

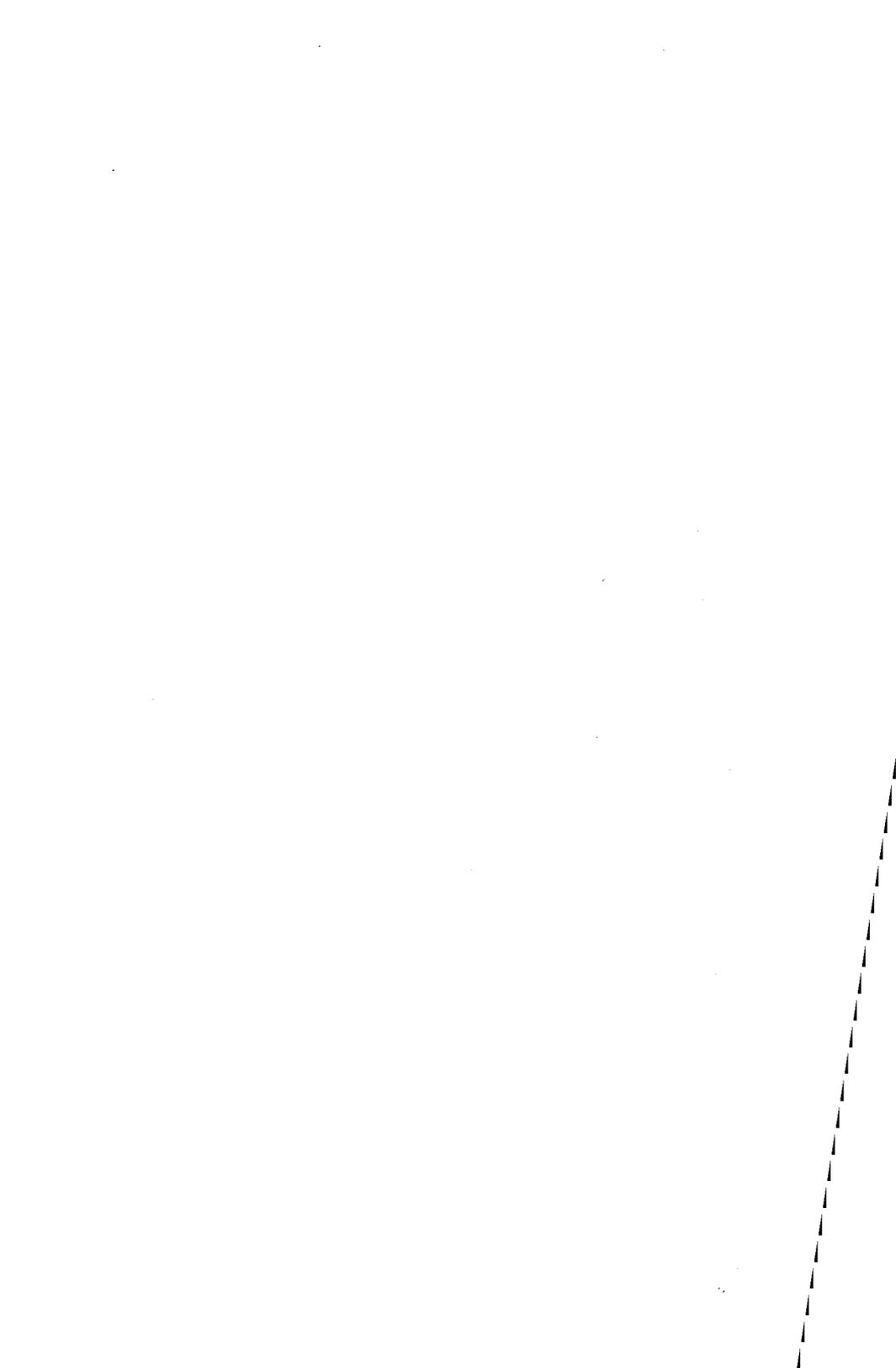
**Code
of the
Village of Asharoken**

**COUNTY OF SUFFOLK
STATE OF NEW YORK**

SERIAL NO.133.....

**GENERAL CODE PUBLISHERS CORP.
72 Hinchey Road
Rochester, New York 14624**

1989



**Code
of the
Village of Asharoken**

COUNTY OF SUFFOLK
STATE OF NEW YORK

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1989

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1989

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VILLAGE OF ASHAROKEN

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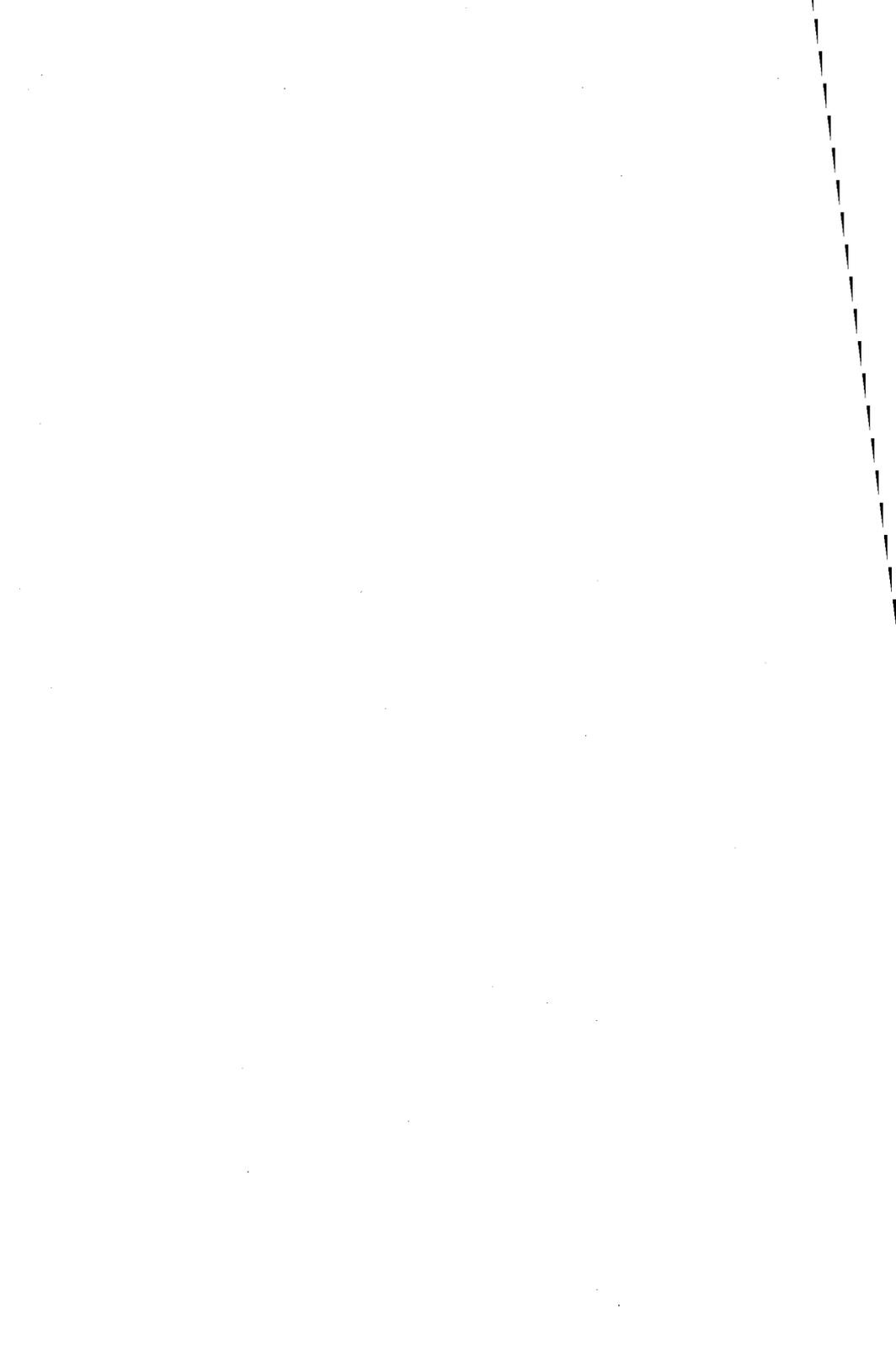
I, **DOROTHY AIELLO**, Village Clerk of the Village of Asharoken, hereby certify that the chapters contained in this volume are based upon the original local laws, ordinances and resolutions of the Board of Trustees of the Village of Asharoken, and that said local laws, ordinances and resolutions, as revised and codified, renumbered as to sections and rearranged into chapters, constitute the Code of the Village of Asharoken, County of Suffolk, State of New York, as adopted by local law of the Board of Trustees on June 4, 1990.

Given under my hand and the Seal of the Village of Asharoken, County of Suffolk, State of New York, this day of 1990, at Northport, New York.

s/DOROTHY AIELLO

.....
Village Clerk

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PREFACE

The Village of Asharoken has, over the years, passed through a process of legislative change common to many American communities. While only a few simple laws were necessary at the time of the establishment of the village, subsequent growth of the community, together with the complexity of modern life, has created the need for new and more detailed legislation for the proper function and government of the village. The recording of local law is an aspect of municipal history, and as the community develops and changes, review and revision of old laws and consideration of new laws, in the light of current trends, must keep pace. The orderly collection of these records is an important step in this ever-continuing process. Legislation must be more than mere chronological enactments reposing in the pages of old records. It must be available and logically arranged for convenient use and must be kept up-to-date. It was with thoughts such as these in mind that the Board of Trustees ordered the following codification of the village's legislation.

Contents of Code

The various chapters of the Code contain all currently effective legislation (local laws, ordinances and certain resolutions) of a general and permanent nature enacted by the Board of Trustees of the Village of Asharoken, including revisions or amendments to existing legislation deemed necessary by the Board of Trustees in the course of the codification.

Division of Code

The Code is divided into parts. Part I, Administrative Legislation, contains all village legislation of an administrative nature, namely, that dealing with the administration of government, that establishing or regulating municipal departments and that affecting officers and employees of the municipal government and its departments. Part II, General Legislation, contains all other village legislation of a regulatory nature. Items of legislation in this part generally impose penalties for violation of their provisions, whereas those in Part I do not.

Grouping of Legislation and Arrangement of Chapters

The various items of legislation are organized into chapters, their order being an alphabetical progression from one subject to another. Wherever there are two or more items of legislation dealing with the same subject, they are combined into a single chapter. Thus, for example, all legislation pertaining to the regulation of streets and sidewalks may be found in Part II, in the chapter entitled "Streets and Sidewalks." In such chapters, use of Article or Part designations has preserved the identity of the individual items of legislation.

Table of Contents

The Table of Contents details the alphabetical arrangement of material by chapter as a means of identifying specific areas of legislation. Wherever two or more items of legislation have been combined by the editor into a single chapter, titles of the several Articles or Parts are listed beneath the chapter title in order to facilitate location of the individual item of legislation.

Reserved Chapters

Space has been provided in the Code for the convenient insertion, alphabetically, of later enactments. In the Table of Contents such space appears as chapters entitled "(Reserved)." In the body of the Code, reserved space is provided by breaks in the page-numbering sequence between chapters.

Pagination

A unique page-numbering system has been used, in which each chapter forms an autonomous unit. One hundred pages have been allotted to each chapter, and the first page of each is the number of that chapter followed by the numerals "01." Thus, Chapter 6 begins on page 601, Chapter 53 on page 5301, etc. By use of this system, it is possible to add or to change pages in any chapter without affecting the sequence of subsequent pages in other chapters, and to insert new chapters without affecting the existing organization.

Numbering of Sections

A chapter-related section-numbering system is employed, in which each section of every item of legislation is assigned a number which indicates both the number of the chapter in which the legislation is located and the location of the section within that chapter. Thus, the first section of Chapter 6 is § 6-1, while the fourth section of Chapter 53 is § 53-4. New sections can then be added between existing sections using a decimal system. Thus, for example, if two sections were to be added between §§ 53-4 and 53-5, they would be numbered as §§ 53-4.1 and 53-4.2.

Scheme

The Scheme is the list of section titles which precedes the text of each chapter. These titles are carefully written so that, taken together, they may be considered as a summary of the content of the chapter. Taken separately, each describes the content of a particular section. For ease and precision of reference, the Scheme titles are repeated as section headings in the text.

Histories

At the end of the Scheme in each chapter is located the legislative history for that chapter. This History indicates the specific legislative source from which the chapter was derived, including the enactment number (e.g., ordinance number, local law number, bylaw number, resolution number, etc.), if pertinent, and the date of adoption. In the case of chapters containing Parts or Articles derived from more than one item of legislation, the source of each Part or Article is indicated in the History. Amendments to individual sections or subsections are indicated by histories where appropriate in the text.

Codification Amendments and Revisions

New chapters adopted or sections amended or revised during the process of codification are specifically enumerated in chapter Histories with reference to "Ch. 1, General Provisions," where the

legislation adopting this Code and making such revisions will appear after final enactment. Sections so amended or revised are also indicated in the text by means of Editor's Notes referring to the chapter cited above.

General References; Editor's Notes

In each chapter containing material related to other chapters in the Code, a table of General References is included to direct the reader's attention to such related chapters. Editor's Notes are used in the text to provide supplementary information and cross-references to related provisions in other chapters.

