(s) and all related fixtures, structures, appurtenances and apparatus, including height above preexisting grade, materials, color and lighting;

(n) The frequency, modulation and class of service of radio or other transmitting equipment;

(o) The actual intended transmission and the maximum effective radiated power of the antenna(s);

(p) Direction of maximum lobes and associated radiation of the antenna(s);

(q) Certification that the NIER levels at the proposed site are within the permissible threshold levels adopted by the FCC;

(r) Certification that the proposed antenna(s) will not cause interference with other telecommunications devices;

(s) A copy of the FCC license applicable for the intended use of the wireless telecommunications facilities;

(t) Certification that a topographic and geomorphologic study and analysis has been conducted, and, taking into account the subsurface and substrata and the

proposed drainage plan, that the site is adequate to assure the stability of the proposed wireless telecommunications facilities on the proposed site;

(u) A radius map, certified by its preparer, showing the name, address, section, block and lot number on all property located within 1,500 feet of any property line or the lot or parcel on which the new wireless telecommunications facilities are proposed to be located.

(v) Site plan. An applicant shall be required to submit a site plan as follows: The site plan shall show all existing and proposed structures and improvements, including roads and shall include grading plans for new facilities and roads. The site plan shall also include documentation on the proposed intent and capacity of use as well as a justification for the height of any tower or antennas and justification for any land or vegetation clearing required. Additionally, the Board of Trustees shall require the site plan include a completed visual environmental assessment form (visual EAF) and landscaping plan addressing other standards listed within this section, with particular attention to visibility from key viewpoints within and outside of the municipality as identified in the visual EAF. The Board may require submittal of a more detailed visual analysis based on the results of the visual EAF.

6. In the case of a new wireless telecommunications facility, the applicant shall be required to submit a written report demonstrating its meaningful efforts to secure shared use of existing wireless telecommunications facilities, or the use of alternative buildings or other structures within or adjoining the Village. Copies of written requests and responses for shared use shall be provided to the Board as part of the application, along with any letters of rejection stating the reason for rejection. A written technical report from an engineer, that the proposed tower or telecommunications facilities cannot be installed or collocated on another existing tower or usable antenna support structures, owned by others, located within a one-half-mile radius of the proposed tower site shall be provided.

7. The applicant shall certify that the wireless telecommunications facility, foundation and attachments are designated and will be constructed to meet all local, village, state and federal structural requirements for loads, including wind and ice loads.

8. The applicant shall certify that the wireless telecommunications facilities will be effectively grounded and

bonded so as to protect persons and property, and installed with appropriate surge protectors.

9. The applicant shall furnish a visual impact assessment which shall include:

(a) A Zone of Visibility Map which shall be provided in order to determine locations from which the wireless telecommunications facility may be seen.

(b) Pictorial representations of before and after views from key viewpoints both inside and outside of the Village as may be appropriate, including, but not limited to, state highways and other major roads; state and local parks; other public lands; historic districts; preserves and historic sites normally open to the public; and from any other location where the site is visible to a large number of visitors, travelers or residents; residential properties from which the site is visible. The Board shall have the authority to determine the appropriate key sites at a preapplication meeting.

(c) An assessment of the visual impact of the wireless telecommunications facility base and accessory buildings from abutting and adjacent properties and streets which will demonstrate the need or appropriateness of screening of said structures.

10. The applicant shall demonstrate and provide in writing and/or by drawing how it shall effectively screen from view the base and all related facilities and structures of the proposed wireless telecommunications facilities.

11. Any and all representations made by the applicant or its counsel to the Board, on the record or otherwise, during the application process, whether written or verbal, shall be deemed a part of the application and may be relied upon in good faith by the Board.

12. All utilities at a wireless telecommunications facilities site shall be installed underground and in compliance with all laws, ordinances, rules and regulations of the Village, including specifically, but not limited to, the National Electrical Safety Code and the National Electrical Code where appropriate.

13. All applications for wireless telecommunications facilities shall demonstrate that the facility has been sited to minimize the adverse visual and physical impacts and effect on the environment, the adjacent neighborhood, and the Village and its character.

14. Both the wireless telecommunications facility and any and all accessory or associated facilities shall maximize the use of building materials, colors and textures designed to blend with the structure to which it may be affixed, and/or to harmonize with the natural surroundings, which shall include the utilization of stealth or concealment technology as may be required by the Board.

15. Telecommunications sites shall provide an access road, turnaround space, and parking to assure adequate emergency and service access. Existing roads, whether public or private, shall be used to the maximum extent possible. Road construction shall at all times minimize ground disturbance and the cutting of vegetation. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion.

16. A person who holds a special use permit for wireless telecommunications facilities shall construct, operate, maintain, repair, provide for removal of, modify or restore the permitted wireless telecommunications facilities in strict compliance with all then current applicable technical, safety and safety-related codes adopted by the Village, state, or United States, including but not limited to the most recent editions of the National Electrical Safety Code, the National Electrical Code, FAA, and FCC, as well as accepted and responsible workmanlike industry practices and recommended practices of the National Association of Tower Erectors as modified and updated from time to time. The codes referred to are codes that include, but are not limited to, use, construction, building, electrical, fire, safety, health and land use codes. In the event of a conflict between or among any of the preceding, the more stringent shall apply.

17. A holder of a special use permit granted under this article shall obtain, at its own expense, all permits and licenses required by applicable law, rule, regulation or code, and must maintain the same, in full force and effect, for as long as required by the Village or other governmental entity or agency having jurisdiction over the permittee.

18. With respect to the application process, the Board will seek lead agency status pursuant to SEQRA. The Board shall conduct an environmental review of the proposed project pursuant to SEQRA in combination with its review of the application pursuant to this article.

19. An applicant shall submit to the Village the number of completed applications determined to be needed at the pre-application meeting.

20. The applicant shall examine the feasibility of designing a proposed wireless telecommunications facility to accommodate future demand for at least five additional commercial applications, for future co-locations. As determined by the Board, the wireless telecommunications facility shall be structurally designed to accommodate at least five additional antenna arrays equal to those of the applicant, and located as close to the applicant's antenna as possible without causing interference.

21. Future shared use.

(a) The owner of the proposed new wireless telecommunications facility, and his/her successors in interest, shall negotiate in good faith for the shared use of the proposed wireless telecommunications facility by other wireless service providers in the future, and shall:

(i) Respond within 60 days to request for information from a potential shared-use applicant;

(ii) Negotiate in good faith concerning future requests for shared use of the new wireless telecommunications facility by other telecommunications providers;

(iii) Allow shared use of the new wireless telecommunications facility if another telecommunications provider agrees in writing to pay reasonable charges. The charges may include, but are not limited to, a pro rata share of the cost of site selection, planning, project administration, land costs, site design, construction and maintenance financing, return on equity, less depreciation, and all of the costs of adapting the wireless telecommunications facility or equipment to accommodate a shared user without causing electromagnetic interference.

(b) Failure to abide by the conditions outlined above shall be grounds for revocation of the special use permit for the wireless telecommunications facility.

22. There shall be a preapplication meeting. The purpose of the preapplication meeting will be to address issues which will help to expedite the review and permitting process. A preapplication meeting shall also include a site visit, if there has not yet been a prior site visit for the requested site. Costs of the Village's consultants to prepare for and attend the preapplication meeting will be borne by the applicant. Any and all representations made by the applicant or its counsel during the preapplication meeting and site visit shall be deemed a part of the application and may be relied upon in good faith by the Village of Sag Harbor.

23. The holder of a special use permit shall notify the Village of any intended modification of a wireless telecommunications facility and shall apply to the Board to modify, relocate or rebuild a wireless telecommunications facility.

24. In order to better inform the public of the potential visual impact of a new wireless telecommunications facility, the applicant shall, at the discretion of the Board, conduct a balloon test prior to the public hearing on the application. The applicant shall arrange to fly, or raise upon a temporary mast, a minimum of three feet in diameter, a brightly colored balloon at the maximum height of the proposed new wireless telecommunications facility. The dates, (including a second date, in case of poor visibility on the initial date) times and location of this balloon test shall be published in the official newspaper of the Village. The applicant shall inform the Village, in writing, of the dates and times of the test, at least 14 days in advance. The balloon shall be flown for at least three consecutive hours sometime between 9:00 a.m. and 4:00 p.m. on the initial date. The secondary date may be on a weekday.

25. The applicant shall provide a written copy of an analysis, completed by a qualified individual or entity, to determine if the wireless telecommunications facility or existing structure intended to support wireless facilities requires lighting under Federal Aviation Administration Regulation Part 77. This requirement shall be for any new wireless telecommunications facility or for an existing structure or building where the application increases the height of the structure or building. If this analysis determines that the FAA must be contacted, then all filings with the FAA, all responses from the FAA and any related correspondence shall be provided to the Village in a timely manner.

D. Location.

1. Applicants for wireless telecommunications facilities shall locate, site and erect said Wireless Telecommunication Facilities in accordance with the following priorities, (1) being the highest priority and (7) being the lowest priority. The applicant shall demonstrate to the Board its attempts to locate on the highest priority sites available.

(a) On Village-owned properties or facilities;

(b) On electric, telephone and any other utility poles;

(c) On existing nonresidential structures, such as water towers, multistory buildings, church steeples, silos and existing telecommunications towers or other similar non-residential structures when placement of wireless facilities, including but not limited to antennas do not increase the height of the structure;

(d) On nonresidential properties, such as schools, churches, universities, clubs, similar type nonresidential properties, and commercial property;

(e) Sites in excess of 10 acres;

(f) On other properties in the Village. No existing structure shall be modified to serve as a transmission tower unless in conformity with the regulations established herein;

(g) Other locations not meeting with the above priority criteria shall only be permitted by the Board when the applicant demonstrates to the Board's satisfaction that a priority site is not available and the alternative site, to the maximum extent practicable, protects and preserves the aesthetic qualities, open space characteristics of the Village, the property values of the community and the health, safety, and welfare of Village residents.

2. Towers shall be permitted only as a last alternative after all other transmission alternatives have been proven not to be effective to eliminate substantial gaps in service within the Village. Guyed wire towers shall not be permitted.

3. If the need for a new tower is proven, the tower shall be no taller than the minimum height necessary to eliminate substantial gaps in service or portions thereof within the Village.

4. If the proposed site is not the highest priority listed in Subsection A of this section, then a detailed explanation must be provided as to why any individual site(s) of any higher priority type were not selected or available. The applicant seeking such an exception must satisfactorily demonstrate the reason or reasons why such a permit should be granted for the proposed site, and the hardship that would be incurred by the applicant if the permit were not granted for the proposed site.

5. An applicant may not by-pass sites of higher priority by stating that the site proposed is the only site leased or selected. An application shall always address co-location as the first preference of the Village. If such option is not proposed, the applicant must explain to the reasonable satisfaction of the Board why co-location is not feasible.

6. Notwithstanding the above, the Village may approve any site located within an area in the above list of priorities, provided that the Village finds that the proposed site is in the best interest of the health, safety and welfare of the Village and its inhabitants and will not have a deleterious effect on the aesthetic nature and character of the community, the neighborhood and on nearby property values. Notwithstanding the above, the Village may disapprove any site located within an area in the above list of priorities, provided that the Village finds that the proposed site is not in the best interest of the health, safety and welfare of the Village and its inhabitants and will have a deleterious effect on the aesthetic nature and character of the community, the neighborhood and on nearby property values.

7. The applicant shall submit a written report demonstrating the applicant's review of the above categories of locations in order of priority, demonstrating the reason for the site selection. If appropriate, based on selecting a site of lower priority, a detailed written explanation shall be included with the application, explaining why categories of sites of a higher priority were not selected or available.

8. Notwithstanding that a potential site may be situated in an area of highest priority or highest available priority, the Village may disapprove an application for any of the following reasons:

(a) Conflict with safety and safety-related codes and requirements;

(b) Conflict with the historic nature or aesthetic character of a neighborhood or historical district;

(c) The use or construction of wireless telecommunications facilities which is contrary to an already stated purpose of a master plan or specific zoning or land use designation; or

(d) The placement and location of wireless telecommunications facilities which would create an unacceptable risk, or the reasonable probability of such, to residents, the public, employees and agents of the Village, or employees of the service provider or other service providers;

(e) Conflicts with the provisions of this chapter.

E. Shared use.

1. Co-locating on existing wireless telecommunications facilities or other structures without increasing the height, as

opposed to the construction of a new wireless telecommunications facility or increasing the height of the existing facility, shall be preferred by the Village. The applicant shall submit a comprehensive report inventorying existing wireless telecommunications facilities and other suitable alternative structures within a two-mile radius of the location of any proposed new site or wireless telecommunications facilities, and demonstrate conclusively why an existing wireless telecommunications facility or other suitable structure cannot be used.

2. An applicant intending to locate on an existing wireless telecommunications facility or other suitable structure shall be required to document the consent of the existing owner to permit its use by the applicant.

3. Such shared use shall consist only of the minimum antenna array necessary to provide service primarily and essentially within the Village.

F. Height.

1. The applicant shall submit documentation justifying the total height of any wireless telecommunications facility and/or antenna and the basis therefor. Such documentation will be analyzed in the context of the justification of the height needed to provide service primarily and essentially within the Village.

2. If the need for a new wireless telecommunications facility can be proven, the maximum permitted height of a wireless telecommunications facility shall be no higher than the minimum height necessary to eliminate substantial gaps in service within the Village, whether in whole or in part. In no event shall a tower be higher than 75 feet.

G. Appearance and visibility.

1. All wireless telecommunications facilities shall employ stealth design technology as determined by the Board.

2. Wireless telecommunications facilities shall not be artificially lighted or marked, except as required by law.

3. Wireless telecommunications facilities shall be galvanized or, if deemed necessary, painted with a rust-preventive paint of an appropriate color to harmonize with the surroundings and shall be maintained in accordance with the requirements of this article.

4. If lighting is required, the applicant shall provide a detailed plan for sufficient lighting of as unobtrusive and inoffensive an effect as is permissible under applicable regulations.

5. Wireless telecommunications facilities and all related cabling that are co-located on a structure other than a wireless telecommunications facility shall be of a color that matches the color of the structure to which the facilities are attached. Whenever possible wireless telecommunications facilities shall employ stealth technology to minimized the visual impact of such facilities and equipment.

6. In all cases, structures offering slender silhouettes (i.e., monopoles) shall be preferable to freestanding structures, except where such freestanding structures offer capacity for future co-location. Towers should be designed and sited so as to avoid, whenever possible, application of FAA lighting and painting requirements.

#### H. Security.

All wireless telecommunications facilities and antennas shall be located, fenced or otherwise secured in a manner that prevents unauthorized access. Specifically, all antennas, towers and other supporting structures, shall be made reasonably inaccessible to unauthorized individuals and constructed or shielded in such a manner that they cannot be climbed or collided with, and shall be installed in such a manner that they are readily accessible only to persons authorized to operate or service them.

#### I. Signage.

Wireless telecommunications facilities shall contain a sign no larger than is required to provide adequate notification to persons in the immediate area of the presence of an antenna that has transmission capabilities and shall contain the name(s) of the owner(s) and operator(s) of the antenna(s) as well as emergency phone number(s). The sign shall be placed on the equipment shelter or cabinet located on premises and be visibly able to be read from the access point of the site. The sign shall not be lighted, unless lighting is required by applicable law, rule or regulation. No other signage, including advertising, shall be permitted.

#### J. Lot size and setbacks.

All proposed structures associated with a wireless telecommunications facility shall be set back so as to comply with applicable minimum setback requirements for the zoning

district in which the property is situated. On poles or other public utility structures on public utility rights-of-way, the setback shall be as required by the utility or any existing or future governing law or regulation. Proposed towers and their associated equipment shall be set back a minimum of 110% of the height of the tower above finished grade, from all property lines and existing structures. Additional setbacks may be required by the Board to contain, on-site, substantially all ice-fall or debris from tower failure, and/or to preserve privacy of adjoining residential and public property. Setbacks shall apply to all tower parts and to any accessory facilities.

K. Visual mitigation.

1. Landscaping and/or other screening and visual mitigation treatments, including but not limited to, the use of camouflage, stealth or concealment technologies or treatments shall be required to minimize the visual and aesthetic impact of such facility.

2. All ground-based equipment and structures shall either be located underground or placed so as not to be directly or easily visible from any property line.

3. Accessory facilities shall maximize use of building materials, colors and textures designed to blend with the natural surroundings.

4. Existing on-site vegetation shall be preserved to the maximum extent possible, and no cutting of trees exceeding four inches in diameter (measured at a height of four feet off the ground) shall take place without prior approval of the Board. Clearcutting of all trees in a single contiguous area exceeding 5,000 square feet shall be prohibited.

5. Deciduous or evergreen tree plantings may be required to screen portions of the tower from nearby residential property as well as from public sites known to include important viewsheds or vistas. Where the site abuts residential or public property, including streets, the vegetative screening shall be required consisting of at least one row of native evergreen shrubs or trees capable of forming a continuous hedge at least 10 feet in height within two years of planting shall be provided to effectively screen the tower base and accessory facilities. In the case of poor soil conditions, planting may be required on soil berms to assure plant survival. Plant height in these cases shall exclude the height of any berm. Required vegetation shall be maintained as a condition of the special use permit.

L. Noise.

Noise-producing equipment shall be sited and/or insulated to minimize any increase in noise above ambient levels as measured at the property line.

M. Retention of expert assistance; reimbursement by applicant.

1. The Board may retain any attorney, consultant and/or expert necessary to assist it in reviewing and evaluating the application, including the construction, modification and inspection of the site, once permitted, and any requests for recertification.

2. An applicant shall deposit with the Village funds sufficient to reimburse the Village for all reasonable costs of such attorney, consultant and expert evaluation and consultation to the Board in connection with the review of any application, including the construction and modification of the site, once permitted. The initial deposit shall be \$5,000. The placement of the \$5,000 with the Village shall precede the site visit and preapplication meeting and any work related to or necessitated by the applicant's contact with the Village. The Village will maintain a separate escrow account for all such funds. In reviewing the application the Village's consultants/experts shall invoice the Village for their services at the consultant's/expert's standard rates, including the construction and modification of the site, once permitted. If at any time during the process this escrow account has a balance less than \$2,500, the applicant shall immediately, upon notification by the Village, replenish said escrow account so that it has a balance of at least \$5,000 as determined by the Village. Such additional escrow funds shall be deposited with the Village before any further action or consideration is taken on the application. In the event that the amount held in escrow by the Village is more than the amount of the actual invoicing at the conclusion of the project, the remaining balance shall be promptly refunded to the applicant. In the event the amount deposited by the applicant is insufficient to pay the actual cost of the Village consultants, the applicant shall pay any additional amount due prior to the issuance or denial of the special use permit.

3. The total amount of the funds needed as set forth in Subsection B of this section may vary with the scope and complexity of the project, the completeness of the application and other information as may be needed to complete the necessary review, analysis and inspection of any construction or modification.

4. The applicant shall also reimburse the Village for the actual and necessary charges for legal fees which have been incurred by the Village in connection with the application.

5. Any application submission shall be simultaneously submitted to the Board's consultants by the applicant.

N. Exceptions from special use permit requirement.

1. No person shall be permitted to site, place, build, construct, modify or prepare any site for the placement or use of, wireless telecommunications facilities as of the effective date of this article without having first obtained a special use permit for wireless telecommunications facilities. Notwithstanding anything to the contrary in this section, no special use permit shall be required for those exceptions noted in the definition of wireless telecommunications facilities.

2. All wireless telecommunications facilities legally existing on or before the effective date of this article shall be allowed to continue as they presently exist, provided however, that any modifications of an existing wireless telecommunications facility must comply with the provisions of this article.

O. Public hearing and notification requirements.

1. Prior to the approval of any application for a special use permit for wireless telecommunications facilities, a public hearing shall be held by the Board, notice of which shall be published in the official newspaper of the Village no less than 10 calendar days prior to the scheduled date of the public hearing. The applicant shall notify all landowners, in writing, whose property is located within 1,500 feet of any property line of the lot or parcel on which the new wireless telecommunications facilities are proposed to be located, and any property owner or organization directly impacted by the proposed facility as determined by the Board, by certified mail, return receipt requested, no less than ten (10) calendar days prior to the scheduled date of the public hearing.

2. There shall be no public hearing required for an application to collocate on an existing wireless telecommunications facility or other structure, provided that there is no proposed increase in the height of the wireless telecommunications facility or other structure, including attachments thereto.

3. The Board shall schedule the public hearing referred to in Subsection A of this section once it determines that the application is complete. The Village, at any stage prior to

issuing a special use permit, may require such additional information as it deems necessary. The Board may waive any part or item to be contained in the application upon request of that applicant for good cause shown as determined by the Board.

