

Local Law # \_\_\_ of 2015

A local law to amend Chapter 360 of the Code of the Village of Nyack, entitled “Zoning”, as follows:

*(New text in italics)*

**Preminary Statement**

Over the past thirty-six months the Village Board has reviewed and implemented several amendments to the Nyack Zoning Code recommended by the standing Land Use Technical Committee (LUTC). Generally, the proposals emanating from the LUTC consist of proposed modifications to the Zoning Code which serve to (1) clarify existing problems or shortcomings in the text of the Zoning Code, (2) address inconsistencies and/or anomalies in the Code (generally brought to the attention of the committee by the Building Inspector based on his analysis of issues that arise during the processing of land use applications), (3) streamline the land use application process for the public, or (4) to lessen the burden in processing land use applications on the building department.

Phase III of recommendations from the LUTC are set forth hereinbelow.

## **A. Proposed changes to the definition, measurement, and exceptions of “Floor Area” and “Floor Area Ratio”**

### Legislative Intent

The Building Inspector and LUTC Committee have requested that the Village Planner conduct a comparative analysis of various Floor Area and FAR measurement definitions in municipal zoning code in Rockland and Westchester counties, so as to provide a rational basis to amend the definition of Floor Area and FAR in the Village’s Zoning Code. Over the years, the present definition has presented problems of scope and interpretation, and both the Building Inspector and LUTC Committee recognize the necessity of amending the current FAR definition.

The LUTC is recommending that the Village Board clarify the definition of Floor Area Ratio within the Village Code (360-4.2). This will save staff time as well as provide more continuity in the Building Department’s treatment of FAR.

This recommendation is based on the Planner’s review of FAR definitions in the Tri-State area concentrating on Westchester and Rockland Counties. Unlike many communities, the Village of Nyack does not use FAR for single family and two family residences. The Village instead applies FAR only for multi-family, mixed use and non-residential uses such as office, commercial and industrial uses. The elements that we propose to be excluded from FAR are standards commonly found in the Tri-State area. For example, there are no municipalities identified in the Tri-State area that treat off-street accessory parking for multi-family, mixed use and non-residential uses as FAR. Similarly, many communities also exclude mechanical spaces, storage, cellars and basements not used for habitable area and unenclosed porches, balconies, terraces and stair and elevator bulkheads.

Additionally, the recommendation has not excluded elevator and stairway shafts from treatment as FAR. New York City and the communities in the metro area do not exclude elevator and stairway shafts from their FAR. Nationally, it appears that only Los Angeles, Chicago, Columbus, OH, Evanston, IL and other municipalities in California exclude elevator and stairway shafts.

The proposed definition clarifies that the exclusion of off-street parking areas/structures under buildings (such as offices and multi-family) are excluded from FAR calculations. This will assist in preventing parking from being spread out across the site. Parking structures or areas under buildings can be more effectively screened and are more efficient from a land use perspective. More of the site can be landscaped rather than being devoted to parking. More efficient use of land provides the potential for more tree cover and landscaping, allowing possibility of more

separation of parking from adjacent residential properties, natural features, and habitats. Finally, encouraging off-street parking under commercial and multi-family buildings is a more efficient use of land, represents smart growth and allows the orderly development envisioned in the Village's Zoning Code. The proposed definition allows the FARs enacted in accord with the updated Comprehensive Plan to be realized. If parking under buildings and non-habitable areas such as mechanical spaces, unenclosed porches, balconies, and storage were not excluded from FAR, it would make the development of commercial and multi-family uses difficult to achieve as envisioned in the Village's Comprehensive Plan.

The proposed FAR definition will bring the Village's existing code language into line with the FAR treatment commonly used by other municipalities in the Tri-State area.

Based on the short form Environmental Assessment Form (EAF) and other information provided to the Board of Trustees, the proposed action is not expected to result in any significant adverse environmental impacts that would rise to the level of significance required for a Positive Declaration.

Proposed text changes:

**1. Village Code Chapter 360, "Zoning", Article VI ("Definitions"), Section 360-6.1 "Words defined", shall be amended as follows:**

*A new definition of "Floor Area" shall be added as follows (New text in italics):*

***FLOOR AREA***

***The sum of gross horizontal areas of the several floors of the building or buildings on a lot, measured from the exterior faces of exterior walls or from the center line of party walls separating two attached buildings. The following are excluded from FAR calculation:***

- (1) Any attic space with a floor-to-ceiling height of less than seven feet.***
- (2) Cellar and basement areas as defined in the Village Code including and storage areas with the exception of habitable space.***
- (3) Any areas or structures devoted to accessory off-street parking or loading.***

- (4) *Mechanical and utility rooms such as trash rooms, electrical rooms, boiler rooms, emergency generator rooms and similar spaces for the operation of the building but in-dwelling unit mechanical spaces are not excluded.*
- (5) *Unenclosed porches, terraces and balconies.*
- (6) *Elevator and stair rooftop bulkheads.*

**2. Village Code Chapter 360, “Zoning”, Article IV (“Development Standards”), Section 360-4.2(D), “Measurements and Exceptions”, shall be amended as follows (New text in italics):**

§ 360-4.2 Measurements and exceptions.