Appendix

Certain forms of local legislation are not of a nature suitable for inclusion in the main body of the Code but are of such significance that their application is community-wide or their provisions are germane to the conduct of municipal government. The Appendix of this Code is reserved for such legislation and for any other material that the community may wish to include.

Index

The Index is a guide to information. Since it is likely that this Code will be used by persons without formal legal training, the Index has been formulated to enable such persons to locate a particular section quickly. Each section of each chapter has been indexed. The Index will be supplemented and revised from time to time as new legislation is added to the Code.

Instructions for Amending the Code

All changes to the Code, whether they are amendments, deletions or complete new additions, should be adopted as amending the Code. In doing so, existing material that is not being substantively altered should not be renumbered. Where new sections are to be added to a

chapter, they can be added at the end of the existing material (continuing the numbering sequence) or inserted between existing sections as decimal numbers (e.g., a new section between §§ 45-5 and 45-6 should be designated § 45-5.1). New chapters should be added in the proper alphabetical sequence in the appropriate division or part (e.g., Part I, Administrative Legislation, or Part II, General Legislation), utilizing the reserved chapter numbers. New chapter titles should begin with the key word for the alphabetical listing (e.g., new legislation on abandoned vehicles should be titled "Vehicles, Abandoned" under "V" in the table of contents, and a new enactment on coin-operated amusement devices should be "Amusement Devices" or "Amusement Devices, Coin-Operated" under "A" in the table of contents). Where a reserved number is not available, an "A" chapter should be used (e.g., a new chapter to be included between Chapters 45 and 46 should be designated Chapter 45A). New Articles may be inserted between existing Articles in a chapter (e.g., adding a new district to the Zoning Regulations) by the use of "A" Articles (e.g., a new Article to be included between Articles XVI and XVII should be designated Article XVIA). The section numbers would be as indicated above (e.g., if the new Article XVIA contains six sections and existing Article XVI ends with § 45-30 and Article XVII begins with § 45-31, Article XVIA should contain §§ 45-30.1 through 45-30.6).

Supplementation

Supplementation of the Code will follow the adoption of new legislation. New legislation or amendments to existing legislation will be included and repeals will be indicated as soon as possible after passage. Supplemental pages should be inserted as soon as they are received and old pages removed, in accordance with the Instruction Page which accompanies each supplement.

Acknowledgment

The assistance of Dorothy Aiello, Village Clerk, and the other village officials, is gratefully acknowledged by the editor.

The codification of the legislation of the Village of Asharoken reflects an appreciation of the needs of a progressive and expanding community. As in many other municipalities, officials are faced with fundamental changes involving nearly every facet of community life.

Problems increase in number and complexity and range in importance from everyday details to crucial areas of civic planning. It is the profound conviction of General Code Publishers Corp. that this Code will contribute significantly to the efficient administration of local government. As Samuel Johnson observed, "The law is the last result of human wisdom acting upon human experience for the benefit of the public."

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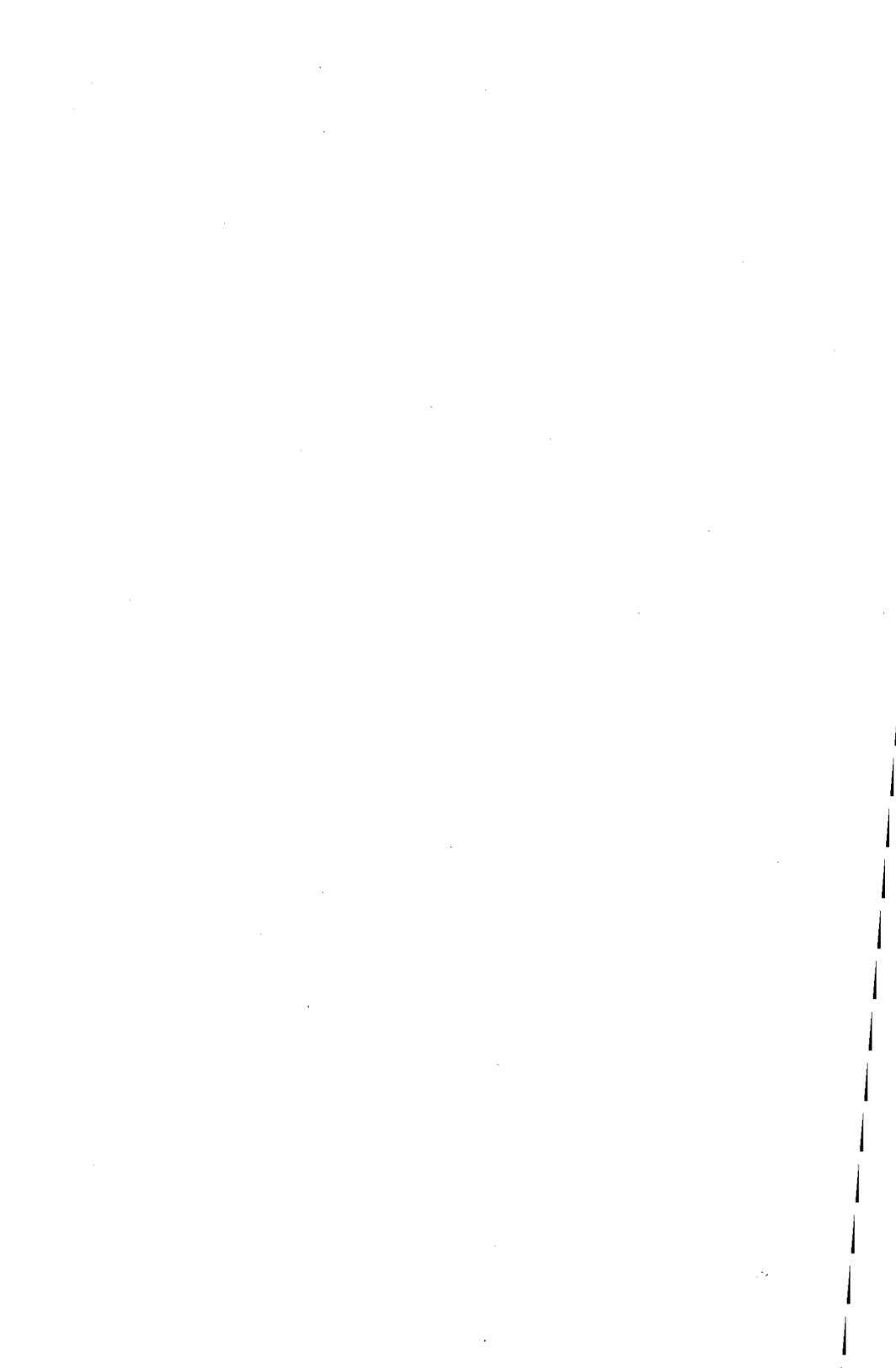
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GENERAL PROVISIONS

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- § 1-15. General penalty.

[HISTORY: Adopted by the Board of Trustees of the Village of Asharoken: Art. I, 6-4-1990 as L.L. No. 2-1990; Art. II, 3-3-1980

as L.L. No. 1-1980, amended in its entirety at time of adoption of Code 6-4-1990 by L.L. No. 2-1990 (see Ch. 1, General Provisions, Art. I). Amendments noted where applicable.]

ARTICLE I
Adoption of Code
[Adopted 6-4-1990 as L.L. No. 2-1990]

Be it enacted by the Board of Trustees of the Village of Asharoken, Suffolk County, New York, as follows:

§ 1-1. Legislative intent.

In accordance with Subdivision 3 of § 20 of the Municipal Home Rule Law, the local laws, ordinances and certain resolutions of the Village of Asharoken shall be known collectively as the "Code of the Village of Asharoken," hereafter termed the "Code." Wherever reference is made in any of the local laws, ordinances and resolutions contained in the "Code of the Village of Asharoken" to any other local law, ordinance or resolution appearing in said Code, such reference shall be changed to the appropriate chapter title, chapter number, Article number or section number appearing below, as if such local law, ordinance or resolution had been formally amended to so read.

§ 1-2. Continuation of existing provisions.

The provisions of the Code, insofar as they are substantively the same as those of local laws, ordinances and resolutions in force immediately prior to the enactment of the Code by this local law are intended as a continuation of such local laws, ordinances and resolutions and not as new enactments, and the effectiveness of such provisions shall date from the date of adoption of the prior local law, ordinance or resolution. All such provisions are hereby continued in full force and effect and are hereby reaffirmed as to their adoption by the Board of Trustees of the Village of Asharoken, and it is the intention of said Board that each such provision contained within the Code is hereby reaffirmed as it appears in said Code. Only such

provisions of former local laws and ordinances as are omitted from this Code shall be deemed repealed or abrogated by the provisions of § 1-3 below.

§ 1-3. Repeal of enactments not included in Code.

All local laws and ordinances of a general and permanent nature of the Village of Asharoken in force on the date of the adoption of this local law and not contained in such Code or recognized and continued in force by reference therein are hereby repealed from and after the effective date of this local law.

§ 1-4. Enactments saved from repeal; matters not affected.

The repeal of local laws and ordinances provided for in § 1-3 of this local law shall not affect the following classes of local laws, ordinances, rights and obligations, which are hereby expressly saved from repeal.

- A. Any right or liability established, accrued or incurred under any legislative provision of the Village of Asharoken prior to the effective date of this local law, or any action or proceeding brought for the enforcement of such right or liability.
- B. An offense or act committed or done before the effective date of this local law in violation of any legislative provision of the Village of Asharoken, or any penalty, punishment or forfeiture which may result therefrom.
- C. Any prosecution, indictment, action, suit or other proceeding pending or any judgment rendered prior to the effective date of this local law, brought pursuant to any legislative provision of the Village of Asharoken.
- D. Any franchise, license, right, easement or privilege heretofore granted or conferred by the Village of Asharoken.
- E. Any local law or ordinance of the Village of Asharoken providing for the laying out, opening, altering, widening, relocating, straightening, establishing grade, changing name, improvement, acceptance or vacation of any right-of-way, easement, street, road, highway, park or other public place within the Village of Asharoken or any portion thereof.

- F. Any local law or ordinance of the Village of Asharoken appropriating money or transferring funds, promising or guaranteeing the payment of money or authorizing the issuance and delivery of any bond of the Village of Asharoken or other instruments or evidence of the village's indebtedness.
- G. Local laws or ordinances authorizing the purchase, sale, lease or transfer of property, or any lawful contract or obligation.
- H. The levy or imposition of special assessments or charges.
- I. The dedication of property.
- J. Any legislation relating to salaries.
- K. Any local law or ordinance amending the Zoning Map.
- L. All legislation regulating traffic.
- M. Any legislation adopted subsequent to January 9, 1989.

§ 1-5. Severability.

If any clause, sentence, paragraph, section, Article or part of this local law or of any local law, ordinance or resolution included in this Code now or through supplementation shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof but shall be confined in its operation to the clause, sentence, paragraph, section, Article or part thereof directly involved in the controversy in which such judgment shall have been rendered.

§ 1-6. Copy of Code on file.

A copy of the Code, in loose-leaf form, has been filed in the office of the Village Clerk of the Village of Asharoken and shall remain there for use and examination by the public until final action is taken on this local law; and, if this local law shall be adopted, such copy shall be certified to by the Village Clerk of the Village of Asharoken by impressing thereon the Seal of the Village of Asharoken, and such certified copy shall remain on file in the office of said Village Clerk to

be made available to persons desiring to examine the same during all times while the said Code is in effect. The enactment and publication of this local law, coupled with the availability of a copy of the Code for inspection by the public, shall be deemed, held and considered to be due and legal publication of all provisions of the Code for all purposes.

§ 1-7. Amendments to Code.

Any and all additions, deletions, amendments or supplements to any of the local laws, ordinances and resolutions known collectively as the "Code of the Village of Asharoken," or any new local laws or resolutions, when enacted or adopted in such form as to indicate the intention of the Board of Trustees to be a part thereof, shall be deemed to be incorporated into such Code so that reference to the Code shall be understood and intended to include such additions, deletions, amendments or supplements. Whenever such additions, deletions, amendments or supplements to the Code shall be enacted or adopted, they shall thereafter be printed and, as provided hereunder, inserted in the loose-leaf book containing said Code, as amendments and supplements thereto. Nothing contained in this local law shall affect the status of any local law, ordinance or resolution contained herein, and such local laws, ordinances or resolutions may be amended, deleted or changed from time to time as the Board of Trustees deems desirable.

§ 1-8. Code book to be kept up-to-date.

It shall be the duty of the Village Clerk to keep up-to-date the certified copy of the book containing the Code of the Village of Asharoken required to be filed in the office of the Village Clerk for use by the public. All changes in said Code and all local laws and resolutions adopted by the Board of Trustees subsequent to the enactment of this local law in such form as to indicate the intention of said Board to be a part of said Code shall, when finally enacted or adopted, be included therein by temporary attachment of copies of such changes, local laws or resolutions until such changes, local laws or resolutions are printed as supplements to said Code book, at which time such supplements shall be inserted therein.

§ 1-9. Sale of Code book; supplementation.