P. Action on application for special use permit.

1. The Board will undertake a review of an application pursuant to this article in a timely manner, consistent with its responsibilities with SEQRA, and shall act within a reasonable period of time given the relative complexity of the application and the circumstances, with due regard for the public's interest.

2. The Board may refer any application or part thereof to any advisory or other committee for a nonbinding recommendation.

3. After the public hearing and after formally considering the application, the Board may approve, approve with conditions, or deny a special use permit. The Board's decision shall be in writing and shall be supported by substantial evidence contained in the record. The burden of proof for the grant of the permit shall be upon the applicant.

4. Construction of a wireless telecommunications facility permitted under this article shall be started within ninety (90) days of the date of the grant of the special use permit and be completed, obtain a certificate of completion, and provide service within one hundred eighty (180) days of the date of the grant of the special use permit. If the requirements of this Subsection D are not complied with, the wireless telecommunications facility shall be deemed to have been abandoned, the special use permit shall be revoked and the provision of Subsection Z shall be enforced.

Q. Recertification of special use permit.

1. All special use permits approved pursuant to this article shall expire five years from the date of issuance, unless between twelve (12) months and six (6) months prior to the five-year anniversary date of the special use permit, and all subsequent five-year anniversaries of the issuance of the original special use permit for wireless telecommunications facilities, the holder of a special use permit for such facility shall submit a signed, written request to the Board for recertification. In the written request for recertification, the holder of such special use permit shall include the following:

(a) The name of the holder of the special use permit for the wireless telecommunications facility;

(b) If applicable, the number or title of the special use permit;

(c) The date of the original granting of the special use permit;

(d) Whether the wireless telecommunications facility has been moved, relocated, rebuilt, or otherwise modified since the issuance of the special use permit and if so, in what manner;

(e) A representation that the wireless telecommunications facility is in compliance with the special use permit and compliance with all applicable codes, laws, rules and regulations;

(f) Recertification that the wireless telecommunications facility and attachments are designed and constructed and continue to meet all local, Village, state and federal structural requirements for loads, including wind and ice loads. Such recertification shall be made by a professional engineer, licensed in the State, the cost of which shall be borne by the applicant.

(g) A representation that the existing wireless telecommunications facility can not be replaced by a wireless telecommunications facility of improved stealth technology which will reduce the visual impact of such existing facility.

2. If, after such review, the Board determines that the permitted wireless telecommunications facility is in compliance with the special use permit and all applicable statutes, laws, local laws, ordinances, codes, rules and regulations currently in effect, then the Board shall issue a recertification of the special use permit for the wireless telecommunications facility, which may include any new provisions or conditions that are required by applicable statutes, laws, ordinances, codes, rules or regulations. If, after such review, it is determined that the permitted wireless telecommunications facility is not in compliance with the special use permit and all applicable statutes, laws, ordinances, codes, rules and regulations, then the Board may refuse to issue a recertification of the special use permit for the wireless telecommunications facility, and in such event such wireless telecommunications facility shall not be used after the date that the applicant receives written notice of the decision by the Board, and until such time as the facility is brought into compliance. Any decision requiring the cessation of use of the facility or imposing a penalty shall be in writing and supported by substantial evidence contained in the record and shall be promptly provided to the owner of the facility. In the event the Wireless Communications facility

shall not be brought into compliance within 90 days from the date of the decision of the Board, the facility shall be removed by the permittee in accordance with Subsection Z below.

3. If the applicant represents that the Wireless Communications facility can be replaced by a facility of improved visual appearance through the use of stealth technology pursuant to Subsection P(1)(g) above, the special use permit shall be renewed on the condition that the wireless telecommunications facility shall be replaced by a wireless communications facility of improved stealth technology as approved by the Board prior to the expiration of the conditional renewal.

4. If the applicant has submitted all of the information requested and required by this article, and if the review is not completed, as noted in Subsection P(2) above, prior to the five-year anniversary date of the special use permit, or subsequent five year anniversaries, then the applicant for the permitted wireless telecommunications facility shall receive an extension of the special use permit for up to six (6) months, in order to complete the recertification review.

5. If the holder of a special use permit for a wireless telecommunications facility does not submit a request for recertification of such special use permit within the timeframe noted in Subsection P(1) above, then such special use permit and any authorizations granted thereunder shall cease to exist on the date of the fifth anniversary of the original granting of the special use permit, or subsequent five-year anniversaries.

R. Extent and parameters of special use permits.

The extent and parameters of a special use permit for wireless telecommunications facilities shall be as follows:

1. Such special use permit shall be nonexclusive;
2. Such special use permit shall not be assigned, transferred or conveyed without the express prior written notification of the Village of Sag Harbor;
3. Such special use permit may be revoked, canceled, or terminated for a violation of the conditions, and provisions, if any, of the special use permit, or for material violation of this article.

S. Application fee.

1. At the time of submission of an application for a special use permit for a wireless telecommunications facility, a

nonrefundable application fee of \$6,000 shall be paid to the Village. If the application is for a special use permit for collocating on an existing wireless telecommunication facility or other structure, the nonrefundable fee shall be \$3,000. Joint applications for co-location on one site shall be treated as separate applications.

2. The application fee for recertification of a special use permit for a wireless telecommunications facility shall be \$1,500 unless there has been a modification of the wireless telecommunications facility since the date of the issuance of the original special use permit for which the conditions of the special use permit have not previously been modified. In the case of any modification, the fees provided in Subsection R(1) shall apply. Any submissions or information provided of any kind shall simultaneously be provided to the Village's consultant.

T. Performance security.

The applicant and the property owner of record of any wireless telecommunications facilities site shall, at its cost and expense, be jointly required to execute and file with the Village, a bond or other form of security acceptable to the Village, in an amount of \$100,000 and with such sureties as are deemed sufficient by the Village to assure the faithful performance of the terms and conditions of this article, and conditions of any special use permit issued pursuant to this article. For co-locations that do not increase the height of the structure attached to, the bond or other security shall be \$50,000. The full amount of the bond or security shall remain in full force and effect throughout the term of the special use permit, recertification and/or until any necessary site restoration is completed to restore the site to a condition comparable to that which existed prior to the issuance of the original special use permit.

U. Reservation of authority to inspect.

In order to verify that the holder of a special use permit for wireless telecommunications facilities and any and all lessees, renters, and/or licensees of wireless telecommunications facilities place and construct such facilities, including towers and antennas, in accordance with all applicable technical, safety, fire, building and zoning codes, laws, ordinances and regulations and other applicable requirements, the Village may inspect all facets of said permit holder's, renter's, lessee's or licensee's placement, construction, modification and maintenance of such facilities, including, but not limited to, towers, antennas and buildings or other structures constructed or located on the permitted site.

V. Annual NIER certification.

The holder of the special use permit shall, annually, certify to the Village that NIER levels at the site are within the threshold levels then currently adopted by the FCC, and that the design and use of the wireless telecommunications facility, including its cumulative impact with other existing facilities, conform to the maximum NIER exposure standards promulgated by the FCC as then existing. Said certification shall include a report prepared in accordance with FCC Office of Engineering and Technology Bulletin 65, as amended. The Village may hire a consultant of its choosing to analyze and verify such certification; the cost of such consultant shall be reimbursed by the applicant or special use permit holder.

W. Liability insurance.

1. The holder of a special use permit for a wireless telecommunications facility shall secure and at all times maintain public liability insurance for personal injuries, death and property damage, and umbrella insurance coverage, for the duration of the special use permit in amounts as set forth below:

(a) Commercial general liability covering personal injuries, death and property damage: \$2,000,000 per occurrence; \$5,000,000 aggregate. Extensions: waiver of subrogation in favor of the Village;

(b) Automobile coverage: \$1,000,000 per occurrence; \$2,000,000 aggregate;

(c) Workers Compensation and Disability: statutory amounts. Extensions: voluntary compensation. All states coverage, employers' liability: unlimited.

(d) Umbrella liability: umbrella form: \$5,000,000.

2. The commercial general liability, automobile and umbrella insurance policies shall specifically include the Village and all elected and appointed officials, and its employees, volunteers, committee members, attorneys, agents and consultants as additional named insureds by endorsement to the policy of insurance.

3. The insurance policies shall be issued by an agent or representative of an insurance company licensed to do business in the state and with a Best's rating of at least A.

4. The insurance policies shall contain an endorsement obligating the insurance company to furnish the Village with at

least thirty (30) days' prior written notice in advance of the cancellation of the insurance.

5. Renewal or replacement policies or certificates shall be delivered to the Village at least fifteen (15) days before the expiration of the insurance that such policies are to renew or replace.

6. Before construction of a permitted wireless telecommunications facility is initiated, but in no case later than fifteen (15) days after the grant of the special use permit, the holder of the special use permit shall deliver to the Village a copy of each of the policies or certificates representing the insurance in the required amounts.

X. Indemnification.

1. Any application for wireless telecommunication facilities that is proposed for property located within the Village pursuant to this article, shall contain a provision with respect to indemnification. Such provision shall require the applicant, to the extent permitted by the law, to at all times defend, indemnify, protect, save, and hold harmless, and exempt the Village, and its officers, boards, employees, committee members, attorneys, agents, and consultants from any and all penalties, damages, costs, or charges arising out of any and all claims, suits, demands, causes of action, or award of damages, whether compensatory or punitive, or expenses arising therefrom, either at law or in equity, which might arise out of, or are caused by, the placement, construction, erection, modification, location, products performance, use, operation, maintenance, repair, installation, replacement, removal, or restoration of said facility. With respect to the penalties, damages or charges referenced herein, reasonable attorneys' fees, consultants' fees, and expert witness fees are included in those costs that are recoverable by the Village. Said indemnity shall be signed by a duly authorized corporate officer or representative of the applicant.

2. Notwithstanding the requirements noted in Subsection 1 of this section, an indemnification provision will not be required in those instances where the Village itself applies for and secures a special use permit for wireless telecommunications facilities.

Y. Fines.

1. In the event of a violation of this article or any special use permit issued pursuant to this article, the Village may impose and collect, from the property owner and or holder of a special use permit for wireless telecommunications facilities

the fines or penalties as set forth below. A violation of this article is hereby declared to be an offense, punishable by a fine not exceeding \$350 per day, per occurrence, or imprisonment for a period not to exceed six months, or both, for conviction of a first offense; for conviction of a second offense, both of which were committed within a period of five years, punishable by a fine not less than \$350 nor more than \$700 per day or imprisonment for a period not to exceed six months, or both; and, upon conviction for a third or subsequent offense all of which were committed within a period of five years, punishable by a fine of not less than \$700 per day nor more than \$1,000 per day or imprisonment for a period not to exceed six months, or both. However, for the purpose of conferring jurisdiction upon courts and judicial officers generally, violations of this article or of such ordinance or regulation shall be deemed misdemeanors, and for such purpose only, all provisions of law relating to misdemeanors shall apply to such violations. Each week's continued violation shall constitute a separate additional violation.

2. Notwithstanding anything in this article to the contrary, the holder of a special use permit for a wireless telecommunications facility may not use the payment of fines, liquidated damages or other penalties, to evade or avoid compliance with this article or any section of this article. An attempt to do so shall subject the holder of the special use permit to termination and revocation of the special use permit. The Village may also seek injunctive relief to prevent the continued violation of this article, without limiting other remedies available to the Village.

Z. Default and/or revocation of special use permit.

1. If wireless telecommunications facilities are repaired, rebuilt, placed, moved, relocated, modified or maintained in a way that is inconsistent or not in compliance with the provisions of this article or of the special use permit, then the Village shall notify the holder of the special use permit in writing of such violation. Such notice shall specify the nature of the violation or noncompliance and that the violations must be corrected within seven (7) days of the date of the postmark of the notice or of the date of personal service of the notice, whichever is earlier. Notwithstanding anything to the contrary in this subsection or any other section of this article, if the violation causes, creates or presents an imminent danger or threat to the health or safety of lives or property, the Village may, at its sole discretion, order the violation remedied within twenty-four (24) hours.

2. If, within the period set forth in Subsection 1 above, the wireless telecommunications facilities are not brought into compliance with the provisions of this article, or of the special use permit, or substantial steps are not taken in order to bring the affected wireless telecommunications facility into compliance, then the Village may revoke such special use permit for such wireless telecommunications facility, and shall notify the holder of the special use permit within forty-eight (48) hours of such action.

AA. Removal; adherence to State/Federal rules; waiver.

1. Under the following circumstances, the Village may determine that the health, safety, and welfare interests of the Village warrant and require the removal of wireless telecommunications facilities.

(a) Wireless telecommunications facilities with a permit have been abandoned (i.e., not used as wireless telecommunications facilities) for a period exceeding ninety (90) consecutive days or a total of one hundred eighty (180) days in any three-hundred-sixty-five-day period, except for periods caused by force majeure or Acts of God, in which case, repair or removal shall commence within ninety (90) days;

(b) Permitted wireless telecommunications facilities fall into such a state of disrepair that it creates a health or safety hazard;

(c) Wireless telecommunications facilities have been located, constructed, or modified without first obtaining, or in a manner not authorized by, the required special use permit, or any other necessary authorization.

2. If the Village makes such a determination as noted in Subsection 1 of this section, then the Village shall notify the holder of the special use permit for the wireless telecommunications facility within forty-eight (48) hours that said wireless telecommunications facility is to be removed, the Village may approve an interim temporary use agreement/permit, such as to enable the sale of the wireless telecommunications facility.

3. The holder of the special use permit, or its successors or assigns, shall dismantle and remove such wireless telecommunications facility, and all associated structures and facilities, from the site and restore the site to as close to its original condition as is possible within ninety (90) days of receipt of written notice from the Village. However, if the owner of the property upon which the wireless telecommunications facility is located wishes to retain any access roadway to the

wireless telecommunications facility, the owner may do so with the approval of the Board.

4. If a wireless telecommunications facility is not removed or substantial progress has not been made to remove the wireless telecommunications facility within ninety (90) days after the permit holder has received notice, then the Village may order officials or representatives of the Village to remove the wireless telecommunications facility at the sole expense of the owner and/or special use permit holder.

5. If the Village removes, or causes to be removed, a wireless telecommunications facility, and the owner of the wireless telecommunications facility does not claim and remove it from the site to a lawful location within ten (10) days, then the Village may take steps to declare the wireless telecommunications facility abandoned, and sell it and its components.

6. Notwithstanding anything in this section to the contrary, the Village may approve a temporary use permit/agreement for the wireless telecommunications facility, for no more than ninety (90) days, during which time a suitable plan for removal, conversion, or relocation of the affected wireless telecommunications facility shall be developed by the holder of the special use permit, subject to the approval of the Village, and an agreement to such plan shall be executed by the holder of the special use permit and the Village. If such a plan is not developed, approved and executed within said ninety-day time period, then the Village may take possession of, and dispose of, the affected wireless telecommunications facility in the manner provided in this section.

7. To the extent that the holder of a special use permit for a wireless telecommunications facility has not received relief, or is otherwise exempt, from appropriate state and/or federal agency rules or regulations, then the holder of such a special use permit shall adhere to, and comply with, all applicable rules, regulations, standards, and provisions of any state or federal agency, including, but not limited to, the FAA and the FCC. Specifically included in this requirement are any rules and regulations regarding height, lighting, security, electrical and RF emission standards.

8. To the extent that applicable rules, regulations, standards, and provisions of any state or federal agency, including, but not limited to, the FAA and the FCC, and specifically including any rules and regulations regarding height, lighting, security and RF emissions standards are changed and/or are modified during the duration of a special use

permit for a wireless telecommunications facility, then the holder of such a special use permit shall conform the permitted wireless telecommunications facility to the applicable changed and/or modified rule, regulation, standard, or provision within twelve (12) months of the effective date of the applicable changed and/or modified rule, regulation, standard, or provision, or sooner as may be required by the issuing entity.

9. Waiver or modifications. The Board may waive or modify any of the provisions and requirements contained herein upon application of the applicant to the Board showing just cause for such waiver in order to further the purposes and intent of this article and compliance with the Telecommunications Act of 1996.

§ 55-11.12. Day Care Facility.

A. A day care facility is a private establishment enrolling seven (7) or more children between zero (0) and five (5) years of age and where tuition, fees or other forms of compensation for the care of the children is charged and which is licensed and approved to operate as a day-care center or nursery school pursuant to the Social Services Law.

B. Any day care facilities shall be designed to accommodate to the maximum extent the safe stopping and parking and departure of vehicles discharging and picking up children encouraging the use of onsite areas wherever reasonable.

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.

D. An adequate onsite outdoor recreational area shall be provided subject to adequate screening, fencing, location only in a rear yard and use limited to between 9:00 AM and 5:00 PM.

E. No swimming pool facility shall be located at the site of a day care facility or within two hundred fifty (250') feet of any such facility.

§ 55-11.13. Dish Antennas.

A. A dish antenna exceeding 18 inches in diameter shall be deemed a structure and shall be subject to the provisions of this chapter relating to structures.

B. A dish antenna may be installed and maintained on a lot in any district as an accessory use for purposes customarily incidental to the principal use conducted on the lot, provided that:

(1) The diameter of such dish antenna shall not exceed one (1) meter (39.37 inches).

(2) Such dish antenna shall be mounted on the ground, except as hereinafter provided. In the VB Village Business and WF Waterfront Districts, such dish antenna may be mounted on the roof of a building and the number of such dish antennas mounted on the roof shall not exceed one (1) per building, and the dish antenna shall be concealed from public view.

(3) Such dish antenna shall be installed in conformity with the provisions of this chapter relating to accessory structures.

(4) Such dish antenna shall be installed at the location approved by the Board of Historic Preservation and Architectural Review, provided same is concealed from public view.

(5) The height of such dish antenna shall not exceed the height approved by the Board of Historic Preservation and Architectural Review and said Board shall limit its approval to the smallest dish antenna available in the marketplace and reasonably useful at the subject site.

(6) Landscape screening for such dish antenna, approved by the Board of Historic Preservation and Architectural Review, shall be installed and maintained.

C. No building permit shall be issued for a dish antenna unless and until the location and height thereof and landscape screening therefor shall have been approved by the Board of Historic Preservation and Architectural Review. The plans submitted with an application for a building permit shall include a site plan showing the proposed location and proposed height and a landscape plan showing the proposed screening.

D. In determining whether to approve or disapprove the proposed location, height and landscape screening, the Board of Historic Preservation and Architectural Review shall consider the following standards:

(1) The dish antenna shall be installed at a location which minimizes or avoids, to the maximum extent practicable, the adverse visual and aesthetic impact of the dish antenna on adjoining properties, adjacent streets and the neighborhood, consistent with the need to receive adequate signal reception and economic considerations.

(2) The height of the dish antenna shall not exceed a height which minimizes or avoids, to the maximum extent practicable, the adverse visual and aesthetic impact of the dish

antenna on adjoining properties, adjacent streets and the neighborhood, consistent with the need to receive adequate signal reception and economic considerations.

(3) Landscaped screening shall be provided which minimizes or avoids, to the maximum extent practicable, the adverse visual and aesthetic impact of the dish antenna on adjoining properties, adjacent streets and the neighborhood, consistent with the need to receive adequate signal reception and economic considerations.

§ 55-11.14. Fast food establishment

A. An accessory drive-in/drive-thru window is prohibited.

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.

C. No outside banners, flags (other than a municipal flag or flag of the USA), sandwich boards, directional window signs or other outside temporary signage shall be permitted.

D. The external appearance and overall design of the facility shall be as specified by the Board of Historic Preservation and Architectural Review incident to architectural/design review. The Board of Historic Preservation and Review may require the applicant or owner to modify or omit standardized signs, facades, materials or other elements of the facility's external appearance and overall design which, while ordinarily employed at other of the applicant's establishments, violate provisions of the Zoning Code or are found to be unsatisfactory to said Board relative to the goals and objectives of the zoning code.

E. Parking areas and vehicular and pedestrian circulation areas shall be lit at night only to the extent necessary to provide safe and convenient vehicular and pedestrian circulation when the restaurant is open and shall be switched off 1/2 hour after closing and may not be turned on until 1/2 hour prior to opening.

F. All service areas, such as unloading operations and garbage pickup, mechanical equipment and such facilities as packer units, RPZ valves, LP tanks, transformers, condensers, heating, ventilating and air conditioning units, etc., shall be screened

from streets and common driveways and adjacent properties by means of opaque screening in the form of fencing or plantings or a combination thereof, to a height of at least six feet.

G. A row of shrubs or other landscape material which is no less than three (3) feet in height shall be provided along the outside perimeter of all parking and on-site circulation areas. However, such landscaping shall not block sight lines within the site. No outdoor storage of any kind, whether temporary or permanent, and whether screened or not, shall be permitted.

