

LEGAL NOTICE

RESOLUTION OF ADOPTION OF A LOCAL LAW AMENDING §4-420 (FENCES) OF THE ZONING LAW TO ESTABLISH STANDARDS FOR STRUCTURAL FENCES AND HEDGES; REPEAL DUPLICATIVE REVIEW BY THE BOARD OF TRUSTEES AND ARCHITECTURAL REVIEW BOARD UNDER §4-420 AND §10-106(C); AND ESTABLISH STANDARDS FOR REVIEW OF FENCES UNDER §10-108.

WHEREAS, Board of Trustees of the Village of Dering Harbor has proposed a local law amending §4-420 (Fences) of the Zoning Law to establish standards for structural fences and hedges; repeal duplicative review by the Board of Trustees and Architectural Review Board under §4-420 and §10-106(c); and establish standards for review of fences under §10-108; and

WHEREAS, a public hearing was held on December 2, 2017, February 3, 2018, March 3, 2018 and April 14, 2018; and WHEREAS, by letter dated April 2, 2018, the Suffolk County Planning Commission considered the proposed local law to be a matter for local determination, and

WHEREAS, the adoption of said local law is considered to be a Type II action under 6 NYCRR §617.5(c)(10) & (27), SEQRA and will not have a significant adverse impact upon the environment;

NOW, THEREFORE, BE IT RESOLVED, that Local Law No. 1 of 2018 is hereby adopted as follows:

LOCAL LAW NO. 1 OF 2018

A LOCAL LAW amending §4-420 (Fences) of the Zoning Law to establish standards for structural fences and hedges; repeal duplicative review by the Board of Trustees and Architectural Review Board under §4-420 and §10-106(c); and establish standards for review of fences under §10-108.

BE IT ENACTED by the Board of Trustees of the Village of Dering Harbor as follows: **Section 1. Legislative Intent.** Section 4-420 currently entitled "Fences" requires landowners to make application and obtain the review and approval of the Board of Trustees and the Architectural Review Board for a fence, including "living fences." No other building, structure or improvement in the Village requires such duplicative review. Under this section, the Board of Trustees review and approval "to erect, plant or grow fences" is characterized to be "legislative in nature" and there are no expressed standards or criteria to guide the Board of Trustees action. This section contains no specific requirements for structural fences, and does not define what a "living fence" is or provide any standards for same. Section 10-106(c) requires review of "all fences, whether structural or living, including fences for pools, tennis courts and gardens." The standards of Architectural Review Board action under §10-108 apply to

buildings and structures. Again there is no definition of a living fence, and there are no standards or criteria to guide the Architectural Review Board's review of living fences. It is the intent of this local law to repeal §4-420 in its current form and replace it with a definition of structural fences, walls, and hedges, and standards therefor, and to eliminate review and approval of all fences, structural or living, by the Board of Trustees. It is further intended that §10-106(c) be amended to eliminate reference to living fences. The Architectural Review Board will continue to review structural fences and walls. The standards for Architectural Review Board action under §10-108 is being amended to add a new subsection (g) outlining standards and criteria for the review and approval of fences and walls.

Section 2. Amendment to §4-420. Section 4-420 of the Zoning Law is hereby amended by repealing the existing section in strikethrough words and replacing it with new section as underlined words as follows: Section 4-420. Fences.

1. Fences, other than those required in connection with swimming pools, whether structures, or living in the form of vegetation; may be permitted, subject to the issuance of a license by the board of trustees. The board of trustees finds and determines that fences should neither be permitted nor prohibited generally and that because of varying conditions adequate guidelines cannot be established for delegated administrative action by the board of appeals. Accordingly, action on applications for permission to erect, plant or grow fences shall be legislative in nature. Applications may be submitted to the village clerk in letter form, but must be accompanied by a plot plan showing location on the premises, and an elevation or elevations showing the height or heights, including in the case of a living fence, the maximum height to which it is proposed to permit growth, and may be accompanied by an acknowledged consent of the adjacent property owner or owners. The Board of Trustees will determine whether the fence is appropriate for the property and area in question. The Board of Trustees after review and approval shall then refer the matter to the Board of Architectural Review for review and approval of the dimensions and materials utilized in the construction of the fence, whether living or structural.

2. Applications for all fences, whether structural or living including fences for pools tennis courts and gardens, are also subject to approval of the Architectural Review Board provided herein:

Section 4-420. Fences, walls and hedges.

1. Fences and walls. Fences and walls are defined as structures of wood, stone, metal, plastic, or other material, or combination thereof, bounding an area of land designed or intended to limit access to an area, or 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. A hedge as hereinafter defined shall not be considered to be a fence or wall. The following requirements shall apply to fences and walls in all districts:

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

(b) No fence or wall in a rear yard or side yard shall have a height greater than six (6) feet.

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

(d) All fences to be erected shall have the finished side of the fence toward the adjoining street and to adjoining neighboring property(ies).

(e) A fence or wall shall not be erected on a berm or another fence or wall unless the total height of the combination of such features does not exceed the standards in this section.

(f) Fences and walls on corner lots shall be subject to the corner clearance requirements of §4-408 herein.

(g) To allow for visual clearance and snow removal, fences and walls shall be setback a minimum of four (4) feet from the street right-of-way line or such other greater distance as may be determined by the Architectural Review Board. Where the boundary line for the property extends into the paved portion of the street, then such fence or wall shall be setback a minimum of four (4) feet from the paved edge, curb line or sidewalk, whichever is greatest.