Copies of the Code may be purchased from the Village Clerk of the Village of Asharoken upon the payment of a fee to be set by resolution of the Board of Trustees, which Board may also arrange by resolution for procedures for the periodic supplementation thereof.

§ 1-10. Penalties for tampering with Code.

Any person who, without authorization from the Village Clerk, changes or amends, by additions or deletions, any part or portion of the Code of the Village of Asharoken, or who alters or tampers with such Code in any manner whatsoever which will cause the legislation of the Village of Asharoken to be misrepresented thereby, or who violates any other provision of this local law, shall be guilty of an offense and shall, upon conviction thereof, be subject to a fine of not more than two hundred fifty dollars (\$250.) or imprisonment for a term of not more than fifteen (15) days, or both.

§ 1-11. Changes in previously adopted legislation.

- A. In compiling and preparing the local laws, ordinances and resolutions for publication as the Code of the Village of Asharoken, no changes in the meaning or intent of such local laws, ordinances and resolutions have been made, except as provided for in Subsection B hereof. In addition, certain grammatical changes and other minor nonsubstantive changes were made in one (1) or more of said pieces of legislation. It is the intention of the Board of Trustees that all such changes be adopted as part of the Code as if the local laws, ordinances and resolutions had been previously formally amended to read as such.
- B. In addition, the following changes, amendments or revisions are made herewith, to become effective upon the effective date of this local law. (Chapter and section number references are

to the local laws, ordinances and resolutions as they have been renumbered and appear in the Code.)¹

§ 1-12. General penalty.

When no penalty is otherwise prescribed for the violation of any section of any ordinance, the penalty shall be a fine not to exceed two hundred fifty dollars (\$250.) or imprisonment for a term of fifteen (15) days, or both.

§ 1-13. Incorporation of provisions into Code.

The provisions of this local law are hereby made Article I of Chapter 1 of the Code of the Village of Asharoken, such local law to be entitled "General Provisions, Article I, Adoption of Code," and the sections of this local law shall be numbered §§ 1-1 to 1-14, inclusive.

§ 1-14. When effective.

This local law shall take effect immediately upon filing with the Secretary of State of the State of New York.

¹ Editor's Note: Pursuant to § 1-11B, the following sections, Articles and chapters were added or amended: Art. II of Ch. 1, Ch. 10, Ch. 14, §§ 38-1, 38-3, 38-4, 42-2, 42-4, 42-5, 42-6, 42-9A, 42-11, 42-13, 42-14, Ch. 46, §§ 57-3, 57-6, 61-3A(4) and B(3), 61-7B, 64-3A(8) and B, 64-4, 64-5, 64-8, 67-1D, 67-4, 79-7, 86-5E, 86-7, Ch. 91, §§ 97-2, 97-4, 104-1C, 104-4A(1)(e) and C, 104-5, 107-5A(2) and F, 107-6A(2) and E(1), 107-7F and G, 107-8F, 122-10D and E, 122-12A, 125-7J(2), 125-10B, 125-14, 125-17, 125-43, 125-45 and 125-46.

In addition, the following original sections were deleted: Sections 9 and 10 of the resolution of 4-10-1954, Section 2 of Article II of the Fire Prevention Ordinance of 6-12-1926, Sections 8 through 10 of the Health and Sanitation Ordinance of 6-12-1926 and Sections 316 and 318 and Subsections 600(3) and (4) of the ordinance of 1-3-1942.

A complete description of these changes is on file in the village offices.

ARTICLE II

Enforcement

**[Adopted 3-3-1980 as L.L. No. 1-1980; amended in its
entirety 6-4-1990 by L.L. No. 2-1990]**

§ 1-15. General penalty.

When no penalty is otherwise prescribed for the violation of any section of any ordinance, the penalty shall be a fine not to exceed two hundred fifty dollars (\$250.) or imprisonment for a term of fifteen (15) days, or both.

Chapter 7

COURT

§ 7-1. Authorization.

[HISTORY: Adopted by the Board of Trustees of the Village of Asharoken 12-1-86 by resolution. Amendments noted where applicable.]

§ 7-1. Authorization.

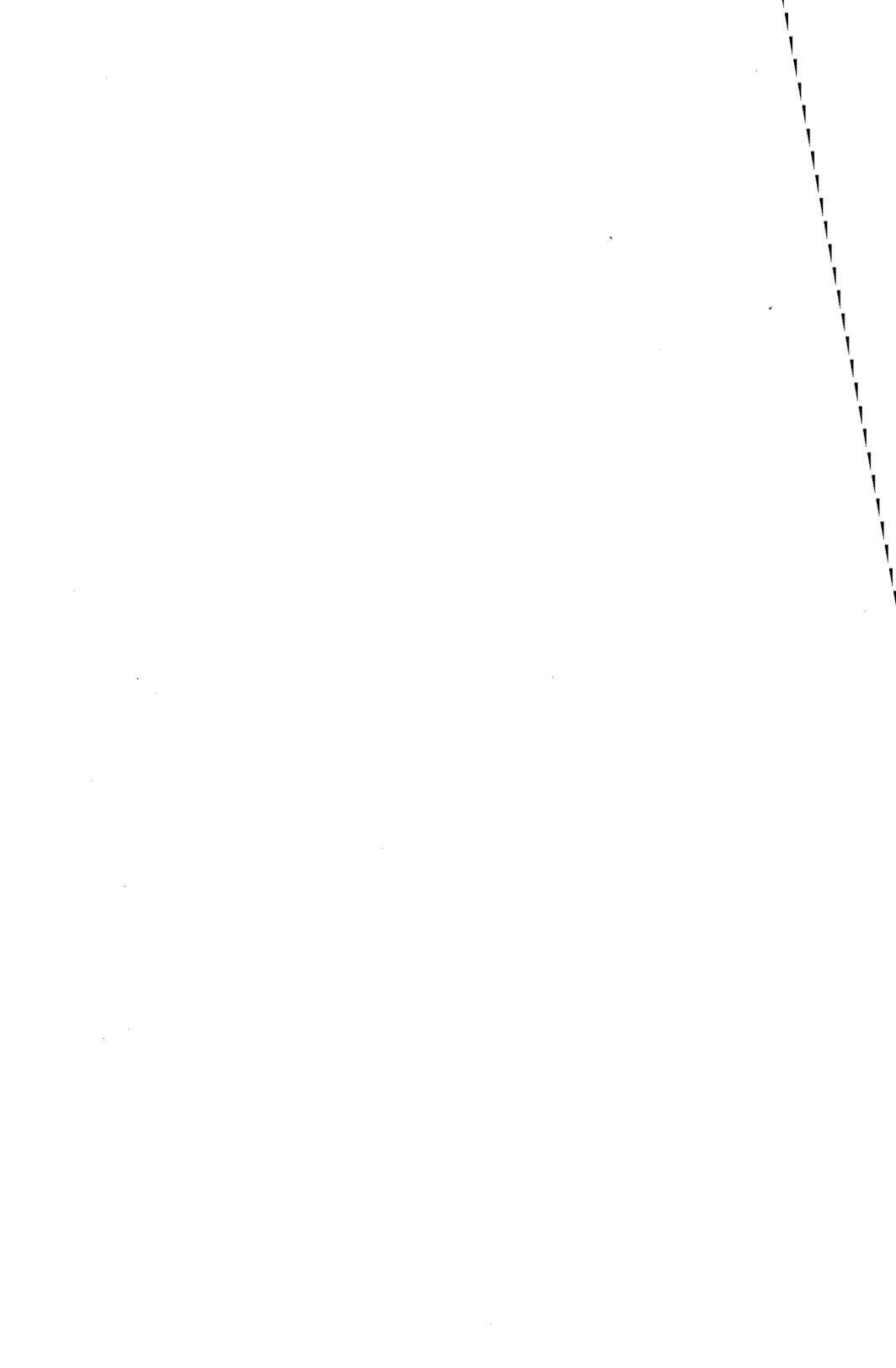
In accordance with § 106, Subdivision 6, of the Uniform Justice Court Act, the Village Justice Court of the Village of Asharoken be and hereby is authorized to conduct jury trials beyond the limits of the village and within the Town of Huntington.

CHAPTER 10**DEFENSE AND INDEMNIFICATION****§ 10-1. Extension of statutory provisions.**

[HISTORY: Adopted by the Board of Trustees of the Village of Asharoken at time of adoption of Code; see Ch. 1, General Provisions, Art. I. Other amendments noted where applicable.]

§ 10-1. Extension of statutory provisions.

The Board of Trustees herewith extends the rights, privileges and benefits created by § 18 of the Public Officers Law to employees (as the term "employees" is defined in said section) as supplemental to other provisions of law granting indemnification and save harmless protection to those employees, officers and appointees of the village who fall within the aforementioned definition of "employee."



Chapter 14

ENVIRONMENTAL CONSERVATION BOARD

- § 14-1. **Legislative intent.**
- § 14-2. **Creation.**
- § 14-3. **Membership; term; vacancy.**
- § 14-4. **Designation of officers; meeting procedures.**
- § 14-5. **Powers and duties.**
- § 14-6. **Annual report.**
- § 14-7. **Compensation; expenses.**
- § 14-8. **Construal of provisions.**

[HISTORY: Adopted by the Board of Trustees of the Village of Asharoken 1-4-71 as L.L. No. 1-1971; amended in its entirety at time of adoption of Code; see Ch. 1, General Provisions, Art. I. Subsequent amendments noted where applicable.]

§ 14-1. Legislative intent.

The preservation and improvement of the quality of the natural and man-made environment within the Village of Asharoken in the face of population growth, urbanization and technologic change, with their accompanying demands on natural resources, are found to be of increasing and vital importance to the health, welfare and economic well-being of present and future inhabitants of the Village of Asharoken. It is recognized that the biologic integrity of the natural environment on which man is dependent for survival and the natural and functional beauty of our surroundings which condition the quality of our life experience cannot be protected without the full cooperation and participation of all the people of the village working in partnership with local and state officials and with various public and private institutions, agencies and organizations. Establishment of a

board for conservation of the environment is a necessary step in fostering unified action on environmental problems.

§ 14-2. Creation.

The Village Board of Trustees of the Village of Asharoken hereby creates a Board which shall be known as the "Asharoken Village Board for Conservation of the Environment," hereinafter called the "Board."

§ 14-3. Membership; term; vacancy.

- A. The Board shall consist of five (5) members who shall be appointed by the Village Board of Trustees and who shall serve for a term of two (2) years, and the remainder shall be ex officio members as provided herein. Persons residing within the Village of Asharoken who are interested in the improvement and preservation of environmental quality shall be eligible for appointment as members of the Board. Vacancies on the Board shall be filled in the same manner as the original appointment, except that a vacancy occurring other than by the expiration of term of office shall be filled only for the remainder of the unexpired term.
- B. The Village Board of Trustees, the Chairman of the Planning Board, Superintendent of Buildings, Commissioner of Roads, Village Attorney and other officials that may be hereafter designated by the Village Board of Trustees shall be ex officio members of the Board.

§ 14-4. Designation of officers; meeting procedures.

- A. The Village Board of Trustees shall designate a member of the Board to act as Chairman thereof. At the first meeting of the Board, its members shall elect from among themselves a Recording Secretary.

- B. The Board shall adopt rules and procedures for its meetings. It shall keep accurate records of its meetings and activities and shall file an annual report as provided in § 14-6 of this chapter.

§ 14-5. Powers and duties.

The powers and duties of the Board, subject to § 14-7 hereof, shall be to:

- A. Advise the Village Board of Trustees on matters affecting the preservation, development and use of the natural and man-made features and conditions of the village insofar as beauty, quality, biologic integrity and other environmental factors are concerned and, in the case of man's activities and developments, with regard to any major threats posed to environmental quality, so as to enhance the long-range value of the environment to the people of the village.
- B. Develop and, after receiving general approval by resolution of the Village Board of Trustees, conduct a program of public information in the community which shall be designed to foster increased understanding of the nature of environmental problems and issues and support for their solutions.
- C. Conduct studies, surveys and inventories of the natural and man-made features within the Village of Asharoken and such other studies and surveys as may be necessary to carry out the general purposes of this chapter.
- D. Maintain an up-to-date inventory or index of all open spaces in public or private ownership within the municipality, including but not limited to natural landmarks, glacial and other geomorphic or physiographic features; streams and their floodplains, swamps, marshlands and other wetlands; unique biotic communities; scenic and other open areas of natural or ecological value; and of the ownership, present use and proposed use of such open areas, so as to provide a base of information for recommendations by the Board for their preservation and/or use.

- E. Seek to coordinate, assist and unify the efforts of private groups, institutions and individuals within the Village of Asharoken in accord with the purposes of this chapter.
- F. Maintain liaison and communications with public and private agencies and organizations of local, state and national scope whose programs and activities have an impact on the quality of the environment or who can be of assistance to the Board.
- G. Working in cooperation with the Planning Board, recommend from time to time to the Village Board of Trustees features, plans and programs relating to environmental improvement for inclusion in the Master Plan of the Village of Asharoken and, similarly, recommend to the Village Board of Trustees appropriate and desirable changes in existing local laws and ordinances relating to environmental control or recommend new local laws and ordinances.
- H. Prepare, print and distribute books, maps, charts and pamphlets in accord with the purposes of this chapter.
- I. Obtain and maintain in orderly fashion maps, reports, books and other publications to support the necessary researches of the Board into local environmental conditions.
- J. When authorized by resolution of the Village Board of Trustees of the Village of Asharoken, accept, by gift, grant, devise, bequest or otherwise, property, both real and personal, in the name of the Village of Asharoken as may be necessary to conserve and otherwise properly utilize open spaces and other land and water resources within the boundaries of the Village of Asharoken. Such real property may be accepted in fee for land and water rights or as any lesser interest, development right, easement, including conservation easement, covenant or other contractual right, including conveyance with limitations or reversions.
- K. Carry out such other duties as may be assigned from time to time by the Village Board of Trustees.