H. All garbage and refuse shall be stored in facilities within the main building. No accessory structures or buildings, whether screened or enclosed shall be provided for such purposes. In addition, no walk-in freezer units shall be placed in accessory structures or buildings.

I. No outdoor seating areas, and no outdoor or indoor playlands or playgrounds, shall be provided in conjunction with or accessory to a fast-food restaurant.

J. No lighting shall be placed on the roof, nor shall any roof be lit directly or indirectly by externally mounted lights.

K. No fast-food restaurant shall be open before 6:00 a.m. on any day nor close after 11:00 p.m. on weekdays and 12:00 midnight on weekends or holidays.

L. Service deliveries and any loading or unloading operation shall only occur between 6:00 a.m. and 6:00 p.m.

M. Garbage pickup shall not be provided prior to 7:00 a.m. on weekdays and 8:00 a.m. on weekends or holidays.

N. No outdoor speakers, nor any outdoor music or public address system, shall be provided.

O. No fast-food restaurant shall be permitted on a flagpole lot.

P. The overall appearance and layout of the fast-food restaurant, including both the building and the site, and the operation thereof, shall be designed to be in conformity with the character of the community in which it is located. Generic and standard architectural design derivatives of national or regional chains shall not be permitted. Architectural design, including the use of façade materials, roof materials, window and door treatments, lighting, landscaping and signage, shall be reflective of and harmonious with the vernacular architecture of the particular hamlet in which the fast-food restaurant is located.

Q. There shall be adequate off-street parking and loading spaces to serve the proposed use, including the parking of oversized vehicles. In the interest of public safety, no vehicle related to such use shall use the shoulder of an adjacent public street for parking or loading.

§ 55-11.15. Funeral Home.

A. A funeral home shall not be located on any parcel less than two (2) acres in lot area with at least one hundred (100') feet frontage on a public street.

B. Parking shall be prohibited in any front yard.

C. Evergreen screening specified by the Planning Board shall be maintained along all side and rear lot lines.

D. Any building service entry shall be limited to the rear of the premises only and shall be adequately screened from the view of all adjacent properties.

E. Any application for a special exception approval shall be accompanied by a complete copy of any approval required from any other agency including by way of illustration, not limitation, the Suffolk County Department of Health Services.

§ 55-11.16. Grocery store, hardware store and home furnishings store

A. The Board of Trustees finds on the basis of an analysis of the size of all land uses historically located in the Village that certain uses typically require a size greater than others, that these uses while greater in size are consistent with and respectful of the existing character of the commercial area of the Village and that these uses provide services that are uniquely useful in supplying necessary goods to the local community. Most evident of this limited list of uses is a grocery store, a hardware store and a home furnishings store. Other uses, for example, restaurants, real estate offices, clothing stores, art galleries, bars and taverns, liquor stores, drug stores, bookstores, variety stores, and the like, have been identified in the same analysis as businesses that are successful using much less required space, typically always less than 3,000 square feet. To the extent any use greater than 3,000 square feet may risk impacts on the community that may be addressed at the development stage of any such use, the Board of Trustees hereby enacts these special standards for grocery stores, hardware stores and home furnishings stores greater than 3,000 square feet.

B. Special exception approval may be granted by the Planning Board for a grocery store, hardware store or home furnishings store in the VB District or Office District provided:

(1) The site plan depicts compliance with the parking requirements of this Code.

(2) The Planning Board shall determine that the proposed use(s) will not have an undue adverse impact on the community. In making such a determination, the applicant shall conduct or hire a consultant to conduct a market and municipal impact study at the expense of the applicant. The Planning Board shall be afforded the opportunity to consider its own such study. Such study shall include, but shall not be limited to, an analysis of the projected impact of the retail store(s) on:

(a) The existing local retail market, including market shares, if applicable.

(b) The supply and demand for local retail space.

(c) Revenues retained within the local economy.

(d) Effects on retail operations in the surrounding market area.

(e) The Village's ability to implement its Comprehensive Plan consistent with the proposed project.

(f) Traffic study.

(g) The anticipated impact of the proposed use on the historic character of the VB and OD Districts.

(h) A comparison of the proposed use with existing similar uses if any.

(i) An analysis of products sold, i.e., the percentage of grocery products in a grocery store or the percentage of hardware products in a hardware store or the percentage of home furnishings in a home furnishings store.

3. In no event shall any use be larger than 8,000 square feet.

4. For every 1,000 square feet or portion thereof greater than 3,000 square feet of additional building space, one second floor apartment shall be provided. Any such apartment shall be reserved for a moderate-income family as defined by the U.S. Department of Housing and Urban Development and its occupancy shall be governed by the provisions of § 55-11.6(B).

5. Where a site adjoins land zoned R-20, any special exception approval shall be conditioned on transitional yards of not less than forty (40') feet.

§ 55-11.17. Outdoor dining as accessory to restaurant.

A. Any outdoor dining shall be accessory to the principal use which shall be an indoor restaurant with indoor tables and seats.

B. Any outdoor dining shall be limited in area to twenty percent (20%) or less of the indoor dining seats.

C. Any outdoor dining shall not, absent compliance with the parking requirements of this Code and compliance with all requirements for sanitary waste disposal, serve to increase the seating capacity of a restaurant and any special exception approval absent such compliance shall require removal of indoor seats equal in number to the outdoor seats.

D. Any outdoor dining proposed to be located on any public property including by way of illustration, not limitation, a sidewalk shall (i) be subject to prior issuance of a license therefor by the Board of Trustees, (ii) be limited to an area within the width of the building, (iii) shall not extend more than six (6) feet into any sidewalk, and (iv) shall not directly or indirectly obstruct or impede pedestrian passage on any sidewalk or public way.

E. Any outdoor dining shall be limited to an area within a roof covering of any kind.

F. All tables and chairs used for outdoor dining shall be removed nightly on any public property and seasonally when not in active and continuous use on private property.

G. Hours of operation of an outdoor dining area shall not be later than midnight.

H. No trash or refuse shall be stored or collected in the outdoor dining area, and any such area shall be maintained free of litter.

I. Any approval hereunder shall be preceded by inspection reports from the Building Inspector and Fire Marshal finding the premises suitable for such use and any approval shall be conditioned on maintenance of procedures to assure public safety.

J. Outdoor dining shall be approved for a period from May 1 to October 30, each year and any such approval shall lapse on

October 30 each year subject to renewal upon any subsequent application hereunder.

K. Any application hereunder shall be accompanied by a floor plan of the existing restaurant and the proposed outdoor dining area.

§ 55-11.18. Public and private schools.

A. Public and/or private schools are a special exception use in the R-20 and OD zoning districts.

B. Any such use shall be subject to special exception approval of the Planning Board.

C. Any such approval shall be subject to the following standards:

(1) Adequate on-site land area for picking up and dropping off of students.

(2) Adequate on-site recreational area;

(3) Prohibition on boarding or residential use;

(4) Compliance with requirements of Suffolk County Department of Health Services and the schedule of off street parking spaces under this chapter;

(5) Accreditation if required by the appropriate agencies of the State of New York;

(6) Absence of outdoor speakers and audio systems;

(7) Use of exterior lighting designs least intrusive of neighboring properties;

(8) Maintenance of vegetated buffers in side and rear yards so as to maintain privacy of adjacent uses; and

(9) Compliance with all applicable general special exception standards.

§ 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:

(1) No such accessory use shall be allowed excepting retail food stores lawfully existing in the VB Village Business

and WF Waterfront Districts on the effective date of this amendment of Chapter 55 of the Village Code.

(2) The total number of chairs and/or stools shall not exceed six.

(3) Waitresses, sit-down food service, menus, chefs and similar features of a restaurant are not permitted.

(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).

(5) Any such special exception approval shall be conditioned upon the further approval of the Board of Historic Preservation and Architectural Review.

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

A. General standards.

1. 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.

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

3. In all events a convenience store shall be a typical mini mart, subordinate to the principal use as a filling station.

4. No convenience store shall be located within less than a fifty (50') foot front yard setback and sideyards of not less than thirty (30') feet, no convenience store shall exceed a height of twenty (20') feet and one story and total lot coverage for all structures at any such site inclusive of a filling station, its accessory structures, the convenience store and any canopy shall not exceed lot coverage of eight (8%) percent or if the site includes an automobile repairs and service use in addition to the sale of gasoline and the operation of a convenience store then the total lot coverage shall not exceed fifteen (15%) percent.

5. The location of fuel tanks shall be approved by the Fire Marshal.

6. Any dumpster must be fully enclosed and its location approved by the Planning Board. Outdoor storage of tires is prohibited.

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.

3. There shall be a planted buffer along the border with any parcel zoned or employed for residential purposes. The planted buffer shall be a minimum of thirty (30) feet wide and shall contain evergreens which are at least six (6) feet in height when planted and set approximately six (6) feet apart. There shall also be a six-foot-high fence of type and design as set by the Planning Board during site plan review. However, if fencing is placed within twenty (20) feet of any right-of-way, said fencing shall be four (4) feet in height and said evergreens planted and maintained at four (4) feet in height.

C. Parking and access.

1. Any approval of a convenience store as a special exception use still require an affirmative finding by the Planning Board that the addition of a convenience store at a filling station shall not result in traffic congestion, that there shall be adequate area on the site, separate from any area used by cars buying fuel, for the parking of automobiles and the delivery of goods, in no event less than one (1) space per one hundred (100) square feet of the gross floor area of the convenience store and the convenience store would not be an intensification of any existing use of the premises as a filling station. For purposes of this section an impermissible intensification would be a convenience store use which is not subordinate to the filling station use and/or which exceeds 600 square feet of gross floor area and/or which is not consistent in character with the filling station including the typical, subordinate uses of a filling station.

2. Driveways shall be offset a minimum of twenty-five (25') feet from grading or point of intersection with any right-of-way and twenty-five (25') feet from any adjoining property at the curblin.

3. There shall be a minimum of one (1) driveway per front yard and a maximum of two (2) driveways per front yard and

no more than two (2) driveways per street frontage. Any one-way driveway shall be fourteen (14') feet in width.

D. Lighting.

1. All lighting for the site must comply with §§ 55-9.9 and 55-14.4(A)(5).

2. All 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. Light fixtures shall not be mounted at a height greater than twelve (12) feet above natural grade unless a greater mounting height is required by the nature of the use or the size of the structure.

3. All exterior lighting and illumination shall be extinguished when the gasoline facilities are closed for operation.

E. Signs.

1. The price/grade signs must at all times accurately reflect the actual price of automotive fuel and kerosene being offered for sale. Any sign is limited to the price of fuel, must be no larger than the minimum required by County or State law and in no event may be internally illuminated.

2. Signs bearing the corporate insignia and/or brand name of the gasoline sold and/or type of services available on site (i.e., full-service and/or self-service), shall be the only signs permitted on the canopy.

3. Signs affixed to or incorporated into the canopy shall not face residentially zoned or developed properties.

4. One (1) additional sign, measuring no larger than twenty-four by twenty-four (24" x 24") inches or four (4') square feet, and having a depth of no more than one (1") inch, shall be allowed at each product dispenser which identifies said product dispenser and/or pump island as providing full service and/or self-service.

F. Outdoor display of goods of any kind at a convenience store is prohibited.

ARTICLE 12. Board of Appeals.

§ 55-12.1. Establishment; training.

There shall be a Board of Appeals consisting of five (5) members pursuant to the provisions of § 7-712 of the Village Law. The Board of Trustees may appoint up to two (2) additional ad hoc members to serve where a member is absent or has a conflict of interest. The term of an ad hoc member shall be one year. All members including ad hoc members shall be required to satisfy on a timely basis the training and continuing education requirements described in § 7-712 of the Village Law.

§ 55-12.2. General provisions.

A. The Board shall have all the powers and duties prescribed by law and by this chapter.

B. All meetings of the Board of Appeals shall be open to the public. A quorum shall consist of three (3) members.

C. Every decision by the Board shall be by resolution and shall contain a full record of the findings of the Board in the particular case.

§ 55-12.3. Appeals, application and hearing procedure.

A. All appeals and applications made to the Board of Appeals shall be in writing, on forms prescribed by said Board and shall be accompanied by a nonrefundable application fee. A fee schedule shall be established, and changed as needed, by resolution of the Board of Trustees. A copy of the fee schedule is on file with the Village Clerk and the Building Department.

B. Each appeal or application shall fully set forth the circumstances of the case. Every appeal or application shall refer to the specific provision of the Code and shall exactly set forth, as the case may be, the interpretation that is claimed, the details of the variance that is applied for and the grounds on which it is claimed that the same should be granted.

C. The Board of Appeals shall not decide any appeal for a variance or interpretation of this chapter without first holding a public hearing, notice of which hearing and of the substance of the appeal or application shall be given by publication in the official newspaper of the Village at least 10 days before the date of such hearing.

D. In addition to such published notice, notice of the hearing shall be provided as follows:

(1) The applicant shall mail a copy of the public notice of the hearing by certified mail, return receipt requested, at least 10 days prior to the date of the hearing, to all owners of property which lies adjacent to that owned by the applicant as determined by their appearance on the last completed assessment roll of the Village and any other owners as the Board of Appeals may deem appropriate, and shall file proof of that mailing with the Secretary to the Zoning Board of Appeals not less than five days prior to the date of the hearing.

(2) If the land involved in an application for a use variance is within 500 feet of the boundary of any other municipality, notice of the public hearing shall also be mailed or sent by electronic transmission by the Secretary to the Clerk of such other municipality not less than 10 days prior to the date of the hearing.

E. Notice of the public hearing and a description of the application shall be transmitted to the Suffolk County Planning Commission in any case where the land involved in an application is within 500 feet of:

(1) The boundary of any other municipality.

(2) Any existing or proposed state or county park or other recreation area.

(3) The right-of-way of any existing or proposed state or county parkway, thruway, expressway, road or highway.

(4) The existing or proposed right-of-way of any stream or drainage channel owned by the county or for which the county has established channel lines.

(5) The existing or proposed boundary of any state- or county-owned land on which a public building or institution is situated.

F. No action shall be taken on applications referred to the Suffolk County Planning Commission until the Commission's recommendation has been received or 45 days have elapsed after the Commission has received the full statement on the applicant's proposal.

G. Provided that that there shall have been substantial compliance with the provisions of Subsections C, D, E and F, failure to give notice in exact conformance herewith shall not be deemed to invalidate action taken by the Board of Appeals in connection with the granting of any appeal or variance.

H. Building permits or certificates of occupancy authorized by Board of Appeals actions on variance applications shall be obtained within one (1) year of its decision. Extensions of this period may be granted by the Board of Appeals without a further public hearing where good cause is shown.

§ 55-12.4. Interpretations and variances.

The Board of Appeals shall, upon appeal, hear and decide:

A. Any matter where the applicant alleges that the Building Inspector was in error in making any order or determination under this Chapter or in refusing to issue a building permit or certificate of occupancy as a result of misinterpreting the meaning, intent or application of any section or part of this chapter.

B. Any matter where the applicant alleges that the Building Inspector was in error in his determination as to the exact location of a district boundary line on the Zoning Map that forms a part of this chapter.

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.

§ 55-12.5. Standards.

The Board of Appeals shall have the power to authorize, upon appeal in specific cases, a variance from the terms of this chapter as follows:

A. Use variances. The Board of Appeals shall have the authority to approve the use of land for a purpose which is otherwise not allowed or is prohibited by this chapter. No such use variance shall be granted by the Board of Appeals without a showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary hardship. In order to prove such unnecessary hardship, the applicant shall demonstrate to the Board of Appeals that for each and every permitted use under the zoning regulations for the particular district where the property is located:

(1) The applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence;

(2) That the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood;

(3) That the requested use variance, if granted, will not alter the essential character of the neighborhood;

(4) That the alleged hardship has not been self-created.

B. Area variances. The Board of Appeals shall have the authority to grant area variances for the use of land in a manner which is not allowed by the dimensional or physical requirements of this chapter. In making its determination, the Board of Appeals shall take into consideration the benefit to the applicant if the variance is granted as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination, the Board of Appeals shall also consider:

(1) Whether the grant of the variance will cause an undesirable change in the character of the neighborhood or will create a detriment to nearby properties;

(2) Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance;

(3) Whether the requested area variance is substantial;

(4) Whether the grant of the variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and

(5) Whether the alleged difficulty was self-created, which consideration shall be relevant to the determination of the Board of Appeals but shall not necessarily preclude the grant of the area variance.

C. Minimum variance. In granting an area variance, the Board of Appeals shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

D. Conditions. The Board of Appeals shall, in the granting of both use variances and area variances, have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed use of the property. Such conditions shall be consistent with the spirit and intent of this chapter and shall be imposed for the purpose of minimizing any adverse impact such variance may have on the neighborhood or community.

§ 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:

A. With respect to lots lying across district boundary lines, to grant approval in appropriate cases where the lot of the applicant lies across the boundary of two districts for the extension into the more restrictive district, but for a distance not exceeding 50 feet measured at right angles to such district boundary line.

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

(1) To grant a permit for the extension of such a nonconforming use on the same lot on which it was located or an increase in the degree of nonconformity of a nonconforming building or structure on the lot occupied by such building or structure, provided that:

(a) In the case of a nonconforming use, such enlargement or extension shall not exceed, in all, 50% of the gross floor area of such building or structure actually devoted to such nonconforming use on the effective date of this use having first become nonconforming. In the case of a nonconforming building or structure, such enlargement or extension shall not exceed, in all, 50% of the gross floor area of such building or structure existing on the effective date of this building or structure having become nonconforming.

(b) All parking and truck loading requirements of § 55-9.6 are complied with.

(c) There shall be no change in the nature or character of such nonconforming use or of such building or structure.

(d) The lot coverage and density shall not be greater than would be permitted by the most restrictive lot coverage and density provisions in the district applicable to a permitted use or special exception use of the same nature or character. The term "density" includes, among other things, the number of dwelling units allowed based on the lot area, the number of guest units allowed based on the lot area and the number of uses allowed based on the lot area.

(2) To grant a permit for the reconstruction, structural alteration, restoration or repair of a building or structure used for a nonconforming use, to an extent not to exceed an aggregate of 100% of the gross floor area of such building or structure.

(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.

C. With respect to yard requirements, to grant a variance modifying the yard requirements of a nonconforming lot which qualified under the terms of § 55-10.3 as to ownership, but where compliance with the dimensional provisions of this chapter is not feasible.

D. With respect to fences, to grant a permit, in appropriate cases, for a higher fence or wall than the maximum heights stipulated in § 55-9.4.

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

(1) To waive, in whole or in part, the requirements of § 55-9.6 for off-street parking and truck loading spaces pursuant to the standards for the grant of area variances contained in this chapter.

(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.

(3) To permit a reduction in the number of off-street parking spaces and/or truck loading spaces originally required and installed for a particular use pursuant to § 55-9.6 and in cases where the Board of Appeals determines that, by reason of diminution in number of dwelling units or residents or in floor area, seating capacity or area or number of employees or change in other factors determining the demand for such spaces, the proposed reduction in available spaces will be consistent with the requirements of said sections, and further provided that the area so withdrawn from these uses shall remain in reserve for potential future increases in need.

F. With respect to the provisions of Article 16, Tidal Flood Hazard Overlay District:

(1) To grant variances consistent with the standards of Section 60.6 of the Rules and Regulations of the National Flood Insurance Program and the further guiding principles and standards which follow in this subsection.

(2) In passing on such applications for variances, the Board of Appeals shall consider all technical evaluations, relevant factors and standards specified in Article 16 and the following:

(a) The danger that materials may be swept onto other lands to the injury of others.

(b) The danger of life and property due to flooding or erosion damage.

(c) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner.

(d) The importance of the services provided by the proposed facility to the community.

(e) The necessity to the facility of a waterfront location, where applicable.

(f) The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage.

(g) The compatibility of the proposed use with existing and anticipated development.

(h) The relationship of the proposed use to the Comprehensive Plan and floodplain management program of that area.

(i) The safety of access to the property in times of flood for ordinary and emergency vehicles.

(j) The expected heights, velocity, duration, rate of rise and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site.

(k) The costs of providing government services during and after flood conditions, including maintenance and repair of public utilities and facilities, such as sewer, gas, electrical and water systems, and streets and bridges.

(3) Generally, variances may be issued for new construction and substantial improvements to be erected on a legally preexisting nonconforming lot of one-half (1/2) acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, provided that the items in § 5512.6(F)(2)(a) through (k) have been fully considered. As the lot size increases beyond the one-half (1/2) acre, the technical justification required for issuing the permit increases.

(4) Variances may be issued for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places without regard to the findings required in the following Subsection F(5) and (6).