...

D. Maximum floor area ratio.

(1) The floor area ratio or FAR regulates how intensely a site may be used. The FAR provides a means to match the potential amount of use with the desired character of the area. The FAR, along with the height and setback standards, control the overall bulk of development on a site. The FAR listed in **Table 4-1**<sup>[1]</sup> is the maximum amount of floor area within the building or buildings on a lot in relation to the amount of lot area, expressed in square feet. For example, if the maximum FAR is 2, then a lot may contain up to two square feet of building floor area for every one square foot of lot area.

(2) In all applicable zoning districts, the FAR applies to the sum of all buildings on the lot.

***(3) Exceptions. The following areas shall not be computed for determination of FAR:***

- (1) *Any attic space with a floor-to-ceiling height of less than seven feet.*
- (2) *Cellar and basement areas as defined in the Village Code and storage areas with the exception of habitable space.*
- (3) *Any areas or structures devoted to accessory off-street parking or loading.*
- (4) *Mechanical and utility rooms such as trash rooms, electrical rooms, boiler rooms, emergency generator rooms and similar spaces for the operation of the building but in-dwelling unit mechanical spaces are not excluded.*

- (5) *Unenclosed porches, terraces, porticos and balconies.*
- (6) *Elevator and stair rooftop bulkheads.*

## **B. Proposed changes to the regulations pertaining to accessory residential apartments for Ambulance Corps members**

### Legislative Statement & Intent

The Nyack Community Ambulance Corps appeared before the Village's Planning Board in April of 2014 seeking a subdivision to merge two properties owned by the Applicant. The first property housed the ambulance facility; the second parcel was adjacent, located at the intersection of West End Avenue and Sixth Avenue. The residential building on this lot is used to house four NCAC volunteer families. Both properties are in the TFR zoning district. The purpose of the proposed subdivision was to allow the residential building on the second lot to be considered an accessory use to the property's principle use as a non-profit ambulance facility. This ran into several difficulties, the primary one being that a use variance would be required for multi-family housing (4 dwelling units) for the residence in the TFR zone (single and two family residences). While the area variances were of a de minimus nature, the issue of the use variance was difficult to surmount since it requires a higher threshold for a successful appeal to the ZBA. Also, the current occupancy restriction on volunteer families with children is problematic. It is very difficult if not impossible to enforce and administer. For example, if a family with an active volunteer has children after they move into an accessory unit, can they or even should they be forced to move out. This policy also limits the recruitment of volunteers for the ambulance corps.

The Village Board requested that the Village Planner review the issue and recommend an approach that can support the ambulance corps and the provision of housing for ambulance volunteers. As an American Planning Association member and a Planning Advisory Services (PAS) subscriber, the Planner enlisted the assistance of the APA's PAS researchers. They conducted a search of New York State municipal codes and those of nearby states. Initially, Village Planner requested that the PAS researchers review any approach using an overlay zone for ambulance facilities with volunteer housing permitted. An extensive search did not return any examples of overlay zones for ambulance services, let alone any that permitted volunteer housing. The PAS researchers did come across several examples of codes that did address this goal in other ways.

The Village Planner and LUTC Committee concluded that the overlay zoning approach appears to be cumbersome and would need to be demapped and remapped if the ambulance facility ever moved from its current location. Currently, the Code provides a special permit process for ambulance facilities. The current code is a reasonable approach which may need to be refined to include a special permit for accessory multifamily housing for ambulance corps volunteers. These special permits should be transferred from the ZBA to the jurisdiction of the Planning Board as they conduct site plan review. This will need minor text changes to provide the

Planning Board with special permit authority for selected special permits. (The Code currently provides the Planning Board with special permit authority to allow mixed use development in the RMU district. The minor text changes would clarify and coordinate all these special permit references in the Code).

