

## Responses to Comments Regarding and/or Requested Amendments to the WFOD Local Law

### 1. The WFOD doesn't restrict height the way the prior law did and the height bonuses from the form based code should be included.

#### Response:

The prior form based code allowed for 3 stories and 35 feet on lots within formerly proposed Height Sub-Zone A (which allowed 3rd story in the OD and WF districts where 2 stories are permitted).

The prior form based code established a height limit of 2 stories and 25 feet within Height Sub-Zone B but for waterfront lots allowed the potential for 3 stories and 35 feet regardless of the underlying zoning ***for all waterfront lots*** north of Bay Street and Long Island Avenue (see Sub-Zone B in map below) (which is higher than what is permitted under this proposed code) if the project offered three of the following “public benefits.”

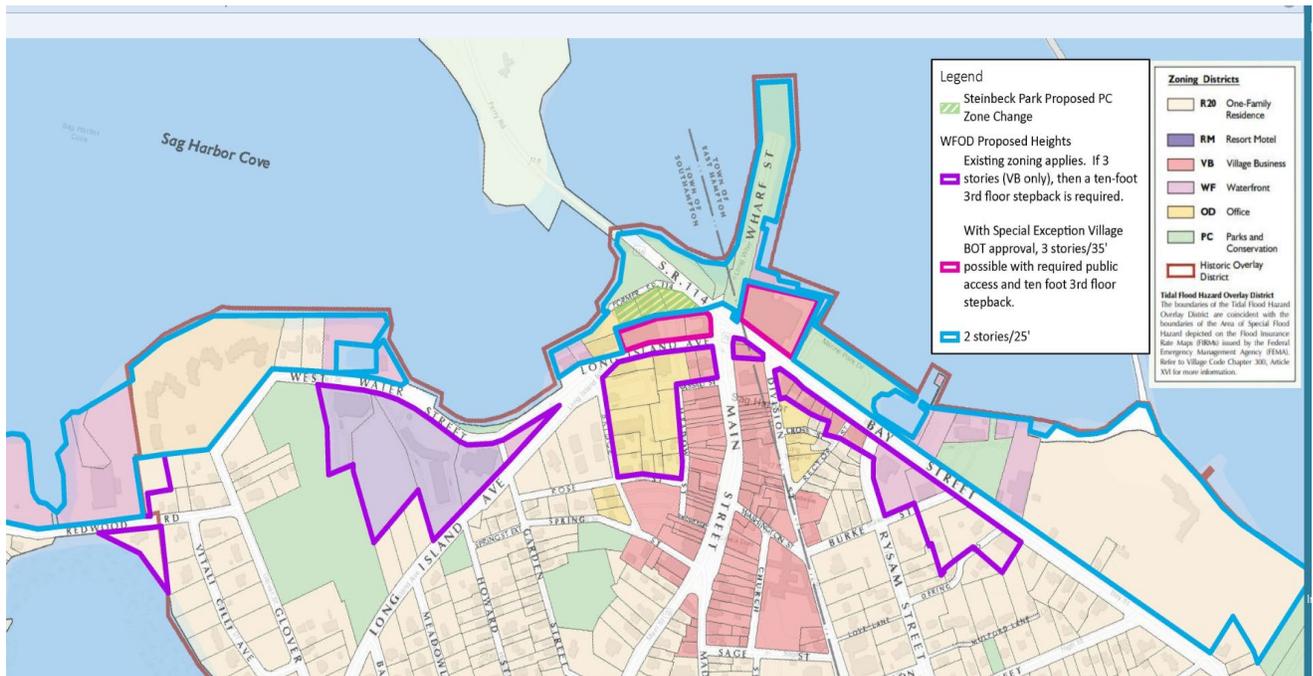


Many of the “public benefits” are already required by the Code and therefore do not constitute significant public benefits for the Village of Sag Harbor nor do they mitigate the impacts of the additional height granted to those waterfront lots.