(5) Variances shall only be issued on a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

(6) Variances shall only be issued upon a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety or extraordinary public expense, create nuisances, cause fraud on or victimization of the public as identified in § 55-12.6(F)(2) or conflict with existing local laws or ordinances.

(7) Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with the lowest floor elevation below the base flood elevation and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

#### ARTICLE 13. Board of Historic Preservation and Architectural Review

##### § 55-13.1. Purpose.

The Board of Trustees finds that excessive uniformity, dissimilarity, inappropriateness or poor quality of the design and location of buildings and appurtenant structures, including signs, adversely affects the desirability of the immediate and neighboring areas and thereby impairs the benefits of occupancy of existing property and the stability and value of both improved and unimproved real property in such areas, prevents the most appropriate development of such areas, produces degeneration of property and destroys the proper relationship between the taxable value of real property in such areas and the cost of municipal services provided therefor. It is the intent of this Article to establish procedures and design criteria necessary to avoid such results and to preserve and enhance the character, historical interest, beauty and general welfare of the Village and to ensure that the location and design of buildings, structures and open spaces in the Village shall aid in creating a balanced and harmonious composition of the whole as well as in the relationship of its several parts.

##### § 55-13.2. Membership.

A. A Board of Historic Preservation and Architectural Review is hereby established, consisting of five (5) members to be appointed by the Board of Trustees. Whenever reasonably able to do so, the Board of Trustees shall seek to include within the membership of this Board an architect familiar with local historic buildings and structures, a resident of an historic district within the Village and members with an interest in

historic preservation and architectural development. The Board of Trustees may appoint up to two (2) additional ad hoc members to serve where a member is absent or has a conflict of interest. The term of an ad hoc member shall be one year. The first appointments thereto shall be for terms so fixed that one (1) will expire at the end of the current official year, two (2) will expire at the end of the next succeeding official year, and two (2) will expire at the end of the next succeeding official year. Succeeding appointments shall be for three-year terms. All members shall be residents of the village.

B. The Board of Trustees may remove any member, with cause, after a public hearing.

C. If a vacancy shall occur other than by expiration of a member's term, it shall be filled by an interim appointment for the remainder of the former member's unexpired term.

D. The Mayor shall designate a Chairman of the Board, subject to the approval of the Board of Trustees. Such designation shall be for one (1) official year of the village and shall expire at the end of each official year. The Board shall designate a Vice Chairman and a Secretary.

E. The Board may adopt rules of procedure as it may deem necessary to the proper exercise of its responsibilities with regard to architectural review and historic preservation.

F. All meetings of the Board shall be open to the public.

G. Every decision of the Board shall be by resolution and shall contain a full record of the findings of the Board in the particular case. A quorum shall consist of three (3) members.

H. The Board of Trustees may designate a licensed architect to advise and take part in the deliberations (but without a vote) of the Board. The Board of Trustees may authorize other professional consultants, secretaries, clerks or such other personnel as may be necessary to assist the Board in carrying out its duties and powers. The Board of Trustees shall fix the compensation thereof and pay other expenses of the Board.

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.

J. The Board is charged with the duty of exercising sound judgment and of rejecting plans which, in its opinion, are not of harmonious character because of proposed style, materials, scale, form, rhythm, proportion, mass, line, color, detail or placement upon the property or in relation to the spaces between buildings or the natural character of the landscape or because the plans do not provide for the location and design or structures and open spaces so as to create a balanced and harmonious composition as a whole and in relation to its several parts and features to each other.

K. In addition to the foregoing duties, the Board shall have the power to:

(1) Conduct surveys of buildings for the purpose of determining those of historic and/or architectural significance and pertinent facts about them.

(2) Formulate recommendations concerning the preparation of maps, brochures and historical markers for selected historic and/or architectural sites and buildings.

(3) Cooperate with and advise the Village Board of Trustees, the Planning Board and other municipal agencies in matters involving historic and/or architectural sites and buildings.

(4) Advise owners of historic buildings on preservation and restoration.

(5) Make recommendations to the Board of Trustees for amendments to the Zoning Map which would change the boundaries of the Historic District and/or include other properties or areas in the Historic District.

(6) Approve in the Historic District or elsewhere the installation of alternative energy systems provided any such approval shall require affirmative findings that any such installation shall not diminish the preservation of the property's historic character defining features in an Historic District and that the installation in all instances shall not be excessively dissimilar to the character of the neighborhood.

(7) Approve or disapprove certificates of appropriateness.

L. The Board is charged with the duty of maintaining the desirable character of each Historic District and of designated historic and cultural landmarks. When reviewing plans relating to property in an Historic District and plans relating to a designated historic and cultural landmark, the Board shall utilize and be guided by the Secretary of the Interior's

Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings, as well as the provisions of Article 13 of this Code.

§ 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:

(1) The name, address and telephone number of the owner.

(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.

(4) Perspective drawings, including relationship to adjacent properties, if necessary in the Board's view.

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

(6) Where the proposal includes signs or lettering, a scale drawing showing the type of lettering to be used, all dimensions and colors, a description of materials to be used, method of illumination, method of attachment to buildings and a plan showing the sign's location on the property.

(7) At the time of submission of any application an initial deposit shall be required in such sum as shall be set forth by the Board upon the request of the applicant and upon the Board's evaluation of the nature and complexity of the proposed application. This deposit with the Village shall be

used as an advance against which withdrawals shall be made to reimburse the Village for the cost of architectural, historical and design professionals engaged by or on behalf of the Board, consultants and the cost of publication of any special meeting notice and/or any special meeting stenographic service and/or any other special review costs actually incurred incident to a particular application. No application shall be considered complete for review purposes until said deposit is made in accordance herewith. The Board Clerk may provide applicants with periodic statements indicating the cost of professional consultant review services and other costs paid out of the initial deposit or owing in the event the initial deposit has been depleted. If an initial deposit amount is depleted, the Board shall suspend its review of the application if any outstanding fees are not paid by the applicant within thirty (30) days of issuance of a request for additional payment. The Board shall not be obligated to comply with any time periods hereunder or pursuant to state and/or local law if the applicant fails timely to pay the fees as aforesaid. No such time period shall elapse except after payment as required. After all required charges have been paid, and upon final approval or denial by the Board or formal withdrawal of the application by the applicant, the Village shall refund to the applicant any funds remaining on deposit. Any such refund shall be made as soon as the Village is reasonably able to do so. All fees required pursuant to this section shall be collected by the Village Clerk or the clerk of the Board of Historic Preservation and Architectural Review who shall promptly forward same to the Village Clerk for recording by the Village Treasurer.

(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.

B. Preliminary plans, elevations, sketches and/or proposals may be submitted to the Board by the owner or by the architect or other agent of the owner for consultation prior to filing an application for a building permit or certificate of appropriateness.

C. No building permit shall be issued for such proposed work until a certificate of appropriateness has first been issued by the Board. The certificate of appropriateness required shall be in addition to and not in lieu of any building permit that may be required by any other local law.

D. Every application for a certificate of appropriateness shall be reviewed by at least a quorum of the Board, except that any application for a nonresidential use greater than 3,000 square feet shall be reviewed by a full board.

E. Meetings of the Board shall be held at such times as the Board may determine. When necessary, special meetings of the Board shall be held at the request of the Building Inspector or at the call of the Chairman.

F. The Board shall approve, deny or approve the permit with modification. The Board may require changes in plans as a condition of approval and may direct landscaping as part of a plan before approval thereof. The Board may require submission of samples of exterior finishes and colors as part of its review of an application. In its review the Board may require documentation of cultural remains and architectural details and features prior to any alteration, restoration or reconstruction. The Board may, at its option, hold a public hearing on the application to obtain information from the applicant and the general public to aid in making its determination. The Board shall make its decision as to whether or not to hold a public hearing within forty-five (45) days of its receipt of a complete application. Notice of such public hearing shall be published in a newspaper of general circulation in the village at least ten (10) days prior to the date of the public hearing. The public hearing shall take place no later than sixty (60) days after receipt of a complete application. An applicant may extend any of the aforesaid time periods.

G. All decisions of the board shall be in writing. A copy shall be sent to the applicant by regular mail and a copy filed with the Village Clerk's office for public inspection. The Board's decision shall state the reasons for denying or modifying any application.

H. Except as provided in § 55-13.7(A), where an application for a building permit involves only interior renovations, referral of such application to the Board shall not be required, and approval of such application by the Board shall not be required.

#### § 55-13.4. Designation of landmarks.

A. From time to time, the Board of Historic Preservation and Architectural Review shall make a study of the structures existing and situated in the village and, for the purpose of identifying and conserving, protecting, enhancing and perpetuating those structures within the village which, by reason of their particular or distinctive architectural style, general design, historic association or historic or

architectural value, constitute a part of the community's architectural and historic heritage, shall recommend such structures to be designated as landmarks. Upon receipt by the Village Board of Trustees of any such recommendation from the Board of Historic Preservation and Architectural Review, the Board will schedule and conduct a public hearing in accordance with Article 21 of the Village Law, at which the parties in interest and citizens shall have an opportunity to be heard with respect to the proposed designation of any structure as a landmark.

B. A written notice of any proposed designation of a structure as a landmark under this section shall be given to the owner of record thereof at least fifteen (15) days prior to the date of the public hearing called for by this section.

C. In the event that the Village Board of Trustees shall adopt the proposed designation of a structure as a landmark, such designation shall be entered in the minutes of the Village Board of Trustees, and a copy thereof shall be published once in the official newspaper, and a copy of such designation shall be posted conspicuously at or near the entrance to the office of the Village Clerk. Affidavits of the publication and the posting thereof shall be filed with the Village Clerk. Such designation shall take effect ten (10) days after such publication and posting.

D. The following structures and properties are designated historic and cultural landmarks:

| Structure Identification<br>and Street Address                                 | Section, Block and<br>Lot Location        |
|--|---|
| American Hotel, Main<br>Street   | Section No. 002, Block 3,<br>Lot 15 (SH)  |
| Bulova Plant, Washing-<br>ton Street, Division<br>Street and Madison<br>Street | Section No. 003, Block 4,<br>Lot 14 (SH)  |
| Cor Maria, Bay Street at<br>the foot of High Street                            | Section No. 002, Block 1,<br>Lot 8 (EH)   |
| Custom House, Garden<br>Street   | Section No. 003, Block 2,<br>Lot 31.1(SH) |
| Hanibal French House, Main<br>Street near Garden Street                        | Section No. 003, Block 2,<br>Lot 32 (SH)  |

|   |  |
|---|--|
| Jared Wade House, Corner<br>of Union Street and Madison<br>Street         | Section No. 003, Block 3,<br>Lot 53 (SH)         |
| John Jermain Library,<br>Main Street                                      | Section No. 003, Block 3,<br>Lot 70 (SH)         |
| Methodist Church, Madison<br>Street north of Union<br>Street              | Section No. 003, Block 3,<br>Lot 54 (SH)         |
| Municipal Building, Main<br>Street  | Section No. 002, Block 3,<br>Lot 14 (SH)         |
| Rysam-Sleight House, corner<br>of Division Street and Burke<br>Street     | Section No. 002, Block 2,<br>Lot 40 (EH)         |
| St. David A.M.E. Zion<br>Church, Eastville Avenue                         | Section No. 006, Block 08,<br>Lot 8 (EH)         |
| Umbrella House, Division<br>Street  | Section No. 002, Block 02,<br>Lot 34.1 (EH)      |
| Whaler's Church and Ceme-<br>tery, Union Street                           | Section No. 003, Block 4,<br>Lots 27 and 28 (SH) |
| Whaling Museum, south-<br>west corner of Main<br>Street and Garden Street | Section No. 003, Block 2,<br>Lot 17 (SH)         |

E. No person shall carry out any exterior alteration, restoration, construction, reconstruction, demolition or moving of a structure or land or historic trees or plantings upon property designated a landmark or property within an Historic District, nor shall any person make any material change in the appearance of such a property that is visible from an adjacent street or adjacent property and which shall affect the appearance and cohesiveness of the Historic District, without first obtaining a certificate of appropriateness from the Board of Historic Preservation and Architectural Review.

§ 55-13.5. Demolition or removal.

A. Every application for a permit to demolish or remove an historic or cultural landmark or any building or structure within the Historic District shall be referred by the Building Inspector to the Board of Historic Preservation and Architectural Review. Any such application shall be accompanied by a current title search showing the name of any mortgagee or

holder of a similar interest with a lien on the premises and consent in original executed form authorizing any such demolition, and any such report and consent shall be reviewed and approved by the Village Attorney.

B. Any such application before the Board of Historic Preservation and Architectural Review shall be heard by a full Board.

C. Any such application shall be accompanied by a long environmental assessment form Part 1 and in all respects any such application is subject to the requirements of 6 NYCRR Part 617.

D. If such application involves an historic or cultural landmark, no permit shall be issued by the Building Inspector unless the Board shall have approved the application, in writing.

E. If such application involves any other building or structure within the Historic District, no permit shall be issued by the Building Inspector unless the Board shall have approved the application.

F. In considering an application seeking demolition, the Board shall consider the historical and architectural value and significance of the building or structure, the extent that the neglect of maintenance, if any, may have contributed to the condition of the building, whether the demolition or removal will be appropriate to the conditions especially affecting the building or structure but not affecting the Historic District generally and whether the demolition or removal will cause substantial detriment to the public welfare or substantial deviation from the purpose and intent of this chapter, and the Board shall consider and be guided by the criteria and standards in the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings.

G. An applicant whose certificate of appropriateness for a proposed demolition has been denied may apply on the ground of hardship. In order to prove the existence of hardship, the applicant shall establish that:

(1) The property is incapable of earning a reasonable return, regardless of whether that return represents the most profitable return possible;

(2) The property cannot be adapted for any other use, whether by the current owner or by a purchaser, which would result in a reasonable return;

(3) Efforts to find a purchaser interested in acquiring the property and preserving it have failed; and

(4) An absence of responsibility for any neglect of maintenance that may have contributed to the hardship.

H. An applicant whose certificate of appropriateness for a proposed alteration has been denied may apply for relief on the ground of hardship. In order to prove the existence of hardship, the applicant shall establish that the property is incapable of earning a reasonable return, regardless of whether that return represents the most profitable return possible.

I. In an application for demolition or removal, the Board may require as a condition of approval the documentation of the building and site by photographs, drawings or other appropriate means. The Board may also require the investigation for cultural remains on site prior to new construction. Access to any resulting information may be limited to protect archaeological sites.

§ 55-13.6. Criteria applicable to all applications.

A. The Board shall disapprove any application for a building permit referred to it if the Board finds by a majority vote of the members of the Board that the building for which the permit is sought or any building of a group of buildings covered by the permit would, if erected, be so detrimental to the character, property values or development of the surrounding area as to produce one (1) or more of the harmful effects set forth in § 55-13.1 by reason of:

(1) Excessive similarity of design in relation to any other structure within the Village existing or for which a permit has been issued or to any other structure included in the same permit application in respect to one (1) or more of the following features of exterior design and appearance:

(a) An apparently identical façade.

(b) Substantially identical size and arrangement of either doors, windows, porticoes or other openings or breaks in the façade facing the street, including reverse arrangements.

(c) Other significant identical features, such as, but not limited to, construction materials, roofline and height or other design elements, provided that a finding of excessive similarity of design shall include not only that such similarity exists but further that it is of such a nature as to produce one (1) or more of the harmful effects set forth in § 55-13.1.

(2) Excessive dissimilarity or inappropriateness of design in relation to any other structure within the Village existing or for which a permit has been issued or to any other structure included in the same permit application or inappropriateness or excessive dissimilarity of design in relation to the characteristics of building design generally prevailing in the Village and with the Zoning District within which the property is located in respect to one (1) or more of the following features:

(a) Volume, including length, width and/or breadth.

(b) Gross floor area.

(c) Height of building or height of roof.

(d) Other significant design features, such as, but not limited to, construction material or quality of architectural design, provided that a finding of excessive dissimilarity or inappropriateness of design shall include not only that such dissimilarity or inappropriateness exists but further that it is of such a nature as to produce one or more of the harmful effects set forth in § 55-13.1.

(e) Inadequate or excessive mass and/or scale of the building or structure when compared or contrasted with other like uses or structures in the Village, even if same is otherwise in dimensional compliance under the applicable Table of Dimensional Regulations. Mere compliance with the Table of Dimensional Regulations shall not bear on or be determinative of whether the mass and/or scale is excessive.

(3) Excessive alteration or inappropriateness of design which substantially changes the architectural character and/or features of an historic landmark and thereby diminishes its historic significance and value.

B. Any consideration of any application shall include an evaluation of visual offensiveness or other poor qualities of exterior design, including but not limited to excessive divergences of the height or levels of any part of the structure or building from the grade or terrain; harmony or discord of color or incompatibility of the proposed structure, building, refurbishing, reconstruction, alteration or addition with the terrain on which it is to be located; and the failure of the exterior design to complement and enhance the natural beauty of its site in regard to landscape, topography, surrounding structures and the scenic character of roadways when visible from said roadway.

C. Any consideration of any application shall include an evaluation of the appropriateness of preserving existing trees at the site, any changes thereto and in an Historic District any trees to be planted thereat.

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

A. In determining whether to approve or disapprove an application for a certificate of appropriateness, the Board shall not consider changes to interior spaces or other changes that are not visible from an adjacent street or that are not visible from an adjacent property. If the interior changes are visible from an adjacent street or property, the Board shall review such proposed changes.

B. The Board's decision to approve or to disapprove shall be based upon the following principles:

(1) Features or properties which make significant contribution to the character of a landmark or a Historic District shall be altered as little as possible;

(2) Any alteration of an existing feature or property shall be compatible with its historic character, as well as with the character of nearby properties and shall not diminish the value of any adjacent or nearby property;

(3) New construction shall be compatible with the character of nearby properties in the Historic District and shall not diminish the value of any adjacent or nearby property; and

(4) Alterations and/or new construction shall not diminish the value of any adjacent or nearby property.

(5) A property will be used as it was historically, or be given a new use that maximizes the retention of distinctive materials, features, spaces and spatial relationships. Where a treatment and use have not been identified, a property will be protected and, if necessary, stabilized until additional work may be undertaken.

(6) The historic character of a property will be retained and preserved. The replacement of intact or repairable historic materials or alteration of features, spaces and spatial relationships that characterize a property will be avoided.

(7) Each property will be recognized as a physical record of its time, place and use. Work needed to stabilize, consolidate and conserve existing historic materials and

features will be physically and visually compatible, identifiable upon close inspection and properly documented for future research.

(8) Changes to a property that have acquired historic significance in their own right will be retained and preserved.

(9) Distinctive materials, features, finishes and construction techniques or examples of craftsmanship that characterize a property will be preserved.

(10) The existing condition of historic features will be evaluated to determine the appropriate level of intervention needed. When the severity of deterioration requires repair or limited replacement of a distinctive feature, the new material will match the old in composition, design, color and texture.

(11) Chemical or physical treatments, if appropriate, will be undertaken using the gentlest means possible. Treatments that cause damage to historic materials will not be used.

(12) Archeological resources will be protected and preserved in place. If such resources must be disturbed, mitigation measures will be undertaken.

(13) Avoidance of asphalt or similar driveway or other similar surfaces, as well as synthetic siding or shutters or timbers or other exterior materials.

(14) New additions, exterior alterations, or related new construction will not destroy historic materials, features and spatial relationship that characterize the property. The new work shall be differentiated from the old and will be compatible with the historic materials, features, size, scale and proportion and massing to protect the integrity of the property and its environment.

(15) New additions and adjacent or related new construction will be undertaken in such a manner that, if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

(16) Preservation rather than replacement of windows wherever feasible.

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

(1) Approval of any alteration or new construction will not alter the identity of the Historic District in a manner which diminishes or detracts from its uniqueness.

(2) Approval of any alteration or new construction will not result in a design or collection of design features in the nature of a national or similar standardized design or collection of design features.

(3) Approval of any alteration or new construction will contribute to a diverse and appropriate blend of historic facades and architectural features.

(4) Approval of any alteration or new construction shall in all events prohibit internal illumination of any signs, backlit signs and fluorescent signs.

(5) Approval of any alteration or new construction shall be limited to structures and facades in character consistent with the Table of Dimensional Regulations for the District in which the parcel is located.

(6) Approval of any alteration or new construction shall not include any authorization for or allowance of standardized architecture or features, standardized color schemes, standardized signage or any standardized feature which may detract from the Historic District.

(7) Approval of any alteration or new construction shall be conditioned upon compliance with these standards and the requirements of this chapter and mere compliance with the Table of Dimensional Regulations for the premises shall not bear on or be determinative of any such approval.

(8) Approval of any alteration or new construction shall require an affirmative finding that any changes shall support, advance and be consistent with the character of the Historic District and each of the applicable criteria as set forth herein.