§ 14-6. Annual report.

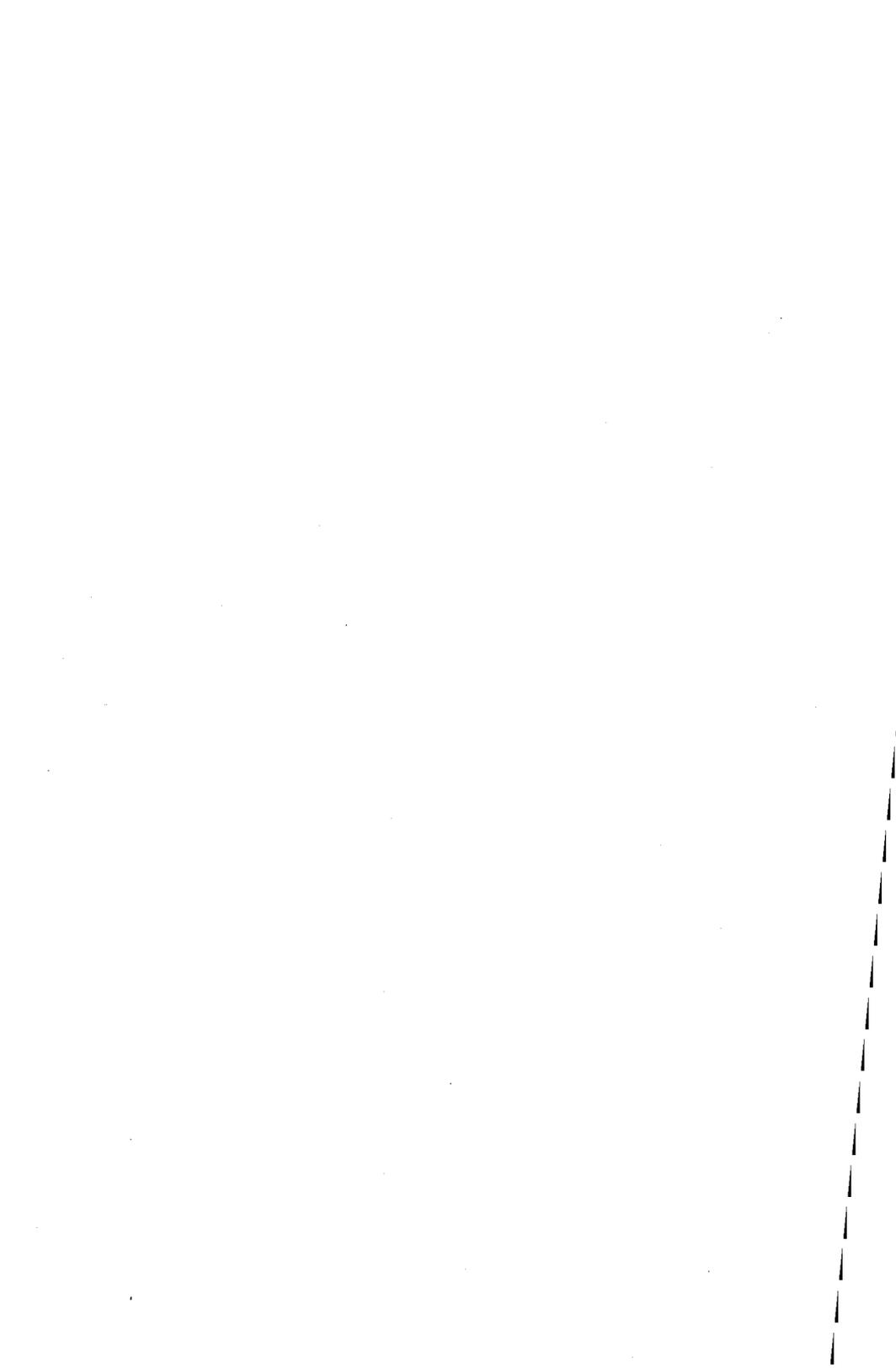
The Board shall submit an annual report to the Village Board of Trustees, not later than the first day of April of each year, concerning the activities and work of the Board and from time to time shall submit such reports and recommendations as may be necessary to fulfill the purposes of this chapter.

§ 14-7. Compensation; expenses.

The members of the Board, including ex officio members, shall receive no compensation for their services as members thereof but may be reimbursed for reasonable and necessary expenses incurred in the performance of their duties within the appropriations made available therefor. No obligations or expenses for the account of the village shall be incurred by the members of the Board without the approval of the Village Board of Trustees.

§ 14-8. Construal of provisions.

This chapter shall be deemed an exercise of the powers of the Village of Asharoken to preserve and improve the quality of the natural and man-made environment on behalf of the present and future inhabitants thereof. This chapter is not intended and shall not be deemed to impair the powers of any other public corporation.



Chapter 17

ETHICS, CODE OF

**ARTICLE I
General Regulations**

- § 17-1. **Legislative finding; purpose.**
- § 17-2. **Definitions.**
- § 17-3. **Standards of conduct**
- § 17-3.1. **Executive sessions.**
- § 17-4. **Filing of claim.**
- § 17-5. **Distribution of Code.**
- § 17-6. **Penalties; removal.**

**ARTICLE II
Public Inspection**

- § 17-7. **Copy of Code on file.**

[HISTORY: Adopted by the Board of Trustees of the Village of Asharoken as indicated in article histories. Amendments noted where applicable.]

**ARTICLE I
General Regulations
[Adopted 9-8-1970]**

- § 17-1. **Legislative finding; purpose.**

A. Pursuant to the provisions of § 806 of the General Municipal Law, the Board of Trustees of the Village of

Asharoken recognizes that there are rules of ethical conduct for public officers and employees which must be observed if a high degree of moral conduct is to be obtained and if public confidence is to be maintained in our unit of local government.

- B. It is the purpose of this article to promulgate these rules of ethical conduct for the officers and employees of the Village of Asharoken. These rules shall serve as a guide for official conduct of the officers and employees of the Village of Asharoken. The rules of ethical conduct of this article as adopted shall not conflict with, but shall be in addition to, any prohibition of Article 18 of the General Municipal Law or any other general or special law relating to ethical conduct and interest in contracts of municipal officers and employees.

§ 17-2. Definitions.

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

INTEREST — A pecuniary or material benefit accruing to a municipal officer or employee or to the municipal officer's or employee's:

- A. Spouse, minor children and dependents;
- B. Firm, partnership or association of which such officer or employee is a member or employee;
- C. Corporation of which such officer or employee is an officer, director or employee; and
- D. Corporation, any stock of which is accrued or controlled directly or indirectly by such officer or employee, unless the context otherwise requires.

MUNICIPAL OFFICER OR EMPLOYEE — An officer or employee of the Village of Asharoken, whether paid or unpaid, including members of any administrative board, commission or other agency thereof. No person shall be

deemed to be a "municipal officer or employee" solely by reason of being a volunteer fireman or civil defense volunteer.

§ 17-3. Standards of conduct

Every officer or employee of the Village of Asharoken shall be subject to and abide by the following standards of conduct:

- A. Gifts. He shall not, directly or indirectly, solicit any gift or accept or receive any gift having a value of \$75 or more, whether in the form of money, services, loan, travel, entertainment, hospitality, thing or promise or any other form under circumstances in which it could reasonably be inferred that the gift was intended to influence him or could reasonably be expected to influence him in the performance of his official duties or was intended as a reward for any official action on his part. **[Amended 1-28-2002 by L.L. No. 1-2002]**
- B. Confidential information. He shall not disclose confidential information acquired by him in the course of his official duties or use such information to further his personal interest.
- C. Representation before one's own agency. He shall not receive or enter into any agreement, express or implied, for compensation for services to be rendered in relation to any matter before any municipal agency of which he is an officer, member or employee or of any municipal agency over which he has jurisdiction or to which he has the power to appoint any member, officer or employee.
- D. Representation before any agency for a contingent fee. He shall not receive or enter into any agreement, express or implied, for compensation for services to be rendered in relation to any matter before any agency of his municipality whereby his compensation is to be dependent or contingent upon any action by such agency with respect to such matter, provided that this subsection shall not prohibit the fixing at any time of

fees based upon the reasonable value of the services rendered.

- E. Disclosure of interest in legislation. To the extent that he knows thereof, a member of the Board of Trustees and any officer or employee of the Village of Asharoken, whether paid or unpaid, who participates in the discussion or gives official opinion to the Board of Trustees on any legislation before the Board of Trustees, shall publicly disclose on the official record the nature and extent of any direct or indirect financial or other private interest he has in such legislation.
- F. Investments in conflict with official duties. He shall not invest or hold any investment, directly or indirectly, in any financial, business, commercial or other private transaction which creates a conflict with his official duties.
- G. Private employment. He shall not engage in, solicit, negotiate for or promise to accept private employment or render services for private interests when such employment or service creates a conflict with or impairs the proper discharge of his official duties.
- H. Future employment. He shall not, after the termination of service or employment with such municipality, appear before any board or agency of the Village of Asharoken in relation to any case, proceeding or application in which he personally participated during the period of his service or employment or which was under his active consideration.

§ 17-3.1. Executive sessions. [Added 1-28-2002 by L.L. No. 1-2002]

- A. Unless otherwise required by law or court of competent jurisdiction, no Village officer or employee shall knowingly disclose by any means any matter or information discussed or deliberated on during a properly convened executive session.

- B. Legal or equitable proceedings to prevent a violation of this section are authorized. Violation of this section constitutes a violation punishable by a fine of up to \$1,000.

§ 17-4. Filing of claim.

Nothing herein shall be deemed to bar or prevent the timely filing by a present or former municipal officer or employee of any claim, account, demand or suit against the Village of Asharoken or any agency thereof on behalf of himself or any member of his family arising out of any personal injury or property damage or for any lawful benefit authorized or permitted by law.

§ 17-5. Distribution of Code.

The Mayor of the Village of Asharoken shall cause a copy of this Code of Ethics to be distributed to every officer and employee of the Village within 15 days after the effective date of this article. Each officer and employee elected or appointed thereafter shall be furnished a copy before entering upon the duties of his office or employment.

§ 17-6. Penalties; removal.

In addition to any penalty contained in any other provision of law, any person who shall knowingly and intentionally violate any of the provisions of this Code may be fined, suspended or removed from office or employment, as the case may be, in the manner provided by law.

ARTICLE II
Public Inspection
[Adopted 11-2-1987]

§ 17-7. Copy of Code on file.

In accordance with the provisions of Chapter 813 of the Laws of 1987,¹ commonly referred to as the "Ethics in Government Act," and, in particular, Subdivision 3(c) of § 806 of the General Municipal Law, as amended thereby, the Village Clerk be and hereby is directed to file with the office of the State Comptroller and maintain as a record subject to public inspection a copy of the Code of Ethics of the Village of Asharoken and a statement that the Village of Asharoken is a municipality which is not subject to the provisions of § 812 of the General Municipal Law because it is not a political subdivision as defined in § 810 of the General Municipal Law.

¹ Editor's Note: See § 94 of the Executive Law.

Chapter 20

FEE SCHEDULE, AUTHORIZATION TO ADOPT

§ 20-1. Adoption of fees by resolution.

[HISTORY: Adopted by the Board of Trustees of the Village of Asharoken 12-6-71 by resolution. Amendments noted where applicable.]

GENERAL REFERENCES

Schedule of fees — See Ch. A127.

§ 20-1. Adoption of fees by resolution.

Except as otherwise specifically provided in the zoning, building, administrative or general ordinances of the village, the Board of Trustees of the village may, by resolution duly adopted, establish a fee or fee schedule for any license or permit required for the conduct of a particular activity or undertaking under any of such ordinances.

Chapter 27**RESIDENCY REQUIREMENTS****ARTICLE I****Justice Court Clerk**

§ 27-1. Intent.

§ 27-2. Applicability.

§ 27-3. County residency required.

[HISTORY: Adopted by the Board of Trustees of the Village of Asharoken as indicated in article histories. Amendments noted where applicable.]

ARTICLE I**Justice Court Clerk**

[Adopted 9-11-2000 by L.L. No. 3-2000]

§ 27-1. Intent.

Inasmuch as Public Officers Law § 3, Subdivision 1, when read in conjunction with Public Officers Law § 3, Subdivision 8, assumes that Village Justice Court Clerks are officers of the village in which they are appointed and thus requires that the Village Justice Court Clerk must be a resident of the village in which he or she serves; and inasmuch as Village Law § 3-300, Subdivision 2(a) allows the Board of Trustees of a village to provide that a village officer may reside within the county in which the village is situated, the Board of Trustees of the Village of Asharoken wishes to exercise its prerogative under Village Law § 3-300, Subdivision 2(a) with regard to the position of Village Justice Court Clerk.