- a. green building practices are built into the building providing greater

- water/energy systems. (Already incentivized in current code, Village Code Chapter 250, Article VII, Tax exemption for green buildings).
- b. preservation and adaptive reuse of historic buildings (Already required to preserve historic buildings under Village Code Chapter 300, Article 13).
- c. buildings exceed standards of USAB (DOJ updated its [ADA Standards](#) in 2010, which are referred to as the 2010 ADA Standards for Accessible Design. These standards, which replace the original ADA Standards DOJ issued in 1991, became mandatory for newly constructed and altered facilities as of March 15, 2012. DOJ's ADA Standards apply to all facilities covered by the ADA except public transit facilities).
- d. restoration of wildlife habitat and native vegetation shoreline buffers, wetlands (Already required in Village Code Chapter 285, Wetlands and Chapter 275, Waterfront Consistency Review).
- e. facilities for public waterfront recreation (Recreation is not defined and subject to interpretation)(off-site location option is illegal –Planning Board may not require off-site improvements under NYS Law).
- f. incorporation of street trees (The Planning Board already has the authority to require street trees through its site plan authority pursuant to Village Code §300-14.3).
- g. provide public access walkway (included in new code).

The proposed law addresses height in two sections as set forth below. The law restricts the height of structures on waterfront lots to 25 feet/2 stories. The law allows for structures on VB Zoned waterfront lots to be 35 feet and 3 stories if public access to the waterfront is provided at the discretion of the Village Board. The existing height in VB is 35 feet and 3 stories so the proposed law is not permitting any more than what currently exists in the Code. The third story must have the 10 foot stepback outlined in the prior code.



The proposed code states:

§300-15.3WFOD Standards  
D. Height/Stories.

(1) The permitted height of structures on waterfront lots in the WFOD shall be 25 feet as measured from street or lowest grade on site, whichever is less with a maximum of two stories. Third stories with a maximum height of 35 feet may be permitted on waterfront lots in the VB Zoning District within the WFOD as set forth in Village Code §300-11.23D(10) for structures over 3,500 square feet in gross floor area requiring a special exception permit from the Village Board of Trustees.

(2) The permitted height of structures that are not waterfront lots in the WFOD shall be governed by the underlying zoning district regulations for that property as set forth in §300, Attachment 2, Table of Dimensional Regulations.

(3) To the extent a third story is permitted as set forth in section 2 above, a third story setback for front, corner and side facades shall be created at a minimum of 10 feet.

§300-11.23D(10) Uses or Structures greater than 3,500 sf in gross floor area in WFOD

(10) The maximum height of structures in the WFOD shall be governed by Village Code §300-15.3(D) except that for a waterfront lot over 3,500 square feet in gross floor area in the VB Zoning District within the WFOD, the Village Board of Trustees may, where appropriate, permit an increase of height to 3 stories or 35 feet, conditioned upon the applicant providing the construction of a permanent accessible pedestrian walkway, a minimum of 10 feet in width, for public use, providing public access to the waterfront. The Board may consider a proposed public access along the waterfront side of the property provided there is already public access leading to it. The proposed public access shall mitigate the impact of allowing for an increase in height of structures on the waterfront.

*2. The WFOD Code should apply to new buildings only and exemptions should be provided for pre-existing nonconforming buildings that may need to be replaced, resort/motels in the RM District and residential uses.*

*Response:* The WFOD code will automatically apply to all new buildings and construction of structures over 3,500 square feet in gross floor area for the Village Board Special Exception Review and all new construction of structures regardless of size for the WFOD standards set forth in 300-15.3 (A-M). The Village Board Special Exception Permit review does not apply to residential structures in the R20 zoning district.

Pre-existing Structures

The law is not applied retroactively to existing structures. Pre-existing Structures and Buildings will be permitted to continue under existing Village Code §300-10.2C which is not changing and states: “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 § **300-10.6** (Abandonment of Use).

**B.** A conforming building or structure used by a nonconforming use shall not be reconstructed, structurally altered, restored or repaired to an extent exceeding 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, except that the degree of nonconformity shall not be increased.

[Amended 8-11-2015 by L.L. No. 13-2015]”

A pre-existing, nonconforming building with a conforming use can be replaced in place and in kind without requiring site plan and/or special permit review under this new law. Any **change** to a pre-existing nonconforming building with a conforming use in the WFOD that increases the degree of nonconformity will require review and conformance with the new WFOD standards and possibly Special Exception Review by the Village Board of Trustees if the building is over 3,500 sf in gross floor area.