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

(a) Continuity in building sizes between new and existing buildings;

(b) The ground floor and upper floor elevations and architectural detailing are compatible with adjacent commercial buildings;

(c) The roof elevation is compatible with adjacent commercial buildings (roof pitch and shape);

(d) Continuity of building sizes on the site, if more than one building is proposed;

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

(f) The relationship of buildings to public spaces, such as streets, plazas, other areas, and public parking, including on-street parking, is strengthened by the proposed building(s);

(10) Approval of any alteration or new construction shall be consistent with the requirement that finds all of the following criteria are met. Alternatively, the Board may approve a different design upon finding that the design contains an equal or superior method of achieving this standard.

(a) Regularly spaced and similarly shaped windows are provided on all building stories;

(b) Ground floor retail spaces have tall ceilings (i.e., 12 feet to 16 feet) with display windows on the ground floor;

(c) Display windows are trimmed, recessed, or otherwise defined by wainscoting, sills, water tables, or similar architectural features;

(d) On multistory buildings, ground floors are defined and separated from upper stories by appropriate architectural features (e.g., cornices, trim, awnings, canopies, arbors, trellises, overhangs, or other features) that visually identify the transition from ground floor to upper story; such features should be compatible with the surrounding architecture;

(e) The tops of flat roofs are treated with appropriate detailing (i.e., cornice, pediment, flashing, trim, or other detailing) that is compatible with the surrounding architecture;

(f) Pitched roofs have eaves, brackets, gables with decorative vents, or other detailing that is consistent with the surrounding architecture;

(g) Where a building or a single use of a building greater than 3,000 square feet of enclosed ground floor space is proposed, said building shall provide articulated faces on all street-facing elevations that make the building appear as multiple buildings rather than one large building. This criterion is met when every 30 feet of building (horizontal length) elevation contains at least one primary entrance, as well as at least one of the following features: windows; weather protection (awnings, canopies, arbors, trellises), building offsets; projections; changes in elevation or

horizontal direction; sheltering roofs; terraces; a distinct pattern of divisions in surface materials; ornamentation; screening trees; small-scale lighting (e.g., wall-mounted lighting, or down lighting); and/or similar features.

11. Any finding of compatibility shall include an affirmative consideration of the following:

(a) The general design, character and appropriateness to the property of the proposed alteration or new construction;

(b) The scale of proposed alteration or new construction in relation to the property itself, surrounding properties and the neighborhood;

(c) Texture, materials and color and their relation to similar features of other properties in the neighborhood.

(d) Visual compatibility with surrounding properties, including proportion of the property's front façade, proportion and arrangement of windows and other openings within the façade, roof shape and the space of properties on street, including setback.

(e) The importance of features or property to be changed to the historic, architectural, cultural or other significance of such feature or property.

(f) Use of pilasters, columns, horizontal moldings, ribs, changes in wall planes, changes in materials, trim details, overhangs and gables with decorative vents.

§ 55-13.8. Hardship application procedure.

A. An applicant may apply to the Board for relief on the basis of hardship upon receipt of written notification from the Board of the denial of a certificate of appropriateness. No relief shall be granted unless the Board makes a finding that a hardship exists and that the owner or predecessor in title has not contributed to the condition of the building by a neglect of maintenance.

B. Within forty-five (45) days of receipt of a complete application for relief, notice of such public hearing shall be published in a newspaper of general circulation in the village at least ten (10) days prior to the date of the public hearing. The Board shall hold a public hearing on the hardship application within sixty (60) days after receipt of a complete application.

C. Prior to such hearing, the applicant shall consult in good faith with the Board and other interested parties to seek an alternative that will result in preservation of the property.

D. All decisions of the Board shall be in writing. A copy shall be sent to the applicant by regular mail and a copy filed with the Village Clerk's office for public inspection. The Board's decision shall state the reasons for granting or denying the hardship application.

§ 55-13.9. Enforcement.

All work performed pursuant to a certificate of appropriateness issued under this chapter shall conform to any requirements included therein. It shall be the duty of the Building Inspector to inspect periodically any such work to assure compliance. In the event that he finds work that is not being performed in accordance with the certificate of appropriateness, or upon notification of such fact by the Board and personal verification, the Building Inspector shall immediately issue a stop-work order, which shall remain in effect until work is in compliance. No work shall be undertaken on the property as long as a stop-work order is in effect.

§ 55-13.10. Maintenance and repair required.

A. Nothing in this chapter shall be construed to prevent the ordinary maintenance and repair of any feature of a landmark or property within a Historic District which does not involve a change in design, material, color or outward appearance.

B. No owner or person with an interest in real property designated as a landmark or included within a Historic District shall permit the property to fall into a state of disrepair so as to cause, in the judgment of the Board a detrimental effect upon the character of the landmark or Historic District.

C. Upon the Board's finding that a property either designated as a landmark or within the Historic District has fallen into state of disrepair so as to cause a detrimental effect upon the character of the landmark or Historic District, the Board may require the Building Inspector to issue a repair order. Such repair order shall specify the minimal repairs required to bring the property into compliance with this section.

§ 55-13.11. Appeals.

The remedy of any person aggrieved by a decision of the Board in granting or denying an application shall be an Article 78 proceeding. Prior to any commencement of any Article 78 proceeding and as a condition of exhaustion of the regulatory

process under this Article, the Board shall within thirty-one (31) days after receipt of a written request from the applicant make formal findings of facts and file same in the Village Clerk's office within ten (10) days thereafter and upon any such filing of such findings the applicant shall within thirty-one (31) days after such filing answer the findings by submission of formal proof and upon such submission and within thirty-one (31) days thereafter, the Board shall reconsider its decision and may conform or modify its prior decision at which point if the applicant is still aggrieved the applicant may file an Article 78 petition within thirty (30) days after the filing of the Board's decision confirming or modifying its prior decision.

#### ARTICLE 14. Planning Board

§ 55-14.1. Establishment; compensation; Chairman; removal of members; vacancies; training.

There shall be a Village Planning Board appointed in accordance with § 7-718 of the Village Law. The Board of Trustees may appoint up to two (2) additional ad hoc members to serve where a member is absent or has a conflict of interest. The term of an ad hoc member shall be one year. Planning Board members shall receive compensation as the Board of Trustees may from time to time by resolution provide. The Chairman of such Planning Board shall be designated in accordance with § 7-718 of the Village Law. Removal of members of the Planning Board and provision in case of vacancies shall be in accordance with the provisions of § 7-718 of the Village Law. All members of the Planning Board including ad hoc members shall be required to satisfy timely the training and continuing education requirements described in § 7-718 of the Village Law.

§ 55-14.2. Powers and duties.

The Planning Board is hereby empowered and directed to undertake studies and make plans incorporating proposed legislation in the form of amendments to the Zoning Ordinance, having the following objectives:

- A. The designation of those areas and structures which are of historic value and which warrant special action to ensure their preservation.
- B. The conservation and preservation of the natural shoreline and wetlands with special reference and attention to ecological relationship and needs.
- C. The proper use of those portions of the waterfront which are required and most suited for human activities, including both recreation and commerce.

D. Appropriate changes in this chapter which may incorporate the result of the foregoing studies as well as consider such other elements as business district requirements, traffic and parking, aesthetic and architectural review of new construction and alterations to existing structures, parks and recreation and general land use development.

§ 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.

B. Objectives of site plan procedure and review.

(1) In considering and acting upon site plans, the Planning Board shall take into consideration the public health, safety and welfare, the comfort and convenience of the public in general and the residents in the immediate neighborhood in particular and may prescribe appropriate conditions and safeguards as may be required in order that the result of its action may, to the maximum extent possible, further the expressed intent of this section and accomplish the following objectives in particular:

(a) Traffic access. All proposed traffic accessways are adequate in number, width, grade, alignment and visibility, are located in proper relationship with intersections, pedestrian crossings and places of public assembly and are in conformance with overall traffic safety considerations.

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

(c) Landscaping and screening. All required recreation, parking, service and similar areas are screened at all seasons of the year from view of adjacent residential districts and streets, and the landscaping of the site is in character with that generally prevailing in the neighborhood and enhances the character of the Village.

(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).

(e) Natural features. Due regard shall be paid to all natural features on and adjacent to the site, including but not limited to water bodies, drainage courses, wetlands, marshes, dunes, bluffs, beaches, escarpments, woodlands, large trees, unique plant and wildlife habitat and flood hazard areas.

(f) Cultural features. Due regard shall be paid to all cultural features on and adjacent to the site, including historic buildings and sites.

(g) Pavement. All plazas and other paved areas intended for use by pedestrians shall use such pavement and plant materials so as to encourage their use by pedestrians during all seasons of the year and prevent the creation of vast expanses of pavement.

(h) Lighting. All outdoor lighting is of such nature and so arranged as to preclude the projection of direct light and glare onto adjoining properties and streets.

(i) Facades. Building facades shall be compatible with the surrounding area in scale, color, style and material except where any of these features is otherwise regulated or specified under this chapter in which event the provisions of this chapter shall prevail.

(j) Drainage. The drainage system and layout proposal will afford an adequate solution to any drainage problems.

(k) Public utilities. The plans for water supply and sewage disposal are adequate.

(l) Public-address or sound system. Any sound or public-address system shall be such that no sound from a system shall be audible on adjoining properties or on the adjacent street.

(m) Physically challenged access. The plan and building design shall accommodate the needs of the physically challenged and be in conformance with the state and federal standards for design and construction concerning the physically challenged, including but not limited to handicapped parking requirements.

(n) Energy conservation. The site plan and building design shall maximize the conservation of energy.

(o) Architecture. Architecture shall comply with the purposes and criteria set forth in Article 13.

(p) Purposes of this Chapter. Any site plan review shall affirmatively comprehend and implement the purposes of this chapter, including by way of illustration, not limitation, the preservation of the present historic character of the VB and adjacent Zoning Districts and the accumulation of new affordable housing units where reasonably able.

(2) Nothing herein shall preclude the Planning Board from requiring neighboring properties to participate in the construction of joint or shared improvements, such as parking, access or drainage, provided that a problem has been identified which can be mitigated only by joint action and an implementation plan has been formulated for such mitigation.

#### § 55-14.4. Site plan elements.

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

(1) A completed site plan application form.

(2) A site plan review fee and payment of the fee required under § 55.14.4(B) below.

(3) An environmental assessment form, Part 1, as required by Chapter 15, Environmental Quality Review, of this Code and by 6 NYCRR Part 617.

(4) A site plan.

(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).

B. Fee.

(1) A fee schedule shall be established, and changed as needed, by resolution of the Board of Trustees. A copy of the fee schedule is on file with the Village Clerk and the Building Department.

(2) In addition to the above-required fee, the Planning Board shall require the payment of out-of-pocket expenses incurred or to be incurred by the Village in studies and/or by retainer of expert advisors related to the hearing, review and determination of an application. Costs of any special hearing for a particular application including rental of space, publication of notices or any other similar fee shall also be paid by an applicant.

At the time of submission of any site plan application an initial deposit shall be required in such sum as shall be set forth by the Planning Board upon the request of the applicant and upon the Board's evaluation of the nature and complexity of the proposed application. This deposit with the Village shall be used as an advance against which withdrawals shall be made to reimburse the Village for the cost of professional consultant review services and the cost of publication of any special meeting notice and/or any special meeting stenographic service and/or any other special review costs actually incurred incident to a particular application. No application shall be considered complete for review purposes until said deposit is made in accordance herewith. The Planning Board Clerk may provide applicants with periodic statements indicating the cost of professional consultant review services and other costs paid out of the initial deposit or owing in the event the initial deposit has been depleted. If an initial deposit amount is depleted, the Planning Board shall suspend its review of the application if any outstanding fees are not paid by the applicant within 30 days of issuance of a request for additional payment. The Planning Board shall not be obligated to comply with any time periods for review of site plans and other or similar applications pursuant to state and/or local law if the applicant fails timely to pay the fees as aforesaid. No such time period shall elapse except after payment as required. After all required charges have been paid, and upon final approval or denial by the Board or formal withdrawal of the application by the applicant, the Village shall refund to the applicant any funds remaining on deposit. Any such refund shall be made as soon as the Village is reasonably able to do so. All fees required pursuant to this section shall be collected by the Village Clerk or the clerk of the Planning Board who shall promptly forward same to the Village Clerk for recording by the Village Treasurer.

(3) The Planning Board shall have the authority to modify or waive the site plan review fee in whole or in part where such application demonstrates, in the Planning Board's judgment, a substantial public benefit. To modify or waive such fee, the Planning Board must adopt a resolution, by a vote of a majority plus one, stating its findings.

C. Site plan. The applicant shall cause a site plan map at a minimum scale of one inch equals 40 feet or one inch equals 20 feet to be prepared by a licensed architect, landscape architect, civil engineer or surveyor. The site plan shall include those elements listed herein which are appropriate to the proposed development or uses, as determined by the Planning Board.

(1) Legal data.

(a) The name and address of the owner of record.

(b) The name and address of the person, firm or organization preparing the map, sealed with the applicable New York State license seal and signature.

(c) The date, North arrow, written and graphic scale, and Suffolk County Tax Map district, section, block and lot numbers.

(d) The property description shall be prepared by a licensed surveyor or civil engineer. The site plan may reference a land surveyor's map or base reference map. All distances shall be in feet and hundredths of a foot. All angles shall be given to the nearest 10 seconds or closer. The error of closure shall not exceed one in 10,000.

(e) The locations, names and existing widths of adjacent streets and curblines.

(f) The location and owners of all adjoining lands, as shown on the latest tax records.

(g) The location, width and purpose of all existing and proposed easements, setbacks, reservations and areas dedicated to the public use within or adjoining the property.

(h) A complete outline of existing easements filed map restrictions, deed restrictions or covenants applying to the property, and a copy of each of the foregoing shall be attached to any application, failing which any such application shall not be deemed complete.

(i) Existing zoning.

(2) Natural features.

(a) Existing contours with intervals of two feet or less referred to NGVD datum. In addition, spot elevations may be required by the Planning Board as circumstances require in the judgment of the Planning Board.

(b) The approximate boundaries of any areas subject to flooding or stormwater overflow, including wetlands.

(c) The location of existing natural features.

(d) The location of any existing cultural features.

(e) The location of any Federal Emergency Management Agency flood plain boundary lines and required base flood elevations, including free board requirements, where applicable.

(3) Existing structures and utilities.

(a) Outlines of all structures and location of all uses not requiring structures.

(b) Paved areas, including parking areas, sidewalks and vehicular access between the site and public streets.

(c) Locations, dimensions, grades and flow direction of any existing culverts or waterlines, as well as other underground and aboveground utilities within and adjacent to the property.

(d) Other existing development, including fences, landscaping and screening.

(e) The location and use of all buildings and structures within 200 feet of the boundary of the subject property.

(4) Proposed development.

(a) The location of proposed buildings or structural improvements, indicating setbacks from all property lines and horizontal distances from existing structures.

(b) The location and design of all uses not requiring structures, such as off-street parking areas and pedestrian circulation. Parking calculations shall be shown.

(c) The location, direction, power and time of use for any proposed outdoor lighting or public-address systems.

(d) The location and plans for any outdoor signs which must be in accordance with applicable sign regulations.

(e) Grading and drainage plans shall be based on a two-inch (2") rainstorm retention; drainage calculations, contours and spot grade elevations to be shown; test hole data as necessary.

(f) Landscaping, buffering and street tree plans, including material size, quantity and location. A list of plantings shall also be shown.

(g) The location of water and sewer mains, electrical service and cablevision installations, location of water valves and hydrants and/or any alternate means of water supply and sewage disposal and treatment.

(h) An indication that all storage areas for materials, vehicles, supplies, products or equipment shall be located in either a side or rear yard in compliance with this chapter and those areas are adequately fenced or screened.

(i) If the site plan only indicates a first stage, a supplementary plan shall indicate ultimate development.

(j) The location of any fire hydrant, cistern, well or other fire protection device.

(k) Any other information deemed by the Building Inspector or the Planning Board to be necessary and/or useful to determine conformity of the site plan with the spirit and intent of this chapter, specifically including any such information necessary to allow the Architectural Review Board and the Harbor Committee to provide a timely advisory report as provided in § 55-14.5(D) of this chapter.

## 5. Licensed Professionals.

Unless waived by the Planning Board, plans for all required improvements must be submitted by a professional engineer or licensed architect or, if appropriate, a registered landscape architect. Installation of such improvements must be under the direct supervision of a registered architect or licensed engineer.

### § 55-14.5. Site plan application procedure.

A. Presubmission conference/work session. Prior to submission of a site plan application, the applicant or his agent shall meet with the Planning Board at a work session. The purpose of the work session shall be to discuss proposed uses or development and to determine which of the site plan elements shall be submitted to the Planning Board in order for the Board to determine conformity with the provisions and intent of this chapter. Any presubmission conference shall include an evaluation of fees to be paid under § 55-14.4(B)(2) above. Within six (6) months following the presubmission conference, nine copies of the site plan application and any related information as required hereunder shall be submitted to the

Planning Board failing which any later submission of an application shall start at the presubmission stage.

B. Formal submission. The complete site plan application shall be submitted to the Building Inspector, who will determine whether the application is complete for review by the Planning Board. The Planning Board upon letter application may waive any of the site plan elements set forth in § 55-14.4(C)(1) to (4).

C. If the Planning Board determines further information is required, the Planning Board shall promptly notify the applicant and advise how the application is deficient.

D. Referrals.

(1) If the Planning Board determines the application is complete, it shall transmit the application and/or solicit comments and review from the Fire Marshal, the Fire Department and the Ambulance Corps with jurisdiction, the Board of Historic Preservation and Architectural Review (BHPAR), the Harbor Committee or other municipal or county agency or district with jurisdiction or potentially affected by the proposed development. The Planning Board shall comply with the referral requirements of §§ 239-m and 239-nn of the General Municipal Law.

(2) In the case of a site plan application requiring a zoning variance, the site plan may be subject to a preliminary review by the Planning Board prior to any action by the Board of Appeals.

(3) In case of a site plan application requiring a consistency determination under LWRP, the site plan shall be referred to the Harbor Committee for an advisory report prior to any action by the Planning Board.

(4) The Fire Marshal, the Fire Department and the Ambulance Corps with jurisdiction, BHPAR and Harbor Committee shall forward their comments to the Planning Board within 62 days of the request for comments and preliminary review. Absence of any response following this period shall be deemed to mean there are no potential adverse impacts to community services solicited upon preliminary review and no additional requirements are considered necessary by such agency for consideration by the Board in its approval of the site plan. Any agency requesting a thirty day extension of time to respond shall be accorded such extension upon request.

E. Public hearing. If the Planning Board determines that a public hearing is necessary, it shall schedule and hold the same within 62 days of determining the application is complete. In determining whether or not to hold a public hearing, the

Planning Board shall consider the degree of public interest in the application and the extent to which a public hearing can aid the decision making process by providing a mechanism for collection of relevant data.

F. Notice. Notice of the hearing shall be given to the applicant and be made by publication at least 10 days prior to such hearing in the official newspaper of the Village. In addition to such notice, the applicant shall mail a copy of the public notice by certified mail, return receipt requested, at least 10 days prior to the date of the hearing to all owners of property which lies adjacent and/or directly opposite (by extension of lot lines through any street) to that owned by the applicant as determined by their appearance on the last completed assessment roll of the Village and shall file proof of that mailing with the Secretary to the Planning Board not less than five days before the hearing.

G. Decision. Within 62 days of conclusion of the public hearing or, if none was held, within 62 days of determining the application is complete, the Planning Board shall determine whether the site plan application complies with the purposes and specifications of the Zoning Code and shall so inform the Building Inspector and Village Clerk and the applicant, in writing, of its approval, approval with modifications, or disapproval. This sixty-two-day period may be extended by the Planning Board upon the written consent of the applicant.

H. No application shall be deemed complete until any review process required pursuant to the State Environmental Quality Review Act (SEQRA) has been completed or if a positive declaration is made.

I. Amendments to a site plan shall be processed in the same manner as an application for site plan review except as the Planning Board may waive any of the requirements herein on any such amendatory application. Any such application shall comply with all applicable requirements under SEQRA. Any applicant who receives site plan approval will be required as a condition of approval to execute an affidavit which states that the applicant will notify the new property owner of the special conditions to the site plan approval in the event that he/she sells the property.

J. An approved site plan shall be valid for a period of two years from the date of approval. All work proposed on the plan shall be complete within two years from the date of approval unless a longer period was approved or the applicant obtains an extension from the Planning Board.

K. No excavation, demolition, filling, regrading, clearing, tree removal or any other work in preparation of future use of a site may take place until site plan approval and express written permission has been received from the Planning Board.