Proposed text changes:

**1. Village Code Chapter 360, “Zoning”, Article III (“Use Regulations”), Section 360-3.2 (“Use Specific Standards”), Section 360-3.2(E)(9)(Accessory Uses – Apartment accessory to ambulance facilities subject to occupancy restrictions”), shall be amended as follows (new text in italics):**

9. Multi-Family Apartment accessory to not-for-Profit ambulance facilities subject to occupancy restrictions.

*(a)*

*All multi-family apartments shall meet the requirements for residential dwelling units contained in the New York State Fire and Building Code. At least one on-site parking space shall be required for each dwelling unit. The Planning Board shall require such reasonable covenants and restrictions to ensure that occupancy of apartments accessory to not for profit ambulance facilities shall be limited to emergency service providers actively associated with the ambulance facility and their spouses. These accessory apartments shall be located on the same lot as the ambulance service facility or an adjacent lot to the facility.*

**2. Village Code Chapter 360, “Zoning”, Table 3.1, entitled “Permitted Uses”, shall be amended as follows:**

(i) After the “Not-for-profit ambulance facilities” designation in the Public and Institutional Use section of Table 3.1, add a new designation: “Apartments Accessory for not-for-profit ambulance facility”.

Add “S” (Special Permit) in the TFR, DMU and CC zoning districts, and “Yes” to “Use Specific Standards” column in this new designation.

**3. Village Code Chapter 360, “Zoning”, Table 4.1, entitled “Dimensional Standards”, shall be amended as follows:**

(i) Amend header for “Two Family/TFR Not-For-Profit Ambulance Facilities” to read “Two Family/TFR Not-For-Profit Ambulance Facilities & Accessory Apartments”.

**4. Village Code Chapter 360-5.1, “Summary and Organization of this article”, Section 360-5.1 (C), Table 5.1, entitled “Summary of Decision Making Authority”, shall be amended as follows:**

(i) Add “D-H” to “Special Use permits” under the Planning Board header.

**5. Village Code Chapter 360, “Zoning”, Article V (“Administration”), Section 360-5.9 (“Special Use Permits”), shall be amended as follows (new text in italics):**

A. Purpose and applicability. This section provides for the review and approval of special permit uses, as identified by Table 3-1 of this chapter, by the Zoning Board of Appeals *or Planning Board*. Such uses typically have unique or widely varying operating characteristics or unusual site development features. While they may be appropriate in a given zoning district, the procedure below encourages public review and evaluation of the specific characteristics of the proposed use and the site in order to assure that proposed special permit uses are in harmony with this chapter and will not adversely affect the surrounding neighborhood or the community at large. In addition, the merger of two or more lots requires a special permit approval.

B. Procedure

...

(5) Step five: Public hearing. Applicable, with the following addition: The Zoning Board of Appeals *or Planning Board* must render a decision on the special permit application within 62 days following the close of said hearing.

(6) Step six: Decision and findings. Applicable, with the following addition: The Zoning Board of Appeals *or Planning Board* may require that special permits be periodically renewed. Such renewal shall be granted following due public notice and hearing consistent with the procedures of this section. Renewal may be withheld only upon a determination by the Building Inspector that such conditions as may have been prescribed by the Board in conjunction with the issuance of the original permit have not been or are no longer being complied with. In such cases, a period



of 60 days shall be granted the applicant for full compliance prior to the revocation of said permit.

C. Criteria. In authorizing the issuance of a special permit, the Zoning Board of Appeals *or Planning Board* shall take into consideration the public health, safety and welfare and shall prescribe appropriate conditions and safeguards to ensure the accomplishment of the following objectives: . . .

. . .

## **C. Proposed changes to the regulations pertaining to pre-existing dimensional non-conformities**

### Legislative Statement & Intent

The LUTC proposed to amend the treatment of non-conforming dimensional standards in the current Village Code in order to streamline the land-use process.

As opposed to the Village's previous Code language on the topic, the current Code in 360-1.9 (E) requires that if a building is nonconforming in terms of dimensional standards, it will require a variance from the ZBA if it is in anyway enlarged or altered.

The result of this change in language has been that every application with pre-existing dimensional nonconformities are required to receive a variance from the ZBA. This also requires that the Planning Board review and make a recommendation to the ZBA regarding the variance request.

This produces additional Building Department staff time and resources, additional costs for public hearings, the Building Inspector's time to review and calculate such variances. It also incurs more time for the Planning Board and ZBA members as well as time for the applicant to appear before the village's land use boards. The ZBA approvals for these types of variance requests are typically pro-forma and approved.

The Chair of the ZBA is supportive of eliminating these types of variance requests. The Building Department's review has determined that over 50 percent of the ZBA's 2013 and 2014 combined applications were for pre-existing dimensional nonconformities (of 41 applications, 22 were for pre-existing nonconformity). In 2014, over 70 percent of the applications were for these pre-existing nonconformities.