§ 27-2. Applicability.

This article shall regulate the residency requirements for the Village Justice Clerk of the Village of Asharoken.

§ 27-3. County residency required.

The Village Justice Clerk of the Village of Asharoken must reside within the County of Suffolk.

Chapter 29

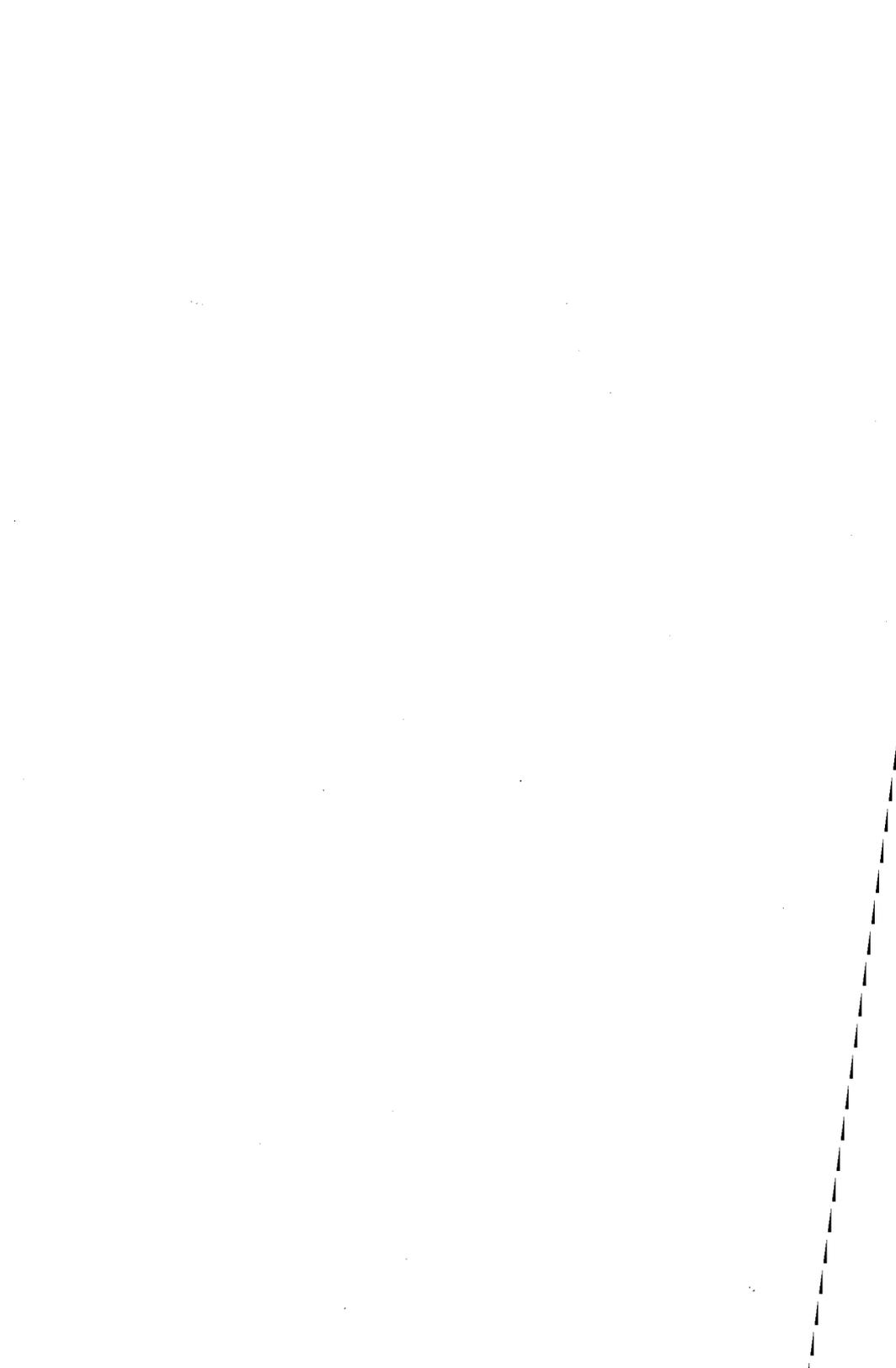
SEAL

§ 29-1. Description.

[HISTORY: Adopted by the Board of Trustees of the Village of Asharoken 11-19-25. Amendments noted where applicable.]

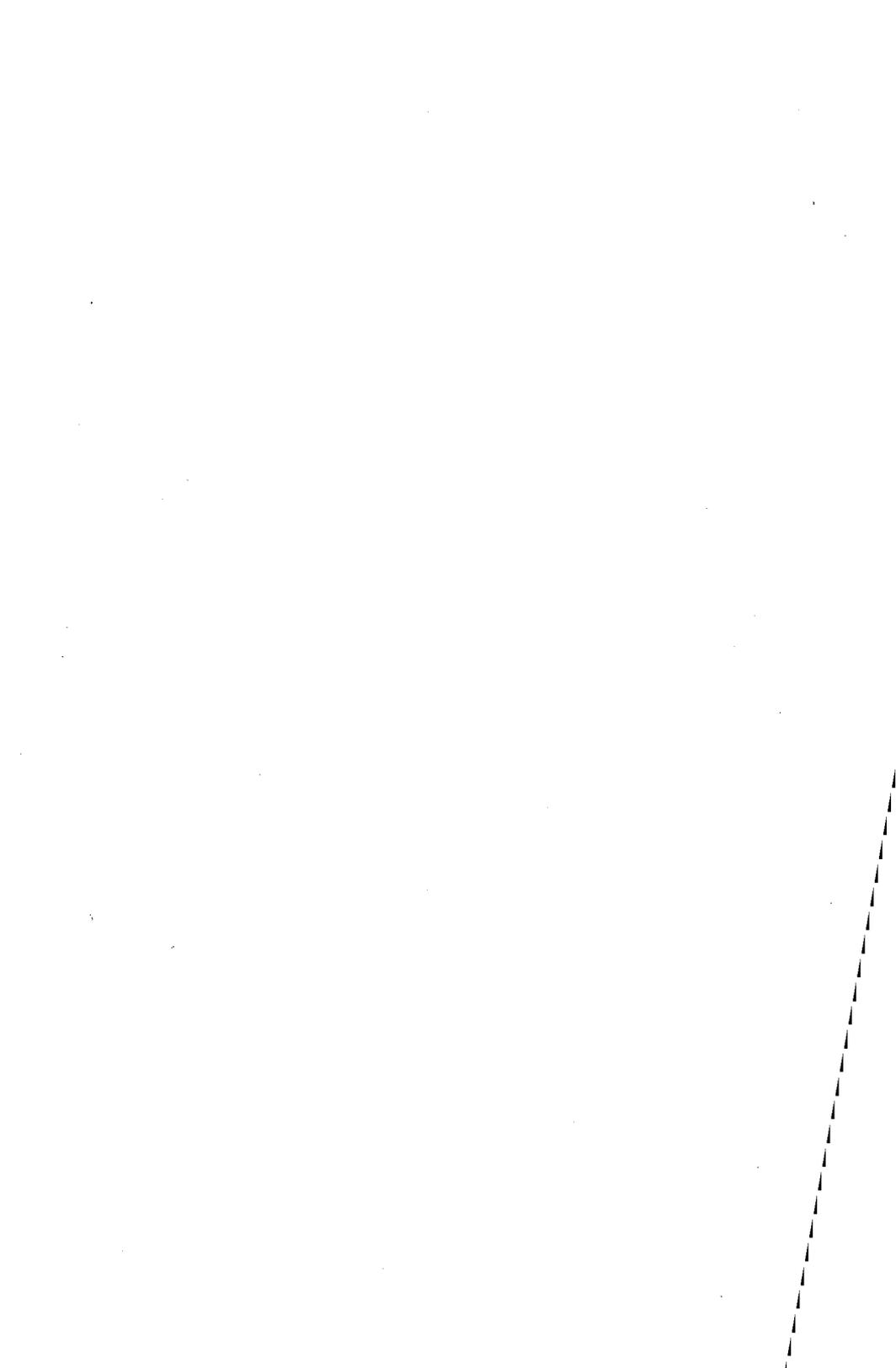
§ 29-1. Description.

The Seal of this village shall be circular in form and around the edge shall have the following: "Village of Asharoken, N.Y.," and in the center shall have the following: "Incorporated 1925."



PART II

**GENERAL
LEGISLATION**



Chapter 38

BEACHES

- § 38-1. Indecent exposure prohibited.
- § 38-2. Dangerous substances.
- § 38-3. Boats to land in designated areas.
- § 38-4. Destruction or removal of growth prohibited.
- § 38-5. Operation of motor vehicles.

[HISTORY: Adopted by the Board of Trustees of the Village of Asharoken 6-12-26. Sections 38-1, 38-3 and 38-4 amended at time of adoption of Code; see Ch. 1, General Provisions, Art. I. Other amendments noted where applicable.]

GENERAL REFERENCES

Health and sanitation — See Ch. 79.

Waterways — See Ch. 122.

- § 38-1. Indecent exposure prohibited. [Amended 6-4-1990 by L.L. No. 2-1990]

No person shall swim or bathe in that portion of Northport Bay, Duck Island Harbor or Long Island Sound within the jurisdiction of the village or appear on the beaches within the jurisdiction of the village unless covered with a bathing suit so as to prevent indecent or improper exposure of the person, nor shall any person dress or undress screened in whole or in part by any trees or bushes or in any automobile, open or closed, or in any place exposed to view.

- § 38-2. Dangerous substances.

No person shall throw, cast or lay or deposit a glass bottle or part thereof, a piece of crockery or any glassware, tin or tinware or any

metal or substance likely to injure any person on any beach or other part of the waterfront in said village.

§ 38-3. Boats to land in designated areas. [Amended 6-4-1990 by L.L. No. 2-1990]

No excursion boat nor any passenger from such excursion boat or any boat used for the carrying of passengers for hire shall land directly or by use of a tender within the village limits except at a place designated by the Trustees.

§ 38-4. Destruction or removal of growth prohibited. [Amended 6-4-1990 by L.L. No. 2-1990]

No person shall remove or destroy any beach grass, beach plum or other nonpoisonous stabilizing growth from or on any beach, dune or beach edge within the village.

§ 38-5. Operation of motor vehicles. [Added 4-1-1991 by L.L. No. 2-1991]

No person shall operate or place any motor vehicle on or along any section of beach or dune, except:

- A. Emergency vehicles while involved in official duties.
- B. Vehicles approved by the Village Board of Trustees for the purpose of performing specific functions, and only while engaged in such functions.
- C. Vehicles permitted under the provision of Article VI, § 125-31, of Chapter 125, Zoning.

BUILDING CONSTRUCTION

Chapter 42

BUILDING CONSTRUCTION ADMINISTRATION

ARTICLE I

Building Department; Permits

- § 42-1. Building Department established.
- § 42-2. Statutory authority.
- § 42-3. Village Clerk to act in absence of Superintendent.
- § 42-4. Building permit; fees.
- § 42-5. Demolition permit required.
- § 42-6. Posting of building and/or demolition permit.
- § 42-7. Approval of application.
- § 42-8. Inspections.
- § 42-9. Duration of permit; extension.
- § 42-10. Certificate of occupancy.
- § 42-11. Final inspection; issuance of certificate.
- § 42-12. New occupancy or use.
- § 42-13. Order to remedy.
- § 42-13.1. Penalties for offenses.
- § 42-14. Proceedings.
- § 42-15. Applicability.
- § 42-16. Definitions.

ARTICLE II
Places of Public Assembly

§ 42-17. Enforcement.

[HISTORY: Adopted by the Board of Trustees of the Village of Asharoken as indicated in article histories. Amendments noted where applicable.]

GENERAL REFERENCES

Unsafe buildings — See Ch. 46.
Zoning — See Ch. 125.
Schedule of fees — See Ch. A127.

ARTICLE I
Building Department; Permits
[Adopted 4-10-1954 by resolution]

§ 42-1. Building Department established.

A Building Department is hereby established in the Village of Asharoken to consist of a Superintendent of Buildings, the Village Clerk and, if designated by the Board, such other person or persons as the Board may deem advisable. The Superintendent shall be a person who has had such professional or other experience as the Board may require and shall be appointed for such a term and at such compensation, if any, as may from time to time be fixed by the Board.

§ 42-2. Statutory authority. [Amended 6-4-1990 by L.L. No. 2-1990]

The Board of Trustees, through and in conjunction with the Building Department, shall have all of the powers set forth in Article 18 of the Executive Law relating to the administration and enforcement of the State Uniform Fire Prevention and Building Code, as well as those hereinafter set forth.

§ 42-3. Village Clerk to act in absence of Superintendent

In the absence of the Superintendent of Buildings or in the case of his inability to act, the Village Clerk shall act in his behalf and shall exercise all of the powers herein conferred upon the Superintendent.