L. A statement shall be placed on all site plans approved by the Planning Board to the effect that the owner agrees to comply with the plan and all conditions noted thereon. The owner or a bona fide agent responsible for completion of the work shall be required to sign such statement and provide such guaranty in an amount determined by the Planning Board before any approved plans will be released by the Planning Board. In the event that the site plan is not signed by the owner or his agent within 90 days of the date of the resolution of the Planning Board approving the plan, the resolution shall be deemed null and void. The Planning Board may extend the 90 day period as circumstances require.

M. To obtain a building permit, an applicant shall submit an undertaking secured by cash or other surety acceptable to the Village Board of Trustees to guarantee performance of required improvements. No certificate of occupancy shall be issued nor any undertaking released until all requirements of site plan approval, including construction of improvements, are completed in a manner satisfactory to the Planning Board.

N. Where a site plan application also requires approval for a special exception use, any building permit which is issued shall be in accordance with both the conditions established for the special exception use as well as for the site plan. Where both special exception use and site plan approval are required, each application may be processed concurrently, excepting as may be required by SEQRA.

§ 55-14.6. Waiver of requirements.

A. The Planning Board may waive the strict application of the submission requirements set forth hereinabove in the following instances:

(1) Where the application involves minor additions or renovations, including structural repair or replacement occasioned by accidental damage, long-term deterioration or compliance with the requirements of health, safety or fire regulations, provided that none of the foregoing involve a change of use or an expansion of floor area devoted to the primary use of the premises.

(2) Change of use provided that the change of use:

(a) Does not result in an increase in the floor area;

(b) Does not have a parking space requirement greater than the parking space requirement for the existing use as is set forth in the schedule of off-street parking space requirements of this Code;

(c) If either the existing use or the new use or both is not listed as a permitted or special exception use in the Table of Uses, then the provisions of this subsection shall not apply and the application shall be reviewed as a full site plan; and

(d) Does not result in different, increased, new or additional Health Department requirements.

B. In the case of a waiver, the Planning Board shall be empowered to require such information from the applicant as it deems necessary to insure that the spirit and intent of site plan review is carried out.

C. Where the Planning Board has elected to waive full site review as provided herein, no public hearing shall be required; however, the decision to waive shall be by formal resolution at a regular public meeting of the Planning Board.

#### § 55-14.7. Violations and penalties.

Any violation of the approval or conditions, including specific covenants or easements, established by the Planning Board with respect to a site plan application shall be deemed a violation of this chapter punishable under the provisions of § 55-17.6.

### ARTICLE 15. Protection of Natural Features

#### § 55-15.1. Purpose of Article

The regulations in this Article are adopted to protect and perpetuate natural features and undisturbed areas. Rapid growth and increasing demands on natural resources are encroaching upon and despoiling marshes, watercourses, natural drainage systems, watersheds and water recharge areas, as well as beaches, bluffs and other coastal features. This encroachment and despoliation are in turn eliminating or disrupting associated natural resources and natural processes, which, in an undisturbed and natural condition, constitute important physical, social, aesthetic, recreational and economic assets. These regulations are therefore designed to preserve and maintain these features, resources and processes by minimizing their disturbance. This will prevent or lessen damage caused by erosion, turbidity, siltation and saltwater intrusion; prevent loss of fish, shellfish and other beneficial marine organisms, aquatic

wildlife and vegetation and the habitat necessary to sustain the same; lessen the dangers imposed by flooding and storm tides; and help to protect the underground water supply through preservation of natural filtration and recharge sites.

§ 55-15.2. Natural features, areas, resources and systems.

The following are hereby designated as natural features, areas, resources or systems in need of special protection by regulation in this Article:

- A. Wetlands.
- B. Watercourses.
- C. Tidal waters.
- D. Beaches.
- E. Beach vegetation.
- F. Dunes.
- G. Bluffs.

§ 55-15.3. Approval Required.

No person shall undertake any of the following activities or make any of the following improvements without first obtaining approval from the Harbor Committee pursuant to this Article and Chapters 52(A), 53 and 53(A).

- A. Wetlands, waters and beaches.

(1) Fill in or near. Place or deposit or permit to be placed or deposited debris, fill, sand, gravel or any material, including structures, into or upon or within 150 feet of any boundary of any wetland, watercourse, tidal water or beach.

(2) Clear or dredge in or near. Clear, dig, dredge or in any other way add to, alter or remove any material, including natural products, from or within 150 feet of any boundary of any wetland, watercourse, tidal water or beach.

(3) Construct in or near. Erect, construct, reconstruct, enlarge or alter any structure, including but not limited to any groin, bulkhead, dock, boathouse, residence, accessory structure, road or other improvement whatsoever, in, on or under or within 150 feet of any boundary of any wetland, watercourse, tidal water or beach.

(4) Site new disposal systems or storage facilities in or near. Build, create or install any new cesspool, septic tank, leaching field or other in-ground sewage or other waste disposal or storage system, including any pipe, conduit or other part thereof, or any aboveground or in-ground holding tank for any liquid other than water and thereafter maintain, operate or make use of the same in, upon or under or within 200 feet of any boundary of any wetland, watercourse, tidal water or beach.

B. Bluffs. Perform any of the activities described in Subsection A(1) through (4) of this section (e.g., filling, clearing or digging of land or construction, erection, alteration or installation of structures) within 100 feet of the crest of the bluff.

§ 55-15.4. Bluff.

No building or other structure shall be erected, constructed or reconstructed within 100 feet from the crest of a bluff.

§ 55-15.5. Wetland Setbacks.

The structures, uses and activities listed below shall be set back the following minimum distances from the upland boundary of all wetlands.

A. Installation of wastewater disposal system structures: 100 feet.

B. Construction or erection of all other structures: 75 feet.

C. Clearing, fertilizing of vegetation, use of herbicides or the establishment of turf, lawn or landscaping: 50 feet.

§ 55-15.6. Exceptions to Setbacks.

A. Waterfront districts and marinas. The wetland setbacks contained herein shall not apply to any structure on a lot in the Waterfront (WF) use district or to any structure which is part of a lawfully operating marina or recreational marina in any district, provided that:

(1) The structure is either water-dependent in that it is used for the servicing of boats, the unloading of fish or the like or for some other reason cannot feasibly be located landward of the otherwise applicable setback line; and

(2) Site plan approval has first been obtained therefor.

B. Undersized lots. The Harbor Committee is authorized to reduce any setback required under this Article up to 50% of the

requirement where the lot is so undersized that compliance otherwise cannot be achieved.

§ 55-15.7. Standards for Harbor Committee Review.

The Harbor Committee shall use all relevant guidelines within the Local Waterfront Revitalization Program, the Harbor Management Plan and Chapters 52(A), 53 and 53(A) Wetlands of the Village Code in reviewing any application under this Article. Whenever any aforesaid enactment is inconsistent with the provisions of this Article, the more restrictive and greater limitation shall prevail.

§ 55-15.8. Exempted Activities.

Nothing in this Article shall be deemed to apply to:

A. Fishing, shellfishing, hunting and trapping which is otherwise legal and for which all necessary licenses and permits shall have been obtained.

B. The demolition, removal or replacement of existing fuel tanks, fuel lines, fuel dispensers or other existing hazardous or toxic storage facilities, including necessary site work, required by Article 12 of the Suffolk County Sanitary Code, provided that the following conditions are satisfied:

(1) Approval has been obtained for such work from the Suffolk County Department of Health Services;

(2) A building permit has been issued incorporating the recommendations of any agency maintaining regulatory authority over this activity; and

(3) The imposition of reasonable conditions by the Building Inspector so as to protect the natural environment.

ARTICLE 16. Tidal Flood Hazard Overlay District

§ 55-16.1. Findings of fact.

The Tidal Flood Hazard Overlay District identifies those areas of the Village of Sag Harbor in which flood hazards occur as a result of periodic storms and inundation. This results in the loss of property and potentially of life, health and safety hazards, disruption of commerce and government services, extraordinary public expenditures for flood protection and relief and impairment of the tax base, all of which adversely affect the public health, safety and general welfare. Such adverse affects are caused by the occupancy of areas subject to flood hazards by uses vulnerable to floods, including those

which are inadequately elevated, floodproofed or otherwise protected from flood damages.

§ 55-16.2. Purpose.

A. To minimize the dangers, damages and related hazards resulting from storms and flooding conditions and to promote the health, safety and general welfare of the village, it is the intent of the Village Board of Trustees in establishing the Tidal Flood Hazard Overlay District to provide regulations which apply to said overlay district in addition to those regulations of the standard districts set forth in this chapter.

B. More specifically, those regulations are designed to:

(1) Protect human life and health;

(2) Minimize expenditure of public money for costly flood control projects;

(3) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;

(4) Minimize prolonged business interruptions;

(5) Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, and streets and bridges located in areas of special flood hazard;

(6) Help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard so as to minimize future flood blight areas;

(7) Ensure that potential buyers are notified that property is in an area of special flood hazard; and

(8) Ensure that those who occupy the areas of special flood hazard assume responsibility for their actions.

§ 55-16.3. Methods for reducing flood hazard.

In order to accomplish its purposes, this Article includes methods and provisions for:

A. Restricting or prohibiting uses which are dangerous to health, safety and property due to water or erosion hazards or which result in damaging increases in erosion or in flood heights or velocities;

B. Requiring that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;

C. Controlling the alteration of natural floodplains and natural protective barriers which help to protect upland areas;

D. Controlling the filling, grading, dredging and other development which may increase flood damage; and

E. Preventing or regulating the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards in other areas.

#### § 55-16.4. Applicability of tidal hazard regulations.

General. This tidal flood hazard regulation shall apply to all areas of special flood hazard in the Village of Sag Harbor.

#### § 55-16.5. Basis for establishing special flood hazard areas (hereinafter Overlay District).

The areas of special flood hazard have been identified by the Federal Emergency Management Agency for the Village of Sag Harbor, Community Number 360807, in Flood Insurance Rate Maps enumerated 36103C0193G, 36103C0194G, 36103C0527G, 36103C0531G and 36103C0532G whose effective date is May 4, 1998, as amended. Said documents including any amendments thereto are hereby adopted and declared to be a part of this chapter and are filed at the Village Clerk's office.

A. Compliance. No building or structure shall be built, erected, moved, altered or extended, and no land, building or structure shall be occupied or used, including mining, dredging, filling, grading, paving, excavation or drilling operations, in the Tidal Flood Hazard Overlay District unless it conforms in all respects to the provisions of this Article, in addition to all other applicable provisions of this chapter.

B. Abrogation and greater restrictions. The provisions of this Article are not intended to repeal, abrogate or impair any existing easements, covenants or deed restrictions. Wherever the provisions of this Article conflict or overlap with those in other Articles of this chapter or with any other ordinance, local law, regulation, easement, covenant or deed restriction, the provisions of the more restrictive article, ordinance, local law, regulation, easement, covenant or deed restriction shall control.

C. Interpretation. In the interpretation and application of this Article, its provisions shall be:

(1) Considered as minimum requirements;

(2) Liberally construed in favor of the village; and

(3) Deemed neither to limit nor repeal any other powers granted under state statutes.

D. Warning and disclaimer of liability.

(1) The degree of flood protection required by this Article is considered reasonable for regulatory purposes since it is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This Article does not imply that land outside the areas of special flood hazard or the uses permitted within such areas will be free from flooding or flood damages.

(2) This Article shall not create liability on the part of the Village of Sag Harbor, any officer or employee thereof or the Federal Emergency Management Agency for any flood damages that result from reliance on this Article or any administrative decision lawfully made thereunder.

E. Definitions. For the purpose of this Article, the following terms shall have the indicated meanings:

APPEAL -- A request for a review of the local administrator's interpretation of any provision of this chapter or a request for a variance from the Zoning Board of Appeals.

AREA OF SHALLOW FLOODING -- A designated AO, AH or VO Zone on the Flood Insurance Rate Map (FIRM) with a one-percent or greater annual chance of flooding to an average annual depth of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

BASE FLOOD -- The flood having a one-percent chance of being equaled or exceeded in any given year.

BREAKWAY WALL -- A wall that is not part of the structural support of the building and is intended through its design and construction to collapse under special lateral loading forces without causing damage to the elevated portion of the building or the supporting foundation system.

COASTAL HIGH HAZARD AREA -- Areas subject to high velocity waters, including but not limited to hurricane wave wash. Such areas are designated on the Flood Insurance Rate Map.

CRAWL SPACE -- An enclosed area beneath the lowest elevated floor, 18 inches or more in height, which is used to service the underside of the lowest elevated floor. The elevation of the floor of this enclosed area, which may be of soil, gravel, concrete or other material, must be equal to or above the lowest adjacent exterior grade, the enclosed crawl space area shall be properly vented to allow for equalization of hydrostatic forces which would be experienced during periods of flooding.

ELEVATED BUILDING:

(1) A non-basement building:

(a) Built, in the case of a building in Zones A1-A30, AE, A, A99, AO, AH, B, C, X, or D, to have the top of the elevated floor, or, in the case of a building in Zones V1-30, VE or V, to have the bottom of the lowest horizontal structure member of the elevated floor elevated above the ground level by means of pilings, columns (posts and piers) or shear walls parallel to the flow of the water; and

(b) Adequately anchored so as not to impair the structural integrity of the building during a flood of up to the magnitude of the base flood.

(2) In the case of Zones A1-A30, AE, A, A99, AO, AH, B, C, X or D "elevated building" also includes a building elevated by means of fill or solid foundation perimeter walls with openings sufficient to facilitate the unimpeded movement of floodwaters.

(3) In the case of zones V1-V30, VE or V, "elevated building" also includes a building otherwise meeting the definition of "elevated building," even though the lower area is enclosed by means of breakaway walls that meet the federal standards.

FLOOD or FLOODING [Added 3-3-1998 by L.L. No. 4-1998]:

(1) A general and temporary condition of partial or complete inundation of normally dry land areas from:

(a) The overflow of inland or tidal waters;

(b) The unusual and rapid accumulation or runoff of surface waters from any source.

(2) The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a

severe storm, or by an unanticipated force of nature, such as a fresh flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in Subsection (1)(a) above.

FLOOD INSURANCE RATE MAP (FIRM) -- The official map on which the Federal Emergency Management Agency has delineated both the areas of special flood hazard and the risk premium zones and base flood elevations applicable to the Village of Sag Harbor.

FREE BOARD -- Any separation between base flood elevation and bottom floor joists required by the New York State Uniform Fire Prevention and Building Code.

LOWEST FLOOR -- The lowest level, including basement or cellar, of the lowest enclosed area. An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement is not considered a building's "lowest floor," provided that such enclosure is not built so as to render the structure in violation of the applicable nonelevation design requirements of this chapter.

NEW CONSTRUCTION -- Buildings or structures for which the start of construction commenced on or after the effective date of Article 16, Tidal Flood Hazard Overlay District.

START OF CONSTRUCTION -- Includes substantial improvement and means the initiation, excluding planning and design, of any phase of a project, physical alteration of the property, and shall include land preparation, such as clearing, grading and filling, installation of streets and/or walkways; excavation for a basement, footings, piers or foundations; or the erection of temporary forms. It also includes the placement and/or installation on the property of accessory buildings (garages, sheds), storage trailers and building materials. For manufactured homes the "actual start" means affixing of the manufactured home to its permanent site.

SUBSTANTIAL IMPROVEMENT -- Any reconstruction, rehabilitation, addition or other improvement of a structure, the cost of which equals or exceeds fifty percent (50%) of the market value of the structure before the start of construction of the improvement. The term includes structures which have incurred substantial damage, regardless of the actual repair work performed. The term does not, however, include either:

A. Any project for improvement of a structure to correct existing violations of state or local health, sanitary or safety code specifications which have been identified by the local code

enforcement official and which are the minimum necessary to assure safe living conditions; or

B. Any alteration of an historic structure, provided that the alteration will not preclude the structure's continued designation as an historic structure.

VARIANCE -- A grant of relief by the Zoning Board of Appeals from the requirements of this chapter which permits construction or use in a manner that would otherwise be prohibited by this chapter.

§ 55-16.6. Responsibilities of Building Inspector.

A. Issuance of building permits and certificates of occupancy.

(1) Prior to issuing any building permit or certificate of occupancy, the Building Inspector shall determine whether or not the proposed building or structure or use is located within the Overlay District and, if it is, what the applicable base flood elevation is in that location. If it is so located in the district, he shall proceed with the application in accordance with this Article as well as with the other procedures of this chapter.

(2) In reviewing any application for a building or structure in any area of special flood hazard, the Building Inspector shall obtain and maintain the following information:

(a) The actual elevation of the bottom of the lowest structural members of the lowest floor, excluding pilings and columns, of the building or structure in relation to mean sea level and to the base flood elevation for all new or substantially improved structures.

(b) For all new or substantially improved floodproofed structures:

[1] He shall verify and record the actual elevation to which such structure has been floodproofed in relation to mean sea level and to the base flood elevation; and

[2] A certification by a registered engineer or architect that the floodproofing methods for any nonresidential structure meet the flood-proofing criteria in § 55-16.7(B)(2).

(c) In coastal high-hazard areas, the certification by a registered engineer or architect required by § 55-16.7(C)(2)(c)(3).

(d) Plans of any walls to be used to enclose space below the base flood elevation.

(e) A site plan in duplicate drawn to scale showing the nature, location, dimensions and elevations of the site area in question; the existing and proposed structures; and any fill, storage of materials; drainage facilities, sanitary waste disposal system and utility services.

(f) Such other information as the Building Inspector shall determine to be necessary for the review of the building permit or certificate of occupancy application.

(3) All records pertaining to the provisions of this Article shall be maintained and made available for public inspection by the Building Inspector.

B. Permit review. He shall:

(1) Review all applications for building permits and certificates of occupancy to determine that the permit requirements of this Article have been satisfied.

(2) Review all such permits and certificates to determine that all necessary permits have been obtained from those federal, state or local governmental agencies from which prior approval is required.

(3) Review all such permits and certificates in the coastal high hazard area of the area of special flood hazard to determine if the proposed development alters sand dunes or any other topographic feature so as to increase potential flood damage.

(4) Review plans for walls to be used to enclose space below the base flood level in accordance with § 55-16.7(C)(2)(c), (d) and (e).

§ 55-16.7. General and specific standards.

A. General standards (A and V Zones). In all areas of special flood hazard, the following standards are required:

(1) Anchoring.

(a) All new construction and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure.

(2) Construction materials and methods.

(a) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.

(b) All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.

(3) Utilities.

(a) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system.

(b) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharge from the systems into floodwaters.

(c) On-site water disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

(d) In addition, all water supply and sanitary sewage systems shall be approved and meet the specifications of the Suffolk County Department of Health.

(e) Electrical, heating, ventilation, plumbing and air-conditioning equipment and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

(4) Subdivision proposals.

(a) All subdivision proposals shall be consistent with the need to minimize flood damage.

(b) All subdivision proposals shall have public utilities and facilities, such as sewer, gas, electrical, and water systems, located and constructed to minimize flood damage.

(c) All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage.

(d) Base flood elevation data shall be provided for subdivision proposals and other proposed development which contain at least fifty (50) lots or five (5) acres, whichever is less.

B. Specific standards (A and V Zones). In all areas of special flood hazard where base flood elevation data has been provided as set forth in § 55-16.5, the following standards are required:

(1) Residential construction. New construction and substantial improvement of any residential structure shall have the lowest floor surface in the lowest enclosed area of the building or structure, including basement, elevated to or above the base flood elevation.

(2) Nonresidential construction. New construction and substantial improvement of any commercial, industrial or other nonresidential structure shall either have the lowest floor surface in the lowest enclosed area, including the basement, elevated to or above the level of the base flood elevation, or, together with attendant utility and sanitary facilities, shall:

(a) Be floodproofed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water;

(b) Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and

(c) Be certified as follows: A registered professional engineer or architect shall develop and/or review structural design, specifications and plans for the construction and shall certify that the design and methods of construction are in accordance with accepted standards of practice to make the structure watertight below the base flood level, with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy, and a record of such certificates which includes the specific elevation, in relation to mean sea level, to which structures are floodproofed shall be maintained by the Building Inspector.

(3) Where residential or nonresidential structures are to be elevated in order to comply with this Article, for all new construction and substantial improvements, fully enclosed areas below the lowest floor that are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria: a minimum of two (2) openings having a total net area of not less than one (1) square inch for every square foot of enclosed area subject to flooding shall be provided; the bottom of all openings shall be no higher than one (1) foot above grade; openings may be equipped with screens, louvers or other coverings or devices,

provided that they permit the automatic entry and exit of floodwaters.

