

**RESOLUTION TO SCHEDULE PUBLIC HEARING ON A LOCAL LAW AMENDING §4-422 OF THE ZONING LAW TO MODIFY THE SETBACKS FOR CERTAIN ACCESSORY STRUCTURES**

RESOLVED, that the Board of Trustees of the Village of Dering Harbor hereby directs that a public hearing shall be held on **Saturday, October 13, 2018 at 9:00 a.m.** prevailing time, at the Dering Harbor Village Hall, Locust Point Road, Dering Harbor, New York, to hear any and all persons either for or against the following local law entitled: “Local Law amending §4-422 of the Zoning Law to modify the setbacks for certain accessory structures.”

**LOCAL LAW NO. \_\_\_ OF 2018**

A LOCAL LAW amending §4-422 of the Zoning Law to modify the setbacks for certain accessory structures.”

BE IT ENACTED by the Board of Trustees of the Village of Dering Harbor as follows:

**Section 1. Legislative Intent.** Currently §4-422 of the Zoning Law requires a 75 foot setback from all property lines for certain customary accessory structures including tennis courts, pools, basketball courts and any other outdoor entertainment areas such as porches, decks and patios. This requirement was added in 2000 by the Board of Trustees solely on the notion that noise created from activities on such structures has a severe negative impact on the neighboring property properties if the such structures are located less than 75 feet. The 2000 Local Law was not accompanied by a planning or noise study and there is no indication that the existing pattern of development throughout the Village was taken into account, including the common practice of locating such accessory structures in the rear yards. This requirement assumes that all such structures automatically result in activities that generate noise of such intensity or quality that would arise to a public nuisance. Other than tennis courts, basketball courts or similar sports courts, the Board of Trustees finds that this presumption is flawed and the law overreaches in its regulatory intent. The Board of Trustees find that accessory structures such as swimming pools, porches, decks and patios are not automatically “outdoor entertainment” areas and that such areas rarely involve activities generating noise to the level of a public nuisance. The Board of Trustees further find that given the current pattern of development in the Village, the current 75’ setback requirement creates recognizable practical difficulties with respect to the use and enjoyment of such customary accessory structures by residents. The existing regulations also make no distinction as to porches, decks and patios that may be attached to the principal dwelling and those that may be detached. Moreover, §4-400(2) contains conflicting requirements in that it requires all accessory structures have the same setbacks as required for principal buildings on the lot. Similarly, §9-902(5) requires that swimming pools have the same setbacks as required for principal buildings on the lot.

It is the intent and purpose of this Local Law to amend §4-422 of the Zoning Law to continue to require a 75’ setback from all property lines for tennis courts, basketball courts and any other outdoor sports courts and areas that by the nature of the sports activities thereon can presumptively create noise arising to a level of a public nuisance if located at a lesser setback. All other accessory structures, including swimming pools, will continue to have the same setbacks as required for principal buildings on the lot in accordance with §4-400(2) and §9-902(5).

**Section 2. Amendment.** Section §4-422 of the Zoning Law is hereby amended by deleting strikethrough words and adding underlined words as follows:

§4-422; Tennis Courts, ~~Pools~~, Sport Courts and Outdoor Sports ~~and Entertainment~~ Areas

Tennis courts, ~~pools~~, basketball courts, sport courts and any other outdoor sports areas, ~~and outdoor entertainment areas such as porches, decks and patios~~ shall have front yard, side yard and rear yard setback requirements of not less than seventy-five (75') feet. The Board of Trustees finds that the noise created by the activities in the above sports courts and areas ~~has~~ presumptively have a severe negative impact on the neighboring properties if the sports courts and areas are located less than seventy-five feet (75') from those properties and negatively impacts the quality of life and welfare of the neighboring residents and the value of their property and of the other residents of the Village.

**Section 3. Authority.** The proposed local law is enacted pursuant to Village Law §§7-700 & 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 4. 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 5. 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 refer this local law to the Suffolk County Planning Commission; and

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

#### **NOTICE OF PUBLIC HEARING**

PLEASE TAKE NOTICE, that the Board of Trustees of the Village of Dering Harbor hereby directs that a public hearing shall be held on **Saturday, October 13, 2018 at 9:00 a.m.** prevailing time, at the Dering Harbor Village Hall, Locust Point Road, Dering Harbor, New York, to hear any and all persons either for or against a local law entitled: “Local Law amending §4-422 of the Zoning Law to modify the setbacks for certain accessory structures.”

Copies of the proposed law, sponsored by the entire Board of Trustees, are on file in the Village Hall, Tuesday, from 9:00 a.m. to 12:00 noon and Thursday 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