§ 42-4. Building permit; fees. [Amended 9-3-1957; 9-4-1972; 6-4-1990 by L.L. No. 2-1990]

- A. No construction or alteration of any building or part thereof or the excavation therefor shall be hereafter commenced until a building permit has been issued by the Superintendent of Buildings. To obtain such permit the owner or his authorized agent shall file and leave with the Village Clerk the following:
- (1) An application, executed in four copies, on the form prescribed by the Building Department and containing the information therein requested.
 - (2) Plans and specifications, in four copies, for the proposed construction or alteration.
 - (a) Such plans shall include:
 - [1] Foundation plans.
 - [2] All floor plans.
 - [3] All elevations.
 - [4] The section showing the riser diagram for plumbing and means and location of sewage disposal.
 - [5] Structural details.
 - (b) All plans and specifications shall be stamped with the seal of a licensed architect or professional engineer to the extent required by the Education Law of the State of New York.

- (3) A plat, in four copies, drawn to scale, showing the actual dimensions of the lot to be built upon, the size of the building or part thereof to be erected and the location of the building on the lot with distances from boundaries and from any other building on the lot.
- (4) Such other information or documents, including the results of material, construction, equipment or assembly tests, as may reasonably be required by the Building Department to establish compliance of the proposed work with the requirements of the State Uniform Fire Prevention and Building Code and all Village ordinances and regulations.

(5) Fees. **[Amended 2-6-1995 by L.L. No. 1-1995]**

- (a) A fee based on on the estimated value of the construction or alteration, to be determined by the Superintendent of Buildings as follows:

| Total Value of Work | Fee |
|--|------------|
| Up to and including \$1,000.00 | \$100.00 |
| For each additional \$1,000.00 or fraction exceeding \$1,000.00 | 20.00 |
| For each amendment | 100.00 |

- (b) Additional fee for construction or alteration without a permit. The total fees for construction and alteration or the filing of the applications for the same, done at any time prior to the issuance of the appropriate permit and/or certificate, shall be three times the amount established above.
- (c) All building permit application fees for the construction of solar panels on residential buildings shall be waived. **[Added 10-1-2007 by L.L. No. 2-2007]**

(6) Proof of Department of Environmental Conservation, Department of Health and any other required approvals.

B. In addition, the Superintendent of Buildings may require, in his discretion, satisfactory assurance, by surety bond, cash deposit or otherwise, that a final

(Cont'd on page 4205)

survey prepared by a licensed surveyor showing the information specified in Subsection A(3) hereof will be furnished before the granting of a certificate of occupancy to the owner.

- C. The applicant is required to sign the permit when it is issued.

§ 42-5. Demolition permit required. [Added 2-6-1995 by L.L. No. 1-1995]

It shall be unlawful to remove, demolish or commence removal or demolition of fifty percent (50%) or more of a building or structure without first filing with the Superintendent of Buildings an application for a demolition permit, in writing, and obtaining a formal permit.

- A. An application to demolish shall be executed in four (4) copies on the form prescribed by the Building Department and shall give the full names and addresses of the owner, the applicant and the person who is to do the work and the lot number, street number or description of the property. A survey in quadruplicate shall accompany the application, clearly identifying the building or structures to be removed and/or demolished.
- B. The work of demolition must be completed within four (4) months after the permit is issued. All debris must be cleared up and the cellar hole filled in within one (1) foot of grade.
- C. A fee in the amount of Three hundred dollars (\$300) shall be required for the demolition of each structure.

§ 42-6. Posting of building and/or demolition permit. [Added 2-6-1995 by L.L. No. 1-1995¹]

The building and/or demolition permit shall be prominently displayed on the job site at all times during the progress of construction, so as to be readily seen from adjacent thoroughfares.

§ 42-7. Approval of application. [Amended 1-4-1988 by L.L. No. 1-1983; 6-4-1990 by L.L. No. 2-1990]

The Superintendent of Buildings shall approve the application and issue a building permit to the applicant if the Superintendent determines that the proposed work as described in the application and other documents submitted conforms to the State Uniform Fire Prevention and Building Code and all village ordinances and regulations and if the required fees have been paid. In making such determination and in the event that he finds that the proposed construction is susceptible of a use other than as permitted under applicable provisions of law, the Superintendent of Buildings may require the owner of the premises to execute and record a covenant, in form acceptable to the Village Attorney, regarding the use or uses to which the proposed structure may be put and may expressly condition the validity of any building permit on receipt of proof of recordation of such covenant; and receipt of such proof shall be a prerequisite to the issuance of a certificate of occupancy as hereinafter provided. If the application is not approved and no construction has been commenced, all plans and specifications shall be returned to the applicant, together with fifty percent (50%) of the fees paid. The applicant should file all papers with the Village Clerk not later than two (2) weeks prior to the regular monthly meeting of the Board of Trustees in order that his application may be discussed at such meeting.

¹ Editor's Note: This local law also provided for the renumbering of former §§ 42-5 through 42-15 as §§ 42-7 through 42-17, respectively.

§ 42-8. Inspections. [Added 6-4-1990 by L.L. No. 2-1990]

The Superintendent of Buildings may make inspections at any time during the course of the work in order to ensure that the requirements of the State Uniform Fire Prevention and Building Code are complied with.

§ 42-9. Duration of permit; extension. [Amended 1-4-1988 by L.L. No. 1-1988]

A building permit shall be effective to authorize the commencing of work in accordance with the application and other documents submitted only for a period of one (1) year after the date of issuance. A building permit may be renewed for an additional second-year period upon the payment of one-half ($1/2$) the fee that had been paid at the issuance of the building permit, provided that the applicant has commenced substantial construction and/or alteration of the subject premises during the period provided hereinabove. Said permit can be further extended for an additional third-year period upon the payment of one-half ($1/2$) of the fee that had been paid at the issuance of the building permit. At the expiration of three (3) years from the original date of issuance of the permit, said building permit shall expire and become null and void.

§ 42-10. Certificate of occupancy.

No building hereafter erected shall be used or occupied in whole or in part, and no building hereafter altered shall continue to be used or occupied for more than thirty (30) days after the completion of such alteration, until a certificate of occupancy shall have been issued therefor; provided, however, that the Superintendent of Buildings may, at the request of the applicant, issue a temporary certificate of occupancy for such time as the Superintendent may prescribe if such temporary occupancy or use will not in any way jeopardize life or property.

§ 42-11. Final inspection; issuance of certificate.

- A. Upon completion of the work, a final inspection thereof shall be made by the Superintendent of Buildings. The Superintendent may require the architect, engineer or superintendent of the work to file with the Department an affidavit of compliance of the work with the approved plans and specifications and with the State Uniform Fire Prevention and Building Code and all village ordinances and regulations. If required by the Superintendent, the applicant shall cause to be made a survey satisfactory to the Superintendent showing the location of the building or part thereof erected on the lot. [Amended 6-4-1990 by L.L. No. 2-1990]
- B. If it is determined by the Superintendent that the work has been completed in accordance with the approved plans and specifications and with such code and ordinances, the Superintendent shall issue a certificate of occupancy. If it is found that the work has not been properly completed, the Superintendent shall withhold the certificate of occupancy and shall order the work so completed.

§ 42-12. New occupancy or use. [Added 2-6-1984 by L.L. No. 2-1984]

- A. Change of occupancy/use. In the case of the change of the nature of occupancy or of use in any building, existing or to be erected, the owner or lessee must notify the Superintendent of Buildings before the proposed change is made. The Superintendent of Buildings shall thereupon cause an inspection to be made of the premises, and a certificate shall be issued for such use. No new certificate shall be issued, nor shall the building be occupied or used, unless it conforms or is made to conform to all requirements for strength of floors to carry the proposed loads, for means of egress, for light and air and for all other safety requirements of this Code. In an existing building, no change of occupancy shall be made that

would bring it under some special provision of law, ordinance or regulation, unless the Superintendent of Buildings finds, upon inspection, that such building conforms to the provisions of law with respect to the proposed new occupancy and use and issues a certificate of occupancy/use therefor.

- B. Notwithstanding the foregoing, in the event of change in the nature of use of any building or premises and prior thereto, the owner thereof must notify the Superintendent of Buildings, who may require the providing of such proof as he deems necessary for him to determine the legality of the proposed use. No such change in use shall be effected nor building or premises used or occupied unless an appropriate certificate of occupancy/use has been issued therefor. No such certificate of occupancy/use shall be issued unless the Superintendent of Buildings shall determine that the proposed use conforms in all respects to applicable laws and regulations, including without limitation the Zoning Ordinance of the Village of Asharoken.¹

§ 42-13. Order to remedy. [Added 2-2-1998 by L.L. No. 2-1998]

In the event that the village receives notice of a violation of this article or any part thereof or a violation of Chapter 125 of the Village Code, the New York State Uniform Fire Prevention and Building Code, the New York State Department of Environmental Conservation Rules and Regulations and/or the Federal Emergency Management Agency Rules and Regulations, the Building Inspector may, at his discretion, issue an order to remedy said violation to the property owner. Such order shall be served either personally or by certified mail, return receipt requested, and shall advise the property owner of the section of the Village Code allegedly violated. It shall further direct the property owner to remedy the condition within 30 days of the

¹ Editor's Note: See Ch. 125, Zoning.

receipt of the order. Failure to remedy the condition will result in issuance of a violation pursuant to § 42-13.1 of the Code.

§ 42-13.1.² Penalties for offenses. [Amended 3-3-1980 by L.L. No. 1-1980; 6-4-1990 by L.L. No. 2-1990; 2-2-1998 by L.L. No. 2-1998]

Notwithstanding § 42-13, any violation of this article or any part thereof or any lawful order of the Superintendent of Buildings shall be punishable by a fine of not exceeding \$250 for each offense. Each day that a violation continues shall be deemed a separate offense. This section shall not apply to violations of the provisions of the State Uniform Fire Prevention and Building Code punishable under § 382 of the Executive Law.

§ 42-14. Proceedings.

Appropriate actions and proceeding may be taken at law or in equity to prevent unlawful construction or alteration or to restrain, correct, abate or remove such violation or to prevent illegal occupancy of a building, structure or premises; and these remedies shall be in addition to the penalties prescribed in the preceding section.

§ 42-15. Applicability. [Amended 6-4-1990 by L.L. No. 2-1990]

This article shall apply to all buildings and the construction and alteration thereof which are within the scope of the State Uniform Fire Prevention and Building Code.

² Editor's Note: Original Sections 9 and 10, dealing with hazardous buildings and which immediately preceded this section, were deleted 6-4-1990 by L.L. No. 2-1990. See now Ch. 46, Buildings, Unsafe.

§ 42-16. Definitions. [Amended 6-4-1990 by L.L. No. 2-1990]

The definitions contained in the State Uniform Fire Prevention and Building Code shall apply to words used in this article.

**ARTICLE II
Places of Public Assembly
[Adopted 9-4-1961 by resolution]**

§ 42-17. Enforcement.

The village hereby assumes full responsibility for enforcing the provisions of Article 17 of the Labor Law and the rules adopted thereunder.

Chapter 44

EROSION AND SEDIMENT CONTROL; STORMWATER MANAGEMENT

- § 44-1. Intent.**
- § 44-2. Purpose.**
- § 44-3. Findings of fact.**
- § 44-4. Word usage; definitions.**
- § 44-5. Statutory authority.**
- § 44-6. Applicability.**
- § 44-7. Exemptions.**
- § 44-8. Stormwater pollution prevention plans.**
- § 44-9. Performance and design criteria.**
- § 44-10. Maintenance, inspection and repair of stormwater facilities.**
- § 44-11. Subdivision regulations.**
- § 44-12. Construction inspection.**
- § 44-13. Performance guarantee; maintenance guarantee; recordkeeping.**
- § 44-14. Fees for services.**
- § 44-15. Enforcement; penalties for offenses.**
- § 44-16. Violations deemed a public nuisance.**
- § 44-17. Remedies not exclusive.**

[HISTORY: Adopted by the Board of the Trustees of the Village of Asharoken 1-7-2008 by L.L. No. 2-2008. Amendments noted where applicable.]

GENERAL REFERENCES

Storm sewers — See Ch. 45.
Excavations — See Ch. 64.
Flood damage prevention — See Ch. 73.
Subdivision of land — See Ch. 107.
Waterways — See Ch. 122.
Zoning — See Ch. 125.

§ 44-1. Intent.

It is the intent of this legislation to adopt a stormwater management and erosion and sediment control chapter that will satisfy the relevant part of the Phase II Stormwater regulations adopted by the New York State Department of Environmental Conservation.

§ 44-2. Purpose.

The purpose of this chapter is to establish minimum stormwater management requirements and controls to protect and safeguard the general health, safety, and welfare of the public residing within this jurisdiction and to address the findings of fact in § 44-3, hereof. This chapter seeks to meet those purposes by achieving the following objectives:

- A. Meet the requirements of minimum measures 4 and 5 of the SPDES General Permit for Stormwater Discharges from Municipal Separate Storm Sewer Systems (MS4s), Permit No. GP-02-02, or as amended or revised;
- B. Require land development activities to conform to the substantive requirements of the NYS Department of Environmental Conservation State Pollutant Discharge Elimination System (SPDES) General Permit for Construction Activities GP-02-01, or as amended or revised;
- C. Minimize increases in stormwater runoff from land development activities in order to reduce flooding, siltation, increases in stream temperature, and

streambank erosion and maintain the integrity of stream channels;

- D. Minimize increases in pollution caused by stormwater runoff from land development activities which would otherwise degrade local water quality;
- E. Minimize the total annual volume of stormwater runoff which flows from any specific site during and following development to the maximum extent practicable; and
- F. Reduce stormwater runoff rates and volumes, soil erosion and nonpoint source pollution, wherever possible, through stormwater management practices and to ensure that these management practices are properly maintained and eliminate threats to public safety.