Therefore, an exemption for pre-existing structures is not required to be added to this code since it is already clearly addressed in Village Code §300-10.2C.

**3. The prior form based code limited the size of commercial uses in the Office District to 2,000 square feet “to protect Main Street merchants” which should be included in this code.**

**Response:** The prior code addressed and limited the size of commercial uses in the Office Zoning District (“OD”) to 2,000 square feet because it was proposing to allow retail uses in the OD. Allowing retail uses in the OD was contrary to the recommendations set forth in the Planning Study entitled Planning Strategies for the Inc. Village of Sag Harbor, dated July 21, 2008. Specifically, the study stated,

“[m]anaging the appropriate use of the Village’s commercial space is also paramount in maintaining the historic character of Sag Harbor. The change of use of commercial spaces can, under some circumstances, cause a gradual shift in the composition of that commercial district. The retail uses present along with the many restaurant and food service uses (totaling 24 separate businesses) should be supported, as they present important opportunities for the visitors and residents of the Village and enhance the commercial shopping district. For example, one can observe changes that have occurred over time in Southampton Village – a slow but perceptible change in the type of commerce that takes place in its commercial district. Some of the retail stores have changed to uses which cater to high-end clientele. In some instances, financial services and real estate office have replaced space that had been used for retail.... If not kept in balance with the need to maintain the retail trade commerce, change in uses in the Sag Harbor business district has the potential to change the character of the community.” See Planning Strategies for the Inc. Village of Sag Harbor, page 42.

The planning study was the basis for the creation of the OD Zoning District and recommended specific uses for the OD that would not interfere with the retail center on Main Street. Therefore,

any allowance of additional or different retail uses in the OD, regardless of the limited size, could potentially have an impact on the Village that required further study. Adopting the legislation to limit commercial uses to 2,000 square feet would result in legislation being adopted that was contrary to the planning study. The adopted planning studies of a Village represent the Village's "comprehensive plan" pursuant to NYS Village Law §7-722. Zoning amendments that conflict with the Village's comprehensive plan require an additional planning study as a basis for same and can require a Generic Environmental Impact Study pursuant to NYS Village Law §7-722(8). A GEIS is a lengthy study that fully explores the impacts of the proposed legislation on the environment.

Therefore, stating that restricting commercial uses to 2,000 square feet would protect Main Street is conclusory and must actually be studied prior to consideration for adoption. Considering that the 2,000 square foot limit was considered in conjunction with expanding the OD to include retail uses that are mostly prohibited in that district, the actual impacts of limiting the sizes of permitted uses in the OD to 2,000 sf was not studied or considered by the prior Planning Study and must be thoroughly vetted prior to adoption.

**4. The proposed Code should amend the use table and/or allow for certain retail uses in the OD District and/or allow for smaller sized retail stores within OD.**

**Response:** Again, the most recent adopted planning study for the Village of Sag Harbor entitled Planning Strategies for the Inc. Village of Sag Harbor, dated July 21, 2008, recommended maintaining the "diversity of the retail stores currently present on Main Street to protect the values of the commercial shopping district in the Village." See page 62. The study specifically recommends creating the Office District and limiting the uses in this district to "professional offices, financial institutions and the like"....to encourage real estate offices and banks to locate in the Office District rather than to seek space on Main Street in the Village Business District. Allowing additional retail uses to infiltrate the Office District is contrary to the Planning Study's recommendations. Since it is contrary to an adopted planning study, this suggestion needs its own planning study to determine the actual impact to the Office District and the VB District before it can be considered.

**5. A letter from Friends of Bay Street requested a height increase to 39 feet or requested a height bonus for FEMA compliance.**

**Response:** The current zoning code limits the height of structures to 35 feet. The proposed code limits that further on waterfront lots and allows the height increase up to 35 feet on Village Business zoned waterfront lots. Allowing an increase of height beyond 35 feet would require a planning study to review the impacts of such an increase on the entire Village and/or the zoning district where this is specifically proposed. This was not studied in the proposed code, rather the Planning Study for the proposed code recommends limiting the height on waterfront lots in the WFOD to preserve the character of Sag Harbor Village.