C. Coastal high hazard area (V Zones). Coastal high hazard areas are located within the areas of special flood hazard established hereunder. These areas have special flood hazards associated with high velocity waters from tidal surges and hurricane wave wash; therefore, the following provisions shall apply:

(1) Location of structures.

(a) Where there is a dune or bluff formation, the nearest part of any building or structure, other than a walkway, stair or stile, shall be at least fifty (50) feet landward from the crest of the dunes or bluff, except that the Building Inspector may require a greater distance if the intended building or structure would interfere with the natural slope of the landward side of the dune.

(b) On all other water frontage, all buildings or structures shall be located at least twenty-five (25) feet landward of the reach of the mean high tide or the edge of the tidal wetland, except that any accessory building or structure may be located within such setback if the Zoning Board of Appeals finds that it will not tend to deteriorate ecological values of the tidal wetland; provided, however, that in no case shall such distance be less than that required by the applicable dimensional regulations of this chapter.

(c) One (1) walkway, stair or stile, adequate for access across the crest of the dune or bluff, may be installed or placed in an area seaward of a point fifty (50) feet landward from the crest of the dunes or bluff for each existing waterfront lot. In a new land subdivision, there shall be not more than one (1) walkway, stair or stile for each two (2) waterfront lots.

(2) Construction methods.

(a) Elevation. All buildings or structures and mechanical equipment, such as, but not limited to, heating plants, air conditioners, hot-water heaters and laundry equipment shall be elevated so that the lowest portion of the structural members supporting them and the lowest floor are located no lower than the base flood elevation level, with all space below such lowest supporting members open so as not to impede the flow of water, except for breakaway walls.

(b) Structural support.

[1] All buildings or structures shall be securely anchored on pilings or columns. At the minimum, bottom floor joists shall be secured to wood girders which, in turn, shall be bolted [minimum of two (2) galvanized through-bolts of five-eighths (5/8) inch diameter, washers and nuts per connection] to pressure-treated wood spiles with butt ends.

[2] Pilings or columns used as structural support and the building or structure attached thereto shall be designed and anchored to resist flotation, collapse and lateral movement due to the effects of wind and water loads acting simultaneously on all building components. Wind and water loading values shall each have a one-percent chance of being equaled or exceeded in any given year (one-hundred-year mean recurrence interval). At the minimum, wood spiles shall be driven into the ground to a depth of at least six (6) feet below the height of mean sea level. It shall be permissible to wash the spiles to a depth of mean sea level and drive the spiles the remaining six-foot minimum below mean sea level. Spiles shall be properly anchored and spaced and braced in accordance with accepted structural design standards. Spiles shall be braced horizontally and diagonally.

[3] There shall be no fill used for structural support.

(c) Certification. A registered professional engineer or architect shall develop or review the structural design, specifications and plans for the construction and shall certify that the design and methods of construction to be used are in accordance with accepted standards of practice for meeting the provisions of this Article. The piling or column plan for structural support shall be endorsed by the contractor who installed them.

(d) Space below the lowest floor.

[1] Any alteration, repair, reconstruction or improvement to a structure stated after the enactment of this Article shall not enclose the space below the lowest floor unless breakaway walls are used as provided for in this section.

[2] Breakaway walls shall be allowed below the base flood elevation, provided that they are nonsupporting and are designed so as to collapse under wind and water loads without causing collapse, displacement or other structural damage to the elevated portion of the building or supporting foundation system. For the purposes of this section, a breakaway wall shall have a design safe loading resistance of not less

than ten (10) and no more than twenty (20) pounds per square foot. Use of breakaway walls which exceed a design safe loading resistance of twenty (20) pounds per square foot (either by design or when so required by local or state codes) may be permitted only if a registered professional engineer or architect certifies that the designs proposed meet the following conditions:

[a] Breakaway wall collapse shall result from a water load less than that which would occur during the base flood.

[b] The elevated portion of the building and supporting foundation system shall not be subject to collapse, displacement or other structural damage due to the effects of wind and water loads acting simultaneously on all building components, structural and nonstructural. Maximum wind and water loading values to be used in this determination shall each have a one-percent chance of being equaled or exceeded in any given year (one-hundred-year mean recurrence interval).

[3] If breakaway walls are utilized, such enclosed space shall not be used for human habitation. Such enclosed space shall be usable solely for the parking of vehicles, building access or storage.

(e) Building permit application: supplementary drawings. In addition to the customary requirements of the Building Code, as amended from time to time, an application for a building permit for a structure in the coastal high hazard area shall include the following:

[1] A piling plan drawn to a scale of one-fourth (1/4) inch equals one (1) foot zero (0) inches, showing the actual dimensions and location of the structures indicating the height above mean sea level of all floor joists and the depth below mean sea level of all spiles, together with all such other information as may be necessary in order to determine whether or not compliance with the requirements hereof is proposed.

[2] A detailed drawing of any proposed breakaway wall.

(3) Sand dunes.

(a) There shall be no alteration of sand dunes, bluffs or any other topographic feature which would increase potential flood damage.

(b) No person, firm or corporation shall in any manner weaken, damage or undermine any portion of the sand dune

or bluff, or of any snow fence, fencing, sand, grass or other work or installation supplementing said sand dune or bluff in the Village of Sag Harbor.

(c) No person, firm or corporation shall attach any device or structure whatsoever to said sand dunes or bluffs, or to any part thereof, or take any action which might reasonably tend to weaken, damage, break or undermine said sand dune or bluff, or any part thereof, or any fencing or other structure supplemental thereto.

#### ARTICLE 17. Administration and Enforcement

##### § 55-17.1. Interpretation of provisions.

In applying and interpreting this chapter, its provisions shall be held to be the minimum requirements adopted for the promotion of the public health, safety, morals, comfort, convenience or the general welfare. The following more specific regulations shall apply:

A. Nothing contained in this chapter shall be taken to repeal, abrogate, annul or in any way impair or interfere with the New York State Uniform Fire Prevention and Building Code or any rules or regulations adopted or issued thereunder or any other provisions of law or code or regulation existing or as may be adopted in the future when not in conflict with any of the provisions of this chapter; nor is it intended by this chapter to interfere with or abrogate or annul any easements, covenants or other agreements between parties; provided, however, that when this chapter imposes a greater restriction upon the use of buildings, structures, premises, lots or land or upon the height of buildings or structures or requires larger lots, yards, courts or other open spaces than imposed or required by such other provisions of law, code or regulation or by such easements, covenants or agreement, the provisions of this chapter shall control.

B. Wherever the provisions of any other law of code or regulation impose a greater restriction than this chapter, the provisions of such other law or code or regulation shall control.

C. No provision contained in this chapter shall be construed as justifying the encroachment of any building or structure within any street lines now or hereafter laid down on any subdivision plat filed in the office of the County Clerk or village highway right-of-way.

§ 55-17.2. Building permits.

A. No building or structure shall be erected, constructed, reconstructed, structurally altered, demolished or moved unless a building permit authorizing the same shall have been issued by the Building Inspector. No excavation for the erection, construction, reconstruction, structural alteration, demolition or moving of any building or structure shall be commenced unless such building permit shall have been issued. No clearing of any lot or parcel shall occur except incident to and after the issuance of a building permit. All procedures with respect to applications for and issuance of building permits shall be in conformity with the provisions of the Building Code. All such applications shall be accompanied by such other information as may be necessary for the enforcement of this chapter. No permit authorizing the demolition of a building shall occur unless the applicant provides a current title report approved as to form by the Village Attorney enabling identification of any mortgagee or lien holder encumbering the premises and the applicant further provides a written executed consent from any said mortgagee and/or lien holder authorizing said demolition with any said consent in a form and substance approved by the Village Attorney.

B. Review of applications.

(1) No building permit shall be issued for the erection, construction, reconstruction, structural alteration, demolition, restoration, repair or moving of any building or structure, or part thereof, unless the plans and intended use indicate that such building or structure is designated and intended to conform in all respects to the provisions of this chapter and, when approval of the Board of Historical Preservation and Architectural Review is required pursuant to Article XV of this chapter, said Board has issued its approval.

(2) The Building Inspector shall review any application for a building permit and determine whether:

(a) The application is complete for his initial review;

(b) The application complies with the requirements of the Village Code;

(c) Additional approvals are required from Village agencies, including the Zoning Board of Appeals, Planning Board, Harbor Committee or Board of Historic Preservation and Architectural Review.

C. No building permit shall be issued where a lot or lots are formed from part of an existing lot, whether already improved or not, if the separation is effected in such a manner that any of the lots or any existing or proposed improvements thereon contravene the provisions or intent of this chapter or of the subdivision of land regulations of the village. No building permit shall be issued for a lot which was created after the date of this section in violation of the regulations of Chapter 46, Subdivision of Land.

D. The Building Inspector shall require a topographic survey as a part of each application for a building permit showing site drainage and any proposed drainage facilities to be constructed, before the application is considered.

(1) Applications for a building permit must include a declaration by the owner and/or its duly authorized agent that:

(a) Land adjoining a street or highway will be graded in accordance with village recommendations and specifications.

(b) Should site grading cause flooding, steps will be taken at the owner's expense to correct same by construction of a leaching pool or catch basin. The location and installation of such pool or basin shall be in accordance with village recommendations and specifications. All surface water runoff shall be contained on site at all times and any design shall comply with § 55-14.4(C)(4)(e). The Village Highway Department will be consulted by the owner prior to the construction and placing of said disposal facilities for runoff and drainage.

(2) Stormwater recharge basins. Any stormwater recharge basin shall be designed so as to comply with all current best practice engineering standards and shall prior to construction be approved by the Village Engineer.

(3) Berms and grading.

(a) No berms shall be approved unless the road grade is higher than the individual property.

(b) Grading of residential property with a thirty-five-foot setback shall be level at road grade for a distance of twelve (12) feet. The suggested maximum grade for residential driveways is fifteen percent (15%); for commercial driveways, eight percent (8%).

(c) For any destruction or breakage to the highway surface caused by delivery trucks, graders, lumber trucks, etc., the owner of the construction shall be liable for the cost of repairs or replacement of the damaged highway area.

(4) No building permit shall be issued prior to receiving an approval of the drainage proposal from the Highway Department in whose jurisdiction the site is located.

E. The Building Inspector shall require the applicant for a building permit, except in the case of one- and two-family dwellings, to complete the site plan review procedure as set forth in Article 14 of this chapter. The Building Inspector shall transmit the site plan review application to the Planning Board with his recommendations. No building permit application shall be approved prior to receiving site plan approval from the Planning Board.

F. No building permit shall be issued for any building structure or use for which a variance or special exception use approval has been granted unless such building permit conforms in every way to the conditions established in the written resolution authorizing such a variance or special exception use.

G. After the completion of the footings and establishing of the forms on the first course of the foundation walls or equivalent structure, the owner shall notify the Building Inspector. If required by the Building Inspector, the owner shall cause a survey to be made by a licensed land surveyor showing the true location of such foundation walls with respect to the lot lines of the lot, and a copy of such survey shall be filed with the Building Inspector before construction is continued.

§ 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 into use, in whole or in part, after the effective date of this chapter or to use or to 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.

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.

C. No certificate of occupancy shall be issued for any building, structure, premises, lot or land unless the erection, construction, reconstruction, structural alteration, restoration, repair or moving of such building or structure, or part thereof, and the intended use thereof are in conformity in all respects with the provisions of this chapter.

D. The Building Inspector shall obtain a written resolution from the Board of Appeals before issuing a certificate of occupancy in a case involving a variance from the provisions of this chapter.

E. No certificate of occupancy shall be issued unless all buildings, structures and units as shown on the building permit application are completed in whole and are complying in every respect to this chapter and the New York Uniform Fire Prevention and Building Code, except that the Building Inspector shall have the authority to issue a certificate of occupancy when a dimensional variance of not more than one (1) foot is required due to improper siting of the building or a similar circumstance and when, in his sole discretion, such relief is warranted.

F. The Building Inspector may issue a certificate of compliance in place of and instead of a certificate of occupancy whenever he deems a certificate of compliance more appropriate than a certificate of occupancy; provided, however, that the procedure, prerequisites and fees for obtaining a certificate of compliance shall be the same as are applicable to a certificate of occupancy, and further provided that the term "certificate of occupancy," used in various places throughout this chapter, shall be deemed to include the term "certificate of compliance."

#### § 55-17.4. Fees.

A. Fees for a building permit application and for issuance of building permits, certificates of occupancy and any other applications and related reviews required pursuant to this chapter shall be as set by resolution by the Board of Trustees and shall be available to applicants at the office of the Village Clerk and the Building Inspector. Any such fee shall be increased by 100% whenever the work subject to a permit has been started prior to the issuance of the permit.

B. Completeness of applications. Unless the Board of Trustees has, by resolution, specifically directed that a particular fee be collected only after a local agency approval, no application for a review, permit or approval required under this chapter shall be deemed complete for the purpose of scheduling a public hearing or for the purpose of approval by the local agency reviewing the same, until and unless all fees required of such application have been remitted to and collected by the Village. Should the foregoing provision be deemed in any way inconsistent with the timing requirements of § 7-712-a of the New York Village Law, those state law provisions are hereby superseded to the extent that they might be construed to require local agency action before the remittance of proper fees.

§ 55-17.5. Enforcement.

A. It shall be the duty of the Building Inspector to administer and enforce the provisions of this chapter.

B. The Building Inspector shall maintain files of applications or permits and certificates of occupancy, which files shall be open to public inspection at the office of the Village Clerk or the Building Department. He shall keep a record of every identifiable complaint of a violation of any of the provisions of this chapter and of the disposition of each such complaint. He shall file a report monthly to the Board of Trustees on the operations of his office.

C. Should said Building Inspector be in doubt as to the meaning or intent of any provision of this chapter or as to the location of any district boundary line on the Zoning Map or as to the propriety of issuing a building permit or a certificate of occupancy in a particular case related to the provisions of this chapter, he shall appeal the matter to the Board of Appeals for interpretation and decision without the requirement of any application fee.

D. If the Building Inspector should mistakenly issue a building permit or any form of approval which violates the provisions of this chapter, that building permit and authorization of approval shall be invalid.

E. Expiration and extension of building permits.

(1) Any building permit issued by the Building Inspector shall expire automatically on the 90th day after the date of issuance, unless work has been started within such ninety-day period.

(2) Any permit issued by the Building Inspector shall expire automatically one (1) year after the date of issuance, unless the entire building or structure has been completed in accordance with the filed and approved plans upon which the issuance of the original building permit was based within such one-year period.

(3) Upon good cause shown to the satisfaction of the Building Inspector, which good cause at the discretion of the Building Inspector shall include a situation deemed a hardship to the satisfaction of said Building Inspector, said Building Inspector is authorized to grant not more than two (2) ninety-day extensions or a total of one hundred eighty (180) days, except that no extension shall be granted unless the proposed construction conforms to the provisions of this chapter in effect at the time the application for extension is made. Such

extensions may only run consecutively and shall commence on the day following the expirations of the original permit or first extension thereof.

(4) Any permit holder may apply for an extension or additional extension as set forth in Subsection E(1), (2) and (3) of this section, provided that such application is made in writing, setting forth the reasons therefor. Any such application must be made in writing and filed with the office of the Village Clerk before 4:00 p.m. on the day before the permit or extension will expire. If the expiration of such a permit or prior extension falls on a Sunday or legal holiday, such application for the extension or further extension shall be filed with the office of the Village Clerk before 4:00 p.m. on the last regular business day preceding said Sunday or legal holiday.

§ 55-17.6. Penalties for offenses.

A. Violation of any provision or requirement of this chapter or violation of any statement, plan, application, permit or certificate approved under the provisions of this chapter shall be considered a violation pursuant to the Penal Law of the State of New York punishable by a fine not exceeding \$1,000 or by imprisonment for a term not exceeding fifteen (15) days, or by both such fine and imprisonment. The continuation of a violation of this chapter shall constitute, for each day the violation is continued, a separate and distinct violation hereunder.

B. The owner, general agent or contractor of a building, structure, lot, or part thereof, where such violation has been committed or does exist shall be guilty of such an offense.

C. Any agent, contractor, architect, builder, corporation or other person who commits, takes part or assists in or refuses to abate or correct any such violation shall also be guilty of such violation.

D. The imposition of penalties herein prescribed shall not preclude the Village or any person from instituting appropriate legal action or proceeding to prevent the unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use or to restrain, correct or abate a violation or to prevent the illegal occupancy of a building, structure, premises, lot or land, and to seek appropriate civil penalties, including fines and monetary damages.

ARTICLE 18. General Provisions

§ 55-18.1. Amendments.

This chapter or any part thereof may be amended, supplemented or repealed, from time to time, by the Board of Trustees on its own motion or upon recommendation by the Planning Board after public hearing according to law. An individual may petition for a zoning amendment, which petition shall be accompanied by a fee as set by resolution of the Board of Trustees from time to time.

§ 55-18.2. Severability.

Should any section or provision of this chapter be decided by the courts to be unconstitutional or invalid, such decision shall not affect the validity of this chapter as a whole or any part thereof other than the part so decided to be unconstitutional or invalid.

§ 55-18.3. When effective.

This chapter shall take effect upon filing with the Secretary of State and upon filing in accordance with Village Law § 7-706 but it shall take effect from the date of its service as against a person served personally with a copy thereof, certified by the Village Clerk under the corporate seal of the village, and showing the date of its passage and entry in the minutes.



## Village of Sag Harbor Table Of Uses

| NAICS Code | Principal Uses  | Zoning District |    |    |    |    |
|------------|---|-----------------|----|----|----|----|
|            |   | R20             | RM | VB | OD | WF |
|            | <b>Residential Uses</b>   |                 |    |    |    |    |
|            | Dwelling, One-family detached   | P               | X  | X  | P  | X  |
|            | Dwelling, Two-family detached, if converted from a one-family detached dwelling, provided that the building has a minimum required lot area for two one-family residence lots and that each dwelling unit has not less than the minimum required floor area for a single one-family detached dwelling and one unit is affordable. | SE              | X  | X  | SE | X  |
|            | Multiple dwelling   | X               | X  | X  | X  | X  |
|            | Apartment/Apartment Building  | X               | X  | X  | SE | X  |

|  | <b>Institutional &amp; Governmental Uses</b>   | R20 | RM | VB | OD | WF |
|--|--|-----|----|----|----|----|
|  | Cemetery   | SE  | X  | X  | X  | X  |
|  | Museum   | P   | X  | SE | SE | X  |
|  | Philanthropic, fraternal, social, educational, institutional office or meeting room, nonprofit | SE  | SE | SE | SE | SE |
|  | Public library   | P   | P  | P  | P  | X  |
|  | Radio, television tower, transmission line, necessary as a public service facility             | SE  | SE | SE | SE | SE |

|        | <b>Traveler Accommodations</b> | R20 | RM | VB | OD | WF |
|--------|--------------------------------|-----|----|----|----|----|
| 721191 | Bed and Breakfast              | SE  | X  | SE | SE | X  |
| 721110 | Resort Motel                   | X   | P  | X  | X  | X  |
| 721110 | Hotel                          | X   | P  | X  | X  | X  |

|        | <b>Private Congregations</b> | R20 | RM | VB | OD | WF |
|--------|------------------------------|-----|----|----|----|----|
| 713990 | Club, beach or tennis        | X   | X  | X  | X  | X  |
| 713930 | Club, yacht                  | X   | X  | X  | X  | SE |

|        | <b>Public &amp; Semi-Public Congregations</b> | R20 | RM | VB | OD | WF |
|--------|---|-----|----|----|----|----|
| 722410 | Cabaret, disco or nightclub                   | X   | X  | X  | X  | X  |
|        | Religious Institutions                        | SE  | SE | SE | SE | SE |
|        | School  | SE  | X  | X  | SE | X  |