2. Method of measuring the height of a fence or wall. 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 feet high, notwithstanding the provisions of Subsections 1 (a), (b) and (c) above.

3. Review of fences and walls by the Architectural Review Board. Applications for all fences and walls, including fences for

pools tennis courts and gardens, are subject to review and approval of the Architectural Review Board under the provisions of Article X of this law. The Architectural Review Board shall have the authority to impose greater setbacks or reduce the height of fences and walls.

4. Hedges. A hedge shall be defined as any number of woody plants, whether capable of growing into trees or not, which are planted so as to be in a general line and, when mature, to be so integrated together as to form a barrier or screen. Such hedge need not represent or constitute the precise line of a boundary and may be plantings in a general linear or staggered line or form. Such terms include hedges, windrows and other forms of plantings running along the front lot line or street line. The following requirements shall apply to hedges in all districts:

(a) The stem or trunk of a hedge in a front yard or along a street line shall be setback a minimum of four (4) feet from the street right-of-way line. Where the boundary line for the property extends into the paved portion of the street, then such hedge shall be setback a minimum of four (4) feet from the paved edge, curb line or sidewalk, whichever is greatest.

(b) The landowner shall have a continuing obligation to maintain the hedge so the hedge does not encroach into the street or cause a safety hazard. Failure of a landowner to maintain a hedge installed after the effective date of this amendment at the required setback shall constitute a violation of this Zoning Law.

(c) A hedge on a corner lot shall be subject to the corner clearance requirements of §4-408 herein.

(d) A hedge in a side or rear yard (other than along a street line) and general landscaping beyond four (4) feet of the street line are not regulated hereunder.

(e) At least ten (10) days prior to the installation of the hedge, the landowner shall file notice with the Village Clerk of his/her intent to install a hedge in a front yard or along a street line. The landowner shall have the obligation to assure the hedge complies with the required four (4) foot setback and it is recommended that a licensed surveyor stake the property line and the line of the hedge. The Village reserves the right to inspect the property during installation of the hedge to assure compliance.

(f) Preexisting hedges. Nothing herein shall be construed to restrict or regulate a hedge that existed as of the effective date of this section.

Section 3. Amendment §10-106. Section 10-106 of the Zoning Law is hereby amended by deleting strikethrough words and adding underlined words as follows:

c. All fences, whether structural or living; and walls, including fences for pools, tennis courts and gardens.

Section 4. Amendment §10-108. Section 10-108 of the Zoning Law is hereby amended by adding a new subsection 10-108g as underlined words as follows:

g. Review of fences and walls. The Architectural Review Board shall review applications for fences and walls, including such applications seeking to make substantial alteration, replacement, modification or change to pre-existing fences and walls that do not conform the requirements of §4-420(1). In addition to the standards in §10-108c and §10-108d, the Architectural Review Board shall find that the fence or wall will be compatible with the design, appearance, improvements, and physical characteristics of the site and other existing structures in the surrounding neighborhood; that the materials, height, orientation, and location of the fence or wall is in proper relation to the existing or proposed improvements on the site, to public infrastructure and to other fences or walls on adjacent properties and in the neighborhood; that the fence or wall will be a planned architectural feature and will not dominate the site or overwhelm surrounding properties, structures, or passersby; and that the fence or wall will be of sound construction and located so as not to cause a safety hazard. The use of chain-link, cyclone, barbed wire, electrified, or razor wire fences and other similar types of security fences shall be prohibited. Generally, fences along the front lot line or street line shall be of an open grill or latticework, or similar open design allowing light and air to pass through at least fifty (50) percent of the fencing material. Stockade fences and walls that block views within the front yard or along a street line are discouraged. The Architectural Review Board shall have the authority to impose greater setbacks or reduce the height of fences and walls, and to impose reasonable conditions.

Section 5. Authority. The proposed local law is enacted pursuant to Village Law §7-708 and Municipal Home Rule Law §§10(1)(i), 10(1)(ii)(a)(11), 10(1)(ii)(a)(12), and 10(1)(ii)(e) (3).

Section 6. Severability. If any section or subsection, paragraph, clause, phrase, or provision of this law shall be adjudged invalid or held unconstitutional by any court of competent jurisdiction, any judgment made thereby shall not affect the validity of this law as a whole, or any part thereof other than the part or provision so adjudged to be invalid or unconstitutional.

Section 7. Effective Date. This local law shall take effect upon filing with the Secretary of State pursuant to Municipal Home Rule Law.

AND BE IT FURTHER RESOLVED, that the Village Clerk is hereby authorized and directed to publish the following Notice of Adoption:

NOTICE OF ADOPTION

PLEASE TAKE NOTICE, that after public hearings were held on December 2, 2017,

February 3, 2018, March 3, 2018 and April 14, 2018, the Board of Trustees of the Village of Dering Harbor at their meeting of April 14, 2018 adopted LOCAL LAW NO. 1 OF 2018 as follows: "A LOCAL LAW amending §4-420 (Fences) of the Zoning Law to establish standards for structural fences and hedges; repeal duplicative review by the Board of Trustees and Architectural Review Board under §4-420 and §10-106(c); and establish standards for review of fences under §10-108."

Copies of the adopted law are on file in the Village Hall, Thursday, from 9:00 a.m. to 5:00 p.m. and Friday 9:00 a.m. to 12:00 noon, or by appointment, and on the Village's website.

BY ORDER OF THE
BOARD OF TRUSTEES
VILLAGE OF DERING HARBOR,
NEW YORK