It would appear that the language in the current Code 360-1.9 ( C ) (2) could be changed while maintaining the Village's policy of phasing out non-conforming uses. That is the intent of the following proposed amendments. These changes track the intent and language of old 59-33(c), and cover any increase in a pre-existing nonconformity or new nonconformity resulting from proposed construction. These changes would eliminate the need for variance applications for nonconformities unrelated to the application at hand, or for nonconformities that will not be increased or enlarged by an application. It also puts the discretion as to the need for a variance back in the building inspector's sound discretion.

Proposed text changes:

**1. Village Code Chapter 360, “Zoning”, Article I (“General Provisions”), Section 360-1.9 (“Nonconformities”), specifically Section 360-1.9(C)(2) (“Maintenance and restoration of nonconforming structures”), shall be amended as follows (new text in italics):**

§ 360-1.9 Nonconformities.

...

C.

Maintenance and restoration of nonconforming structures.

(1)

Nonconforming structures must be maintained to be safe and in good repair. Incidental repairs and normal maintenance necessary to keep a nonconforming structures in sound condition are permitted, consistent with all permit or approval requirements of this chapter and the Village of Nyack Code.

(2)

*Normal maintenance, repair or reconstruction in kind of a building which houses a conforming use but is nonconforming as to the dimensional standards of Table 4-1 is permitted if same does not increase the degree of an existing nonconformity or create any new nonconformity.*

...

**D. Proposed changes to the threshold applicable for Architectural Review Board (ARB) review of projects.**

Legislative Statement & Intent

The LUTC has proposed adding a minimum threshold to the types of projects which require review and approval of the ARB, based on the street visibility and size of a project. This recommendation is made in furtherance of LUTC’s stated goals of streamlining the land use application process for the public, and to lessen the burden in processing land use applications on the building department by removing minor modifications to existing structure from the ARB review process.

Proposed text changes:

**1. Village Code Chapter 360, “Zoning”, Article V (“Administration”), Section 360-5.2 (“Decisionmaking Bodies”), specifically Section 360-5.2 (C)(4) (“Architectural Review Board – Powers and Duties”), shall be amended as follows (new text in italics):**

§ 360-5.2 Decisionmaking bodies.

...

C. Architectural Review Board.

...

(4)

Powers and duties. The ARB shall have the following powers and duties:

...

(b)

*(1) To hear and decide requests and impose reasonable conditions pursuant to § 360-5.15 for building permits for the construction or alteration of any structure or item within the Village of Nyack that consists of:*

*(i) Any new construction, reconstruction or alteration of any building or structure that affects the exterior appearance of the building or other structure, is visible from any public street, and*

*exceeds 30% of the square footage of that existing structure's front elevation, not including roof.*

*(ii) Any new construction, reconstruction or alteration of any deck or uncovered porch that affects the exterior appearance of the building or other structure, is visible from any public street and exceeds 25 square feet, including steps.*

*(iii) Consists of site grading or landscaping.*

*(2) To hear and decide requests and impose reasonable conditions pursuant to § 360-5.15 for building permits for the construction or alteration of any structure or item within the Village of Nyack where the Building Inspector, in his/her sole discretion, determines that the plans for an exterior alteration or addition anywhere on the existing structure or accessory structure do not conform with the surrounding neighborhood, or determines that the construction or erection of any accessory structure is in excess of 150 square feet; the Building Inspector may require architectural review in accordance with this section or may refer the application to the ARB for a recommendation as the appropriateness of the project. Such referrals may be made on projects including, but not limited to the following:*

*[i] New construction.*

*[ii] Additions.*

*[iii] Alterations.*

*[iv] Mechanical equipment visible from the street or adjacent property.*

*[v] Street furnishings.*

(c) To review the construction or installation by or for public agencies of structures, facilities and all other items listed above. Such approval or disapproval and all attendant procedures and rules shall apply whether or not an application for a permit for construction or alteration is required or has been submitted.

...

**2. Village Code Chapter 360, “Zoning”, Article V (“Administration”), Section 360-5.15 (“Decisionmaking Bodies”), specifically Section 360-5.15 (A) (“Building Permit (ARB review required)”)), shall be amended as follows (new text in italics):**

§ 360-5.15 Building permit (ARB review required).

A.

Purpose and applicability. No person, firm or corporation shall commence the erection, construction, enlargement, alteration, removal, improvement, demolition, conversion or change in the nature of the occupancy of any building or structure, or cause the same to be done, without first obtaining a separate building permit from the Building Department for each such building or structure; except that no building permit shall be required for the performance of ordinary repairs which are not structural in nature. *The provisions of this section shall also apply to those applications that require approval by the ARB under the provisions of 360-5.2(C) (4)(b).*

...

This local law shall be effective immediately upon filing with the Secretary of State