P = Permitted

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SE = Special Exception

X = Prohibited

## Village of Sag Harbor Table Of Uses

|           | <b>Retail</b>   | <b>R20</b> | <b>RM</b> | <b>VB</b> | <b>OD</b> | <b>WF</b> |
|-----------|---|------------|-----------|-----------|-----------|-----------|
| 453310    | Antique Shop  | X          | X         | P         | X         | X         |
| 424810    | Beverage Store  | X          | X         | X         | SE        | X         |
| 423910    | Bicycle Shop  | X          | X         | P         | SE        | X         |
| 441222    | Boat Dealership   | X          | X         | X         | X         | SE        |
| 451211    | Bookstore   | X          | X         | P         | X         | X         |
| 453991    | Cigar Shop  | X          | X         | P         | X         | X         |
| 448110-90 | Clothing Store  | X          | X         | P         | SE        | X         |
| 443120    | Computer Store  | X          | X         | P         | SE        | X         |
| 445120    | Convenience Store, 24-hour                                  | X          | X         | SE        | X         | X         |
| 445120    | Convenience Store, Limited Hours                            | X          | X         | P         | X         | X         |
| 443112    | Electronics Store   | X          | X         | P         | SE        | X         |
| 445220    | Fish Market   | X          | X         | P         | X         | P         |
| 453110    | Flower Shop   | X          | X         | P         | SE        | X         |
| 444220    | Garden Supply Store   | X          | X         | P         | SE        | X         |
| 452990    | General/Variety Stores                                      | X          | X         | P         | X         | X         |
| 442299    | Glassware   | X          | X         | P         | X         | X         |
| 445110    | Grocery Store, less than/equal to 3,000 sq. ft.             | X          | X         | P         | SE        | X         |
| 445110    | Grocery Store, greater than 3,000 sq. ft.                   | X          | X         | SE        | SE        | X         |
| 444130    | Hardware Store,<br>less than/equal to 3,000 sq. ft.         | X          | X         | P         | SE        | X         |
| 444130    | Hardware Store,<br>greater than 3,000 sq. ft.               | X          | X         | SE        | SE        | X         |
| 442299    | Home Furnishings/Décor,<br>less than/equal to 3,000 sq. ft. | X          | X         | P         | SE        | X         |
| 442299    | Home Furnishings/Décor,<br>greater than 3,000 sq. ft.       | X          | X         | SE        | SE        | X         |
| 448310    | Jewelry Store   | X          | X         | P         | X         | X         |
| 445310    | Liquor Store  | X          | X         | P         | X         | X         |
| 451220    | Music Store   | X          | X         | P         | X         | X         |
| 453910    | Pet Supply Store  | X          | X         | P         | X         | X         |
| 446110    | Pharmacy  | X          | X         | P         | X         | X         |
| 423910    | Sail Loft and Canvas Shop                                   | X          | X         | X         | X         | P         |
| 448210    | Shoe Store  | X          | X         | P         | X         | X         |
| N/A       | Shop for Custom Work  | X          | X         | P         | P         | X         |
| 453220    | Souvenir Shop   | X          | X         | P         | X         | X         |
| 445210-30 | Specialty Food: Seafood, Meat, etc.                         | X          | X         | P         | SE        | X         |
| 423910    | Sporting Goods  | X          | X         | P         | SE        | X         |
| 453210    | Stationary Store  | X          | X         | P         | X         | X         |
| 451120    | Toys & Games  | X          | X         | P         | X         | X         |
| 532230    | Video Tape & Disc Rental                                    | X          | X         | P         | SE        | X         |

P = Permitted

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SE = Special Exception

X = Prohibited

## Village of Sag Harbor Table Of Uses

| NAICS  | Other Commercial Uses          | R20 | RM | VB | OD | WF |
|--------|--------------------------------|-----|----|----|----|----|
| 712110 | Art Gallery                    | X   | X  | P  | X  | X  |
| N/A    | Communication Tower & Exchange | SE  | SE | SE | SE | SE |
| 447190 | Filling Station                | X   | X  | X  | X  | X  |
| 713940 | Fitness Center/Gym             | X   | X  | SE | P  | X  |
| 441222 | Ship/Marine Chandlery          | X   | X  | X  | X  | P  |
| 452910 | Superstore                     | X   | X  | X  | X  | X  |
| 711110 | Theater, Live                  | X   | X  | SE | X  | X  |
| 512131 | Theater, Motion Picture        | X   | X  | P  | X  | X  |

| NAICS  | Food Services           | R20 | RM | VB | OD | WF |
|--------|-------------------------|-----|----|----|----|----|
| 722410 | Bar/Tavern              | X   | X  | P  | SE | X  |
| 722213 | Coffee Shop             | X   | X  | P  | X  | X  |
| 722211 | Delicatessen            | X   | X  | P  | X  | X  |
| 722211 | Fast Food Establishment | X   | X  | SE | SE | X  |
| 722211 | Ice Cream Parlor        | X   | X  | P  | SE | X  |
| 722110 | Restaurant              | X   | X  | P  | X  | SE |

| NAICS  | Offices & Banks                                    | R20 | RM | VB <sup>1</sup> | OD | WF |
|--------|--|-----|----|-----------------|----|----|
| 541211 | Accounting   | X   | X  | P               | P  | X  |
| 541310 | Architect  | X   | X  | P               | P  | X  |
| 541110 | Attorney   | X   | X  | P               | P  | X  |
| 522110 | Bank   | X   | X  | P               | P  | X  |
| N/A    | Drive-in Bank                                      | X   | X  | P               | X  | X  |
| 541330 | Engineering/Surveying                              | X   | X  | P               | P  | X  |
| 524210 | Insurance  | X   | X  | P               | P  | X  |
| 541410 | Interior Design                                    | X   | X  | P               | P  | X  |
| 541990 | Marine Surveyor                                    | X   | X  | P               | X  | P  |
| 621111 | Medical Offices                                    | SE  | X  | P               | P  | X  |
| 522292 | Mortgage & Financial Services                      | X   | X  | P               | P  | X  |
| 54131  | Naval Architect                                    | X   | X  | P               | X  | P  |
| 511110 | Newspaper/Publishing                               | X   | X  | P               | P  | X  |
| N/A    | Office, Other                                      | X   | X  | P               | P  | X  |
| 561611 | Private Investigator                               | X   | X  | P               | P  | X  |
| 531210 | Real Estate  | X   | X  | P               | P  | X  |
| 561510 | Travel Agency                                      | X   | X  | P               | P  | X  |
| 541940 | Veterinarian                                       | X   | X  | P               | P  | X  |
| 441222 | Yacht Sales & Charters, including Boat Display     | X   | X  | P               | SE | SE |
| 441222 | Yacht Sales & Charters, not including Boat Display | X   | X  | P               | P  | P  |

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

P = Permitted

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SE = Special Exception

X = Prohibited

## Village of Sag Harbor Table Of Uses

| NAICS     | Service Uses  | R20 | RM | VB | OD | WF |
|-----------|---|-----|----|----|----|----|
| 561439    | Copy Services (w/o printing services)                         | X   | X  | X  | P  | X  |
| 812320    | Dry Cleaning establishment                                    | X   | X  | SE | X  | X  |
| 812210    | Funeral Home  | X   | X  | X  | SE | X  |
|           | Laundromat  | X   | X  | P  | X  | X  |
| 812990    | Professional Service Shop                                     | X   | X  | P  | P  | X  |
| 812112    | Personal Service: Barbershop, Hair Dresser, Nail Salon        | X   | X  | P  | P  | X  |
| 491110    | Post Office   | X   | X  | P  | P  | X  |
| 323110-19 | Printing Services   | X   | X  | P  | P  | X  |
| 811111-18 | Repair Shop, automobile                                       | X   | X  | X  | X  | X  |
| 811412    | Repair Shop, small household, business or personal appliances | X   | X  | P  | X  | X  |
| 713940    | Spa   | X   | X  | P  | P  | X  |

| NAICS  | Health & Care Services | R20 | RM | VB | OD | WF |
|--------|------------------------|-----|----|----|----|----|
| 623311 | Adult care facility    | X   | X  | X  | X  | X  |
| 621493 | Ambulatory care clinic | X   | X  | P  | P  | X  |
| 624410 | Daycare facility       | SE  | X  | X  | P  | X  |
| 541940 | Veterinary Hospital    | X   | X  | X  | X  | X  |

| NAICS  | Water Dependent Uses                                    | R20 | RM | VB | OD | WF |
|--------|---|-----|----|----|----|----|
| 336612 | Boatyard, including sales, rentals, storage and repairs | X   | X  | X  | X  | SE |
| 336611 | Commercial fishing charter                              | X   | X  | X  | X  | SE |
| 487210 | Excursion Boat  | X   | X  | X  | X  | X  |
| 483210 | Ferry Terminal, Automobile/Other Landing Place          | X   | X  | X  | X  | X  |
| 483212 | Ferry Terminal, Passenger                               | X   | X  | X  | X  | X  |
| 713930 | Marina  | X   | X  | X  | X  | SE |

P = Permitted

SE = Special Exception

X = Prohibited

## Village of Sag Harbor Table Of Uses

| NAICS  | Accessory Uses   | R20 | RM | VB | OD | WF |
|--------|--|-----|----|----|----|----|
|        | Customary accessory structure and/or use, except those prohibited by Chapter 55: Zoning            | P   | P  | P  | P  | P  |
|        | Dish Antenna   | SE  | SE | SE | SE | SE |
|        | Home occupation or professional office   | P   | X  | X  | X  | X  |
|        | Private garage or private off-street parking   | P   | P  | P  | P  | P  |
|        | Accessory Apartment  | SE  | X  | SE | X  | X  |
|        | Sign   | P   | P  | P  | P  | P  |
|        | Private swimming pool  | P   | P  | X  | X  | X  |
|        | Convenience Store <sup>1</sup> , as accessory to a Resort motel                                    | X   | SE | X  | X  | X  |
|        | Personal service shop <sup>2</sup> , as accessory to a Resort motel                                | X   | SE | X  | X  | X  |
|        | Health club <sup>3</sup> , as accessory to a resort motel  | X   | SE | X  | X  | X  |
|        | One dwelling unit for the use by the manager employed by the motel and his/her family <sup>4</sup> | X   | SE | X  | X  | X  |
| 447110 | Convenience Store, limited hours, as accessory to filling station                                  | SE  | X  | X  | X  | X  |
| 561920 | Convention Hall, as accessory to:<br>Resort Motel  | X   | SE | X  | X  | X  |
| N/A    | Launch Service, as accessory to marina   | X   | X  | X  | X  | P  |
| N/A    | Office, as accessory to Marina   | X   | X  | X  | X  | P  |
| 722110 | Restaurant, as accessory to Hotel/Resort Motel   | X   | SE | X  | X  | X  |
|        | Outdoor dining, as accessory to Restaurant   | X   | X  | SE | X  | X  |
| N/A    | Retail, personal service, or health club as accessory to Resort Motel                              | X   | SE | X  | X  | X  |
| N/A    | Tables and chairs as accessory to a Retail Food Store  | X   | X  | SE | X  | X  |

<sup>1</sup> Total floor area shall not be more than 250 square feet pursuant to §55-5.4.

<sup>2</sup> Total floor area shall not be more than 250 square feet pursuant to §55-5.4

<sup>3</sup> Capacity may not be greater than that needed to serve the transients occupying the guest rooms in the resort motel pursuant to §55-5.4.

<sup>4</sup> Habitable floor area shall not be less than 800 square feet, nor greater than 1,500 square feet, pursuant to §55-5.3.

<sup>5</sup> Includes barbershop; beauty parlor; dry-cleaning or laundry service employing not more than five (5) persons; professional studio; travel agency; or similar personal service shops.

P = Permitted

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**Village of Sag Harbor  
Table of Dimensional Regulations\***

|   | <b>R20<br/>Residence</b>      | <b>RM<br/>Resort Motel</b> | <b>VB<br/>Village<br/>Business</b> | <b>OD<br/>Office District</b> | <b>WF<br/>Waterfront</b> |
|---|-------------------------------|----------------------------|------------------------------------|-------------------------------|--------------------------|
| <b>Lot Area</b>   |                               |                            |                                    |                               |                          |
| Minimum (sq. ft.)   | 20,000 /<br>40,000 <b>(1)</b> | 80,000                     | 10,000                             | 10,000                        | 40,000                   |
| Minimum lot area per dwelling unit (sq. ft.)                              | 20,000                        |                            |                                    | 10,000                        | N/A                      |
| Apartments: minimum lot area per unit (sq. ft.)                           | N/A                           | 7,260                      | N/A                                | 7,260                         | N/A                      |
| Minimum per transient guest unit (motel) (sq. ft.)                        | N/A                           | 2,178                      | N/A                                | N/A                           | N/A                      |
| <b>Lot Coverage</b>   |                               |                            |                                    |                               |                          |
| Building coverage maximum (percent)                                       | 20                            | 50                         | 70                                 | 70                            | 40                       |
| Total lot coverage  | 25                            | 50                         | 70                                 | 70                            | 40                       |
| Minimum Lot Width (feet)  | 100                           | 100                        | 50                                 | 75                            | 200                      |
| Maximum height (stories ; feet)   | 2 ; 35 <b>(2)</b>             | 2 ; 35                     | 3 ; 35                             | 2 ; 35                        | 2 ; 35                   |
| <b>Minimum Yard Depth at Principal Building (ft.)</b>                     |                               |                            |                                    |                               |                          |
| Front yard  | 35                            | 35                         | 0                                  | 10                            | 35                       |
| One side yard   | 15                            | 15                         | 5 <b>(6)</b>                       | 5                             | 20                       |
| Both side yards   | 30                            | 30                         | 10 <b>(6)</b>                      | 20                            | 40                       |
| Rear yard   | 30                            | 30                         | 40                                 | 40                            | 30                       |
| Setback from pier or bulkhead   | 30                            | N/A                        | N/A                                | N/A                           | 30                       |
| <b>Minimum Dimensions at Accessory Buildings and Structures (3)</b>       |                               |                            |                                    |                               |                          |
| Distance from street line   | 35                            | 35                         | 20                                 | 20                            | 20                       |
| Distance from side lot line in side yard                                  | 15                            | 30                         | 5 <b>(6)</b>                       | 5                             | 20                       |
| Distance from rear and side lot lines in rear yard                        | 10 <b>(4)</b>                 | 30                         | 15                                 | 15                            | 20                       |
| Maximum height (stories ; feet)   | 1 ; 15                        | 1 ; 15                     | 1 ; 15                             | 1 ; 15                        | 1 ; 15                   |
| Distance between buildings  | 10                            | 15                         | 15                                 | 15                            | 15                       |
| Maximum coverage of rear yard (percent)                                   | 30                            | 30                         | 30                                 | 30                            | 30                       |
| Minimum Gross Floor Area per Business, Establishment, Occupancy (sq. ft.) | N/A                           | N/A                        | 800                                | 800                           | N/A                      |
| Maximum Gross Floor Area per Business, Establishment, Occupancy (sq. ft.) | N/A                           | N/A                        | 2,000 <b>(7)</b>                   | N/A                           | N/A                      |
| Minimum habitable floor area per dwelling unit (sq. ft.)                  | 800 on 1st floor              | N/A                        | 800                                | 800                           | N/A                      |
| Transient guest unit (min.; max.)   | N/A                           | 400 ; 500                  | N/A                                | N/A                           | N/A                      |
| Apartment (min.; max.)  | N/A                           | 800 ; 1,500                | N/A                                | 800 ; 2,500                   | N/A                      |
| Accessory Apartment (min.; max.)  | 300 ; 650                     | N/A                        | 750 ; 1,250                        | N/A                           | N/A                      |
| Minimum Natural or Landscaped Open Space (percent) <b>(5)</b>             | 50                            | 25                         | 20                                 | 30                            | 30                       |

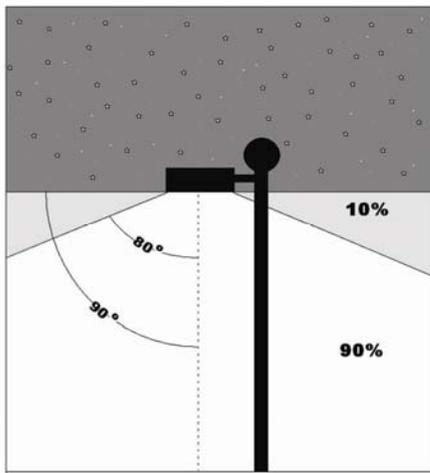
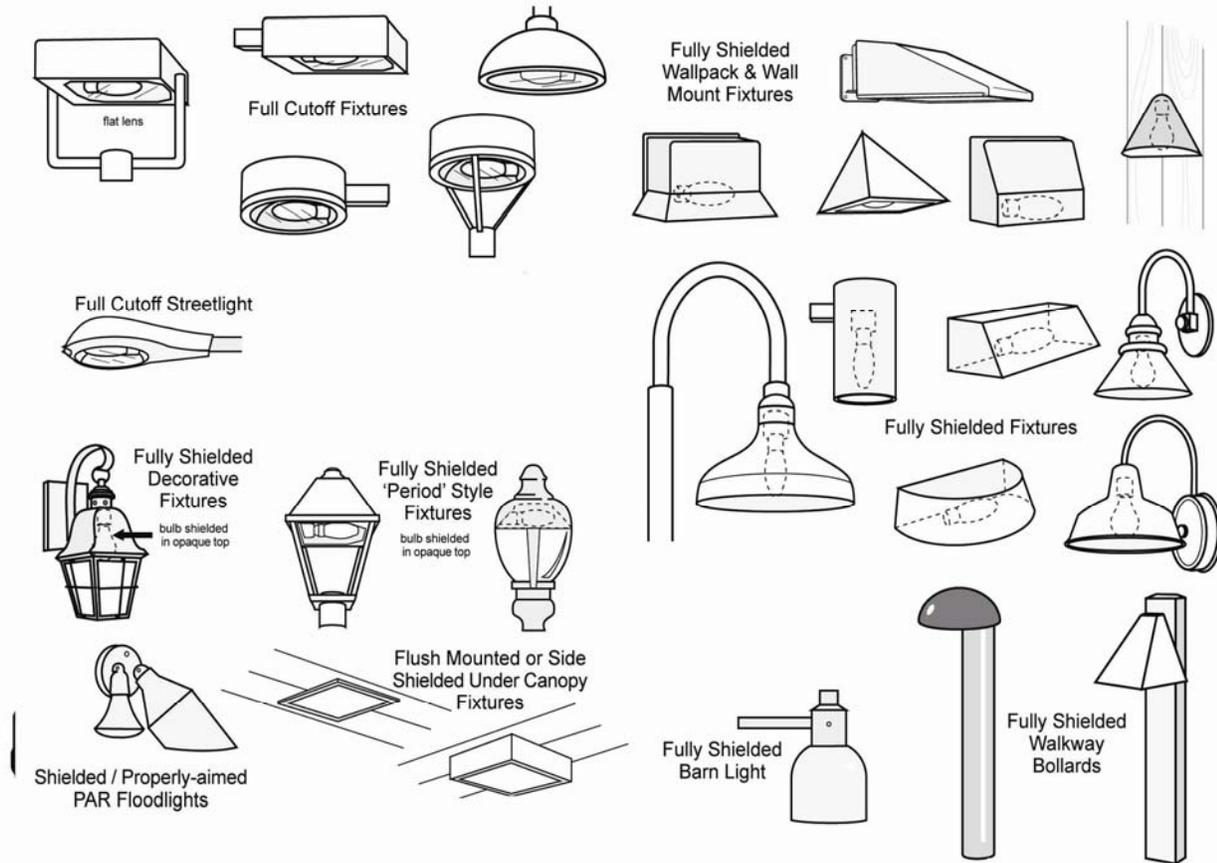
\* See also Article 9, Supplemental Use and Dimensional Regulations

- (1) 20,000 for a one-family detached dwelling; 40,000 for all other uses, except where a specific standard is provided for a special exception use.
- (2) In the R-20 One-Family Residence District, all buildings and structures, except chimneys and decorative railings, must remain inside the sky plane. The sky plane shall be measured at the front and rear property lines from the average elevation of the existing natural grade, and at the side property lines five feet above the average elevation of the existing natural grade and extend to the building or structure at an angle of 45°. The height limitation of 2 stories/35 feet shall not be exceeded.
- (3) Except as provided for specific buildings, structures and uses pursuant to Article 9, Supplemental Use and Dimensional Regulations.
- (4) Fifteen (15) feet for swimming pools or tennis courts.
- (5) Excluding all buildings and structures.
- (6) Section 55-9.2 (C) requires a minimum yard of 15 feet where non-residential districts border residential districts.
- (7) See Section 55-6.4(D) regarding provisions for expansion of gross floor area for uses within the Village Business District.

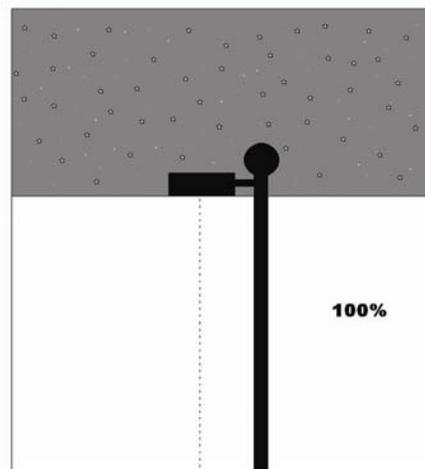


# Appendix L1

## PERMITTED FIXTURES



FULL CUT OFF FIXTURE  
Figure A



FULLY SHIELDED FIXTURE  
Figure B



# Appendix L2

## PROHIBITED FIXTURES

\*\* Unless otherwise specifically exempted