Allowing a height bonus for FEMA compliance is likewise not the goal of this legislation which again, seeks to maintain the existing character of the waterfront and the Village. The Planning

Study states, “Elevating buildings conflicts with the vision for the waterfront area as they have a greater impact on views of the water, create discordance when compared to established building elevations, and are not consistent with the historic pedestrian scale environment.”

**6. Part of the WFOD is in a floodplain where development can have significant impacts on flooding and storm water flow. Can a provision be added to address this issue?**

**Response:** The Code has been amended to add a new standard in the WFOD section 300-15.3(M)

M. All development shall manage storm water on-site in accordance with New York State and Suffolk County guidelines, and may not impact adjoining property owners or public lands. If on-site management is not practical or if the property is within the flood plain, the applicant will be responsible for the cost to extend and if needed, improve the storm sewer system, and provide on-site pre-treatment prior to discharge as required.

The Code has also been amended to include a new standard in section 300-11.23D(14):  
(14) Submission of a drainage plan and stormwater pollution plan, prepared by a New York State licensed engineer shall be submitted to determine whether the proposed development of the property will result in a negative impact to the waterfront, groundwater, or surface waters. Proposed plans shall comply with Chapter 232, Stormwater Management.

**7. The Proposed Code should include Affordable Housing.**

**Response:** The proposed Code is intended to establish additional standards for development in the waterfront by creating the Waterfront Overlay District. The intent is to limit development in the waterfront to preserve the essential character of the Village. Amending the local law to create affordable housing would be an effort to incentivize (rather than limit) development in the form of affordable housing. It would also only address affordable housing in the Waterfront Overlay District and not the entire Village. New York State Municipal Home Rule Law section 20(3) states, “Every such local law shall embrace **only one subject**. The title shall briefly refer to the subject matter.” Therefore, creating or incentivizing affordable housing represents a separate matter that requires a separate local law. However, the Village Board is committed to creating affordable housing in the Village of Sag Harbor and is working on separate legislation to accomplish this goal that will be considered in the coming months.

**8. The Yacht Club dock must be removed from the zoning map.**

**Response:** This proposed local law is only amending the underlying zoning map with respect to the creation of a Waterfront Overlay District (WFOD). Therefore, although the Board could remove the dock from the WFOD, it cannot remove the dock from the underlying zoning map in this legislation. Separate legislation in the form of a local law, adopted after a public hearing, would be required to be considered by this Board to amend the underlying zoning map to do anything other than create the WFOD. Notably, the issue is further complicated by the fact that

the dock has a structure on it that has gone through site plan review and has been subject to the zoning laws of the Village of Sag Harbor.

**9. Why did you remove the requirement for an easement to be granted to the Village when an increase in height is granted by the Village Board in §300-11.23D(10)?**

**Response:** The Village exercises its authority to enact zoning and land use regulations solely by the authority granted to it from the NYS legislature as set forth in NYS Village Law §7-700. NYS Village Law authorizes the Village to regulate and restrict the “height, number of stories and size of buildings and other structures, the percentage of lot that may be occupied, the size of yards, courts and other open spaces, the density of population, and the location and use of buildings, structures and land for trade, industry, residence or other purposes.” In *Matter of Kamhi v. Planning Board of the Town of Yorktown*, 59 N.Y.2d 385, 465 N.Y.S.2d 865 (1983), the New York State Court of Appeals determined that this authority (in that case the same authority granted to a Town) did not include the authority to compel the conveyance of real property (here granting an easement, which represents a conveyance of an interest in real property) to the Village without compensation to the property owner. Thus, although the Village can require a set aside for public access or open space as an incentive to allow for an increase in height, it cannot compel that the public access be conveyed to the Village.

**10. Why were the setback requirements for accessory structures removed?**

**Answer:** The setbacks for accessory structures were removed because they were actually the same and/or less restrictive than those set forth in the underlying zoning districts. The only new standard, requiring that accessory structures shall not be permitted in view corridors or public access areas is still being retained in the law.