§ 44-3. Findings of fact.

It is hereby determined that:

- A. Land development activities and associated increases in site impervious cover often alter the hydrologic response of local watersheds and increase stormwater runoff rates and volumes, flooding, stream channel erosion, or sediment transport and deposition;
- B. This stormwater runoff contributes to increased quantities of waterborne pollutants, including siltation of aquatic habitat for fish and other desirable species;
- C. Clearing and grading during construction tends to increase soil erosion and add to the loss of native vegetation necessary for terrestrial and aquatic habitat;
- D. Improper design and construction of stormwater management practices can increase the velocity of stormwater runoff, thereby increasing streambank erosion and sedimentation;

- E. Impervious surfaces allow less water to percolate into the soil, thereby decreasing groundwater recharge and stream baseflow;
- F. Substantial economic losses can result from these adverse impacts on the waters of the Village;
- G. Stormwater runoff, soil erosion and nonpoint source pollution can be controlled and minimized through the regulation of stormwater runoff from land development activities;
- H. The regulation of stormwater runoff discharges from land development activities in order to control and minimize increases in stormwater runoff rates and volumes, soil erosion, stream channel erosion, and nonpoint source pollution associated with stormwater runoff is in the public interest and will minimize threats to public health and safety.
- I. Regulation of land development activities by means of performance standards governing stormwater management and site design will produce development compatible with the natural functions of a particular site or an entire watershed and thereby mitigate the adverse effects of erosion and sedimentation from development.

§ 44-4. Word usage; definitions.

- A. For the purposes of this chapter, certain terms and words are hereby defined. Words used in the present tense include the future, words in the singular include the plural and words in the plural include the singular; the word "shall" is mandatory. Notwithstanding some references for definitional purposes to the Village Code, the omission of such references in other instances shall not be taken as an intent not to use such definitions for specific terms that are not defined in this section and are defined in said Code, when it is deemed by the Building Inspector or any other official, board or committee of the Village to be

appropriate to do so. Moreover, no definition used in this chapter shall be deemed to apply to any other chapter of the Code, if defined differently in that chapter.

- B. As used in this chapter, the following terms shall have the meanings indicated:

APPLICANT — A property owner or agent of a property owner who has filed an application for a land development activity.

BUILDING — Any structure, either temporary or permanent, having walls and a roof, designed for the shelter of any person, animal, or property, and occupying more than 100 square feet of area.

CHANNEL — A natural or artificial watercourse with a definite bed and banks that conducts continuously or periodically flowing water.

CLEARING — Any activity that removes the vegetative surface cover.

DEDICATION — The deliberate appropriation of property by its owner for general public use.

DEPARTMENT/DEC — The New York State Department of Environmental Conservation.

DESIGN MANUAL — The New York State Stormwater Management Design Manual, most recent version including applicable updates, that serves as the official guide for stormwater management principles, methods and practices.

DEVELOPER — A person who undertakes land development activities.

DISTURBANCE — Clearing, grading, excavation of soil, and/or placement of fill, whether or not such activity is part of construction activity.

EPA — The United States Environmental Protection Agency.

EROSION CONTROL MANUAL — The most recent version of the New York Standards and Specifications for Erosion and Sediment Control manual, commonly known as the "Blue Book."

GRADING — Excavation or fill of material, including the resulting conditions thereof.

IMPERVIOUS COVER — Those surfaces, improvements and structures that cannot effectively infiltrate rainfall, snowmelt and water (e.g., building rooftops, pavement, sidewalks, driveways, etc.).

INFILTRATION — The process of percolating stormwater into the subsoil.

JURISDICTIONAL WETLAND — An area that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support a prevalence of vegetation typically adapted for life in saturated soil conditions, commonly known as "hydrophytic vegetation."

LAND DEVELOPMENT ACTIVITY — Construction activity including, but not limited to, clearing, grading, excavating, soil disturbance and/or placement of fill that results in land disturbance of equal to or greater than one acre, or activities disturbing less than one acre of total land area that is part of a larger common plan of development or sale, even though multiple separate and distinct land development activities may take place at different times on different schedules.

LANDOWNER — The legal or beneficial owner of land, including those holding the right to purchase or lease the land, or any other person holding proprietary rights in the land.

MS4s — Municipal separate storm sewer systems.

MAINTENANCE AGREEMENT — A legally recorded document that acts as a property deed restriction, and which provides for long-term maintenance of stormwater management practices.

NONPOINT SOURCE POLLUTION — Pollution from any source other than from any discernible, confined, and discrete conveyances, and shall include, but not be limited to, pollutants from agricultural, silvicultural, mining, construction, subsurface disposal and urban runoff sources.

PHASING — Clearing a parcel of land in distinct pieces or parts, with the stabilization of each piece completed before the clearing of the next.

POLLUTANT OF CONCERN — Sediment or a water quality measurement that addresses sediment (such as total suspended solids, turbidity or siltation) and any other pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from the land development activity.

PROJECT — Land development activity.

RECHARGE — The replenishment of underground water reserves.

SEDIMENT CONTROL — Measures that prevent eroded sediment from leaving the site.

SENSITIVE AREAS — Coldwater fisheries, shellfish beds, swimming beaches, groundwater recharge areas, water supply reservoirs, habitats for threatened, endangered or special concern species.

SMO — The Stormwater Management Officer.

SMPs — Stormwater management practices.

SPDES — State Pollutant Discharge Elimination System.

SPDES GENERAL PERMIT FOR CONSTRUCTION ACTIVITIES GP-02-01 — A permit under the New York State Pollutant Discharge Elimination System (SPDES) issued to developers of construction activities to regulate disturbance of one or more acres of land.

SPDES GENERAL PERMIT FOR STORMWATER DISCHARGES FROM MUNICIPAL SEPARATE STORMWATER SEWER SYSTEMS GP-02-02 — A permit under the New York State Pollutant Discharge Elimination System (SPDES) issued to municipalities to regulate discharges from municipal separate storm sewers for compliance with EPA established water quality standards and/or to specify stormwater control standards.

STATE — The State of New York.

STABILIZATION — The use of practices that prevent exposed soil from eroding.

STOP-WORK ORDER — An order issued which requires that all construction activity on a site be stopped.

STORMWATER — Rainwater, surface runoff, snowmelt and drainage.

STORMWATER HOTSPOT — A land use or activity that generates higher concentrations of hydrocarbons, trace metals or toxicants than are found in typical stormwater runoff, based on monitoring studies.

STORMWATER MANAGEMENT — The use of structural or nonstructural practices that are designed to reduce stormwater runoff and mitigate its adverse impacts on property, natural resources and the environment.

STORMWATER MANAGEMENT FACILITY — One or a series of stormwater management practices installed, stabilized and operating for the purpose of controlling stormwater runoff.

STORMWATER MANAGEMENT OFFICER — An employee or officer designated by the municipality to accept and review stormwater pollution prevention plans, forward the plans to the applicable municipal board and inspect stormwater management practices.

STORMWATER MANAGEMENT PRACTICES (SMPs) — Measures, either structural or nonstructural, that are determined to be the most effective, practical means of preventing flood damage and preventing or reducing point source or nonpoint source pollution inputs to stormwater runoff and water bodies.

STORMWATER POLLUTION PREVENTION PLAN (SWPPP) — A plan for controlling stormwater runoff and pollutants from a site during and after construction activities.

STORMWATER RUNOFF — Flow on the surface of the ground resulting from precipitation.

SURFACE WATERS OF THE STATE OF NEW YORK — Lakes, bays, sounds, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Atlantic Ocean within the territorial seas of the State of New York and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, public or private (except those private waters that do not combine or effect a junction with natural surface or underground waters), which are wholly or partially within or bordering the state or within its jurisdiction. Storm sewers and waste treatment systems, including treatment ponds or lagoons which also meet the criteria of this definition, are not waters of the state. This exclusion applies only to man-made bodies of water which neither were originally created in waters of the state (such as a disposal area in wetlands) nor resulted from impoundment of waters of the state.

SWPPP — Stormwater pollution prevention plan.

WATERCOURSE — A permanent or intermittent stream or other body of water, either natural or man-made, which gathers or carries surface water.

WATERWAY — A channel that directs surface runoff to a watercourse or to the public storm drain.

§ 44-5. Statutory authority.

In accordance with § 10 of the Municipal Home Rule Law of the State of New York, the Board of Trustees of the Village of Asharoken has the authority to enact local laws and amend local laws and for the purpose of promoting the health, safety or general welfare of the Village and for the protection and enhancement of its physical environment. The Board of Trustees may include in any such local law provisions for the appointment of any municipal officer, employees, or independent contractor to effectuate, administer and enforce such local law.

§ 44-6. Applicability.

- A. This chapter shall be applicable to all land development activities as defined in this chapter.
- B. The municipality shall designate a Stormwater Management Officer (SMO) who shall accept all stormwater pollution prevention plans and forward such plans to the applicable Village Board. The Stormwater Management Officer may either:
 - (1) Review the plans;
 - (2) Upon approval by the Village Board of Trustees of the Village of Asharoken, engage the services of a professional engineer to review the plans, specifications and related documents at a cost not to exceed a fee schedule established by said governing board; or

- (3) Accept the certification of a licensed professional engineer or a certified professional in erosion and sediment control (CPESC) that the plans conform to the requirements of this chapter.
- C. All land development activities subject to review and approval by any Board of the Village shall be reviewed by such Board consistent with the standards contained in this chapter.
- D. All land development activities not subject to review as stated in Subsection C above shall be required to submit a stormwater pollution prevention plan (SWPPP) to the Stormwater Management Officer who shall approve the SWPPP if it complies with the requirements of this chapter.

§ 44-7. Exemptions.

The following activities may be exempt from review under this chapter:

- A. Routine maintenance activities that disturb less than five acres and are performed to maintain the original line and grade, hydraulic capacity or original purpose of a facility.
- B. Repairs to any stormwater management practice or facility deemed necessary by the SMO.
- C. Any part of a subdivision if a plat for the subdivision has been approved by the Village of Asharoken Planning Board on or before the effective date of this chapter, except where the Planning Board has reserved site plan review or other continuous jurisdiction.
- D. Land development activities for which a building permit has been approved on or before the effective date of this chapter.
- E. Installation of fence, sign, telephone, and electric poles and other kinds of posts or poles.

- F. Emergency activity immediately necessary to protect life, property or natural resources.
- G. Activities of an individual engaging in home gardening by growing flowers, vegetable and other plants primarily for use by that person and his or her family.
- H. Landscaping and horticultural activities in connection with an existing structure.

§ 44-8. Stormwater pollution prevention plans.

- A. Stormwater pollution prevention plan requirement. No application for approval of a land development activity shall be reviewed until the appropriate Board has received a stormwater pollution prevention plan (SWPPP) prepared in accordance with the specifications in this chapter.
- B. Contents of stormwater pollution prevention plans.
 - (1) All SWPPPs shall provide the following background information and erosion and sediment controls:
 - (a) Background information about the scope of the project, including location, type and size of project;
 - (b) Site map/construction drawing(s) for the project, including a general location map. At a minimum, the site map should show the total site area; all improvements; areas of disturbance; areas that will not be disturbed; existing vegetation; on-site and adjacent off-site surface water(s); wetlands and drainage patterns that could be affected by the construction activity; existing and final slopes; locations of off-site material, waste, borrow or equipment storage areas; and location(s) of the stormwater discharges(s). The site map shall be at a scale no smaller than one inch equals 100 feet;

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- (c) Description of the soil(s) present at the site;
- (d) Construction phasing plan describing the intended sequence of construction activities, including clearing and grubbing, excavation and grading, utility and infrastructure installation and any other activity at the site that results in soil disturbance. Consistent with the New York Standards and Specifications for Erosion and Sediment Control (Erosion Control Manual), not more than five acres shall be disturbed at any one time unless pursuant to an approved SWPPP;
- (e) Description of the pollution prevention measures that will be used to control litter, construction chemicals and construction debris from becoming a pollutant source in stormwater runoff;
- (f) Description of construction and waste materials expected to be stored on site with updates as appropriate, and a description of controls to reduce pollutants from these materials including storage practices to minimize exposure of the materials to stormwater, and spill-prevention and response;
- (g) Temporary and permanent structural and vegetative measures to be used for soil stabilization, runoff control and sediment control for each stage of the project, from initial land clearing and grubbing to project closeout;
- (h) A site map/construction drawing(s) specifying the location(s), size(s) and length(s) of each erosion and sediment control practice;
- (i) Dimensions, material specifications and installation details for all erosion and sediment

- control practices, including the siting and sizing of any temporary sediment basins;
- (j) Temporary practices that will be converted to permanent control measures;
 - (k) Implementation schedule for staging temporary erosion and sediment control practices, including the timing of initial placement and duration that each practice should remain in place;
 - (l) Maintenance schedule to ensure continuous and effective operation of the erosion and sediment control practice;
 - (m) Name(s) of the receiving water(s);
 - (n) Delineation of SWPPP implementation responsibilities for each part of the site;
 - (o) Description of structural practices designed to divert flows from exposed soils, store flows, or otherwise limit runoff and the discharge of pollutants from exposed areas of the site to the degree attainable; and
 - (p) Any existing data that describes the stormwater runoff at the site.
- (2) Land development activities meeting Condition A, B or C below shall also include water quantity and water quality controls (postconstruction stormwater runoff controls) as set forth below as applicable:
- (a) Condition A: stormwater runoff from land development activities discharging a pollutant of concern to either an impaired water identified on the Department's 303(d) list of impaired waters or a total maximum daily load (TMDL) designated watershed for which

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pollutants in stormwater have been identified as a source of the impairment.

- (b) Condition B: stormwater runoff from land development activities disturbing five or more acres.
 - (c) Condition C: stormwater runoff from land development activity disturbing at least one but less than five acres of land during the course of the project, exclusive of the construction of single-family residences.
- (3) SWPPP requirements for Conditions A, B and C:
- (a) All information in Subsection B of this section;
 - (b) Description of each postconstruction stormwater management practice;
 - (c) Site map/construction drawing(s) showing the specific location(s) and size(s) of each postconstruction stormwater management practice;
 - (d) Hydrologic and hydraulic analysis for all structural components of the stormwater management system for the applicable design storms;
 - (e) Comparison of postdevelopment stormwater runoff conditions with predevelopment conditions;
 - (f) Dimensions, material specifications and installation details for each postconstruction stormwater management practice;
 - (g) Maintenance schedule to ensure continuous and effective operation of each postconstruction stormwater management practice;

- (h) Maintenance easements to ensure access to all stormwater management practices at the site for the purpose of inspection and repair. Easements shall be recorded on the plan and shall remain in effect with transfer of title to the property;
 - (i) Inspection and maintenance agreement binding on all subsequent landowners served by the on-site stormwater management measures in accordance with this chapter.
- C. Plan certification. The SWPPP shall be prepared by a licensed professional landscape architect or a licensed professional engineer and must be signed by the professional preparing the plan, who shall certify that the design of all stormwater management practices meet the requirements of this chapter.
- D. Other environmental permits. The applicant shall assure that all other applicable environmental permits have been or will be acquired for the land development activity prior to approval of the final stormwater design plan.
- E. Contractor certification.
 - (1) Each contractor and subcontractor identified in the SWPPP who will be involved in soil disturbance and/or stormwater management practice installation shall sign and date a copy of the following certification statement before undertaking any land development activity: "I certify under penalty of law that I understand and agree to comply with the terms and conditions of the stormwater pollution prevention plan. I also understand that it is unlawful for any person to cause or contribute to a violation of water quality standards."
 - (2) The certification must include the name and title of the person providing the signature, address and telephone number of the contracting firm; the

address (or other identifying description) of the site; and the date the certification is made.

- (3) The certification statement(s) shall become part of the SWPPP for the land development activity.
- F. A copy of the SWPPP shall be retained at the site of the land development activity during construction from the date of initiation of construction activities to the date of final stabilization.

§ 44-9. Performance and design criteria.

All land development activities shall be subject to the following performance and design criteria:

- A. Technical standards. For the purpose of this chapter, the following documents shall serve as the official guides and specifications for stormwater management. Stormwater management practices that are designed and constructed in accordance with these technical documents shall be presumed to meet the standards imposed by this chapter:
- (1) The New York State Stormwater Management Design Manual (New York State Department of Environmental Conservation, most current version or its successor, hereinafter referred to as the "Design Manual");
 - (2) New York Standards and Specifications for Erosion and Sediment Control, (Empire State Chapter of the Soil and Water Conservation Society, 2004, most current version or its successor, hereinafter referred to as the "Erosion Control Manual").
- B. Equivalence to technical standards. Where stormwater management practices are not in accordance with technical standards, the applicant or developer must demonstrate equivalence to the technical standards set forth in Subsection A above and the SWPPP shall be prepared by a licensed professional, as per § 44-8C, above.

- C. Water quality standards. Any land development activity shall not cause an increase in turbidity that will result in substantial visible contrast to natural conditions in surface waters of the State of New York.

§ 44-10. Maintenance, inspection and repair of stormwater facilities.

- A. Maintenance and inspection during construction.
- (1) The applicant or developer of the land development activity or their representative shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the applicant or developer to achieve compliance with the conditions of this chapter. Sediment shall be removed from sediment traps or sediment ponds whenever their design capacity has been reduced by 50%.
 - (2) For land development activities as defined in chapter and meeting Condition A, B or C of § 44-8, the applicant shall have a qualified professional conduct site inspections and document the effectiveness of all erosion and sediment control practices every seven days and within 24 hours of any storm event producing 0.5 inch of precipitation or more. Inspection reports shall be maintained in a site logbook.
 - (3) At the discretion of the SMO, the applicant, developer or their representative may be required to be on site at all times during the construction or grading activities that take place for the purposes of inspection and documentation of the effectiveness of all erosion and sediment control practices.
- B. Maintenance easement(s). Prior to the issuance of any approval that has a stormwater management facility as

one of the requirements, the applicant or developer must execute a maintenance easement agreement that shall be binding on all subsequent landowners served by the stormwater management facility. The easement shall provide for access to the facility at reasonable times for periodic inspection by the Village to ensure that the facility is maintained in proper working condition to meet design standards and any other provisions established by this chapter. The easement shall be recorded by the grantor in the office of the Suffolk County Clerk after approval by the counsel for the Village.

- C. Maintenance after construction. The owner or operator of permanent stormwater management practices installed in accordance with this chapter shall ensure they are operated and maintained to achieve the goals of this chapter. Proper operation and maintenance also includes, as a minimum, the following:
- (1) A preventive/corrective maintenance program for all critical facilities and systems of treatment and control (or related appurtenances) which are installed or used by the owner or operator to achieve the goals of this chapter.
 - (2) Written procedures for operation and maintenance and training new maintenance personnel.
 - (3) Discharges from the SMPs shall not exceed design criteria or cause or contribute to water quality standard violations in accordance with this chapter.
- D. Maintenance agreements. The Village shall approve a formal maintenance agreement for stormwater management facilities binding on all subsequent landowners and recorded in the Office of the Suffolk County Clerk as a deed restriction on the property prior to final plan approval. The maintenance agreement shall be consistent with the terms and conditions of this chapter. The Village, in lieu of a maintenance agreement, at its sole discretion, may accept dedication of any existing or future

stormwater management facility, provided such facility meets all the requirements of this chapter and includes adequate and perpetual access and sufficient area, by easement or otherwise, for inspection and regular maintenance.

§ 44-11. Subdivision regulations.

- A. A stormwater pollution prevention plan (SWPPP) consistent with the requirements of this chapter shall be required for preliminary subdivision plat approval. The SWPPP shall meet the performance and design criteria and standards of this chapter. The approved preliminary subdivision plat shall be consistent with the provisions of this chapter.
- B. A stormwater pollution prevention plan consistent with the requirements of this chapter and with the terms of preliminary plan approval shall be required for final subdivision plat approval. The SWPPP shall meet the performance and design criteria and standards in this chapter. The approved final subdivision plat shall be consistent with the provisions of this chapter.

§ 44-12. Construction inspection.

- A. Erosion and sediment control inspection.
 - (1) The Village Stormwater Management Officer may require such inspections as necessary to determine compliance with this chapter and may either approve that portion of the work completed or notify the applicant wherein the work fails to comply with the requirements of this chapter and the stormwater pollution prevention plan (SWPPP) as approved. To obtain inspections, the applicant shall notify the Village enforcement official at least 48 hours before any of the following as required by the Stormwater Management Officer:

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- (a) Start of construction;
 - (b) Installation of sediment and erosion control measures;
 - (c) Completion of site clearing;
 - (d) Completion of rough grading;
 - (e) Completion of final grading;
 - (f) Close of the construction season;
 - (g) Completion of final landscaping;
 - (h) Successful establishment of landscaping in public areas.
- (2) If any violations are found, the applicant and developer shall be notified in writing of the nature of the violation and the required corrective actions. No further work shall be conducted except for site stabilization until any violations are corrected and all work previously completed has received approval by the Stormwater Management Officer.
- B. Stormwater management practice inspections. The Village Stormwater Management Officer is responsible for conducting inspections of stormwater management practices (SMPs). All applicants are required to submit as-built plans for any stormwater management practices located on site after final construction is completed. The plan must show the final design specifications for all stormwater management facilities and must be certified by a licensed professional engineer.
- C. Inspection of stormwater facilities after project completion. Inspection programs shall be established on any reasonable basis, including but not limited to: routine inspections; random inspections; inspections based upon complaints or other notice of possible violations; inspection of drainage basins or areas identified as

higher-than-typical sources of sediment or other contaminants or pollutants; inspections of businesses or industries of a type associated with higher-than-usual discharges of contaminants or pollutants or with discharges of a type which are more likely than the typical discharge to cause violations of state or federal water or sediment quality standards or the SPDES stormwater permit; and joint inspections with other agencies inspecting under environmental or safety laws. Inspections may include, but are not limited to: reviewing maintenance and repair records; sampling discharges, surface water, groundwater, and material or water in drainage control facilities; and evaluating the condition of drainage control facilities and other stormwater management practices.

- D. Submission of reports. The Village Stormwater Management Officer may require monitoring and reporting from entities subject to this chapter as are necessary to determine compliance with this chapter.
- E. Right-of-entry for inspection. When any new stormwater management facility is installed on private property or when any new connection is made between private property and the public stormwater system, the landowner shall grant to the Village the right to enter the property at reasonable times and in a reasonable manner for the purpose of inspection as specified in Subsection B.

§ 44-13. Performance guarantee; maintenance guarantee; recordkeeping.

- A. Construction completion guarantee. In order to ensure the full and faithful completion of all land development activities related to compliance with all conditions set forth by the Village in its approval of the stormwater pollution prevention plan, the Village may require the applicant or developer to provide, prior to construction, a performance bond, cash escrow, or irrevocable letter of credit from an appropriate financial or surety institution which guarantees satisfactory completion of the project and

names the Village as the beneficiary. The security shall be in an amount to be determined by the Village based on submission of final design plans, with reference to actual construction and landscaping costs. The performance guarantee shall remain in force until the surety is released from liability by the Village, provided that such period shall not be less than one year from the date of final acceptance or such other certification that the facility(ies) have been constructed in accordance with the approved plans and specifications and that a one-year inspection has been conducted and the facilities have been found to be acceptable to the Village. Per annum interest on cash escrow deposits shall be reinvested in the account until the surety is released from liability.

- B. Maintenance guarantee. Where stormwater management and erosion and sediment control facilities are to be operated and maintained by the developer, the developer, prior to construction, may be required to provide the Village with a cash escrow, a maintenance bond or an irrevocable letter of credit from an approved financial institution or surety to ensure proper operation and maintenance of all stormwater management and erosion control facilities both during and after construction, and until the facilities are removed from operation. If the developer or landowner fails to properly operate and maintain stormwater management and erosion and sediment control facilities, the Village may draw upon the account to cover the costs of proper operation and maintenance, including engineering and inspection costs. To the extent that such escrow, bond or letter of credit, because of the draw, is no longer sufficient to ensure the proper operation and maintenance of the facility, the Village may require an additional escrow, bond or letter of credit.
- C. Recordkeeping. The Village may require entities subject to this chapter to maintain records demonstrating compliance with this chapter.

§ 44-14. Fees for services.

The Village requires any person undertaking land development activities regulated by this chapter to reimburse the Village for costs of review of SWPPPs, inspections, or SMP maintenance performed by the Village or performed by a third party for the Village in accordance with such resolutions as may be adopted from time to time by the Board of Trustees.

§ 44-15. Enforcement; penalties for offenses.

- A. Notice of violation. When the SMO, his designee, or other designee of the Board of Trustees determines that a land development activity is not being carried out in accordance with the requirements of this chapter, it may issue a written notice of violation to the landowner. The notice of violation shall contain:
- (1) The name and address of the landowner, developer or applicant;
 - (2) The address, when available, or a description of the building, structure or land upon which the violation is occurring;
 - (3) A statement specifying the nature of the violation;
 - (4) A description of the remedial measures necessary to bring the land development activity into compliance with this chapter and a time schedule for the completion of such remedial action;
 - (5) A statement of the penalty or penalties that shall or may be assessed against the person to whom the notice of violation is directed;
 - (6) A statement that the determination of violation may be appealed to the municipality by filing a written notice of appeal within 15 days of service of notice of violation.

- B. Stop-work orders. The Building Inspector, his designee, or other designee of the Board of Trustees may issue a stop-work order for violations of this chapter. Persons receiving a stop-work order shall be required to halt all land development activities, except those activities that address the violations leading to the stop-work order. The stop-work order shall be in effect until the Village confirms that the land development activity is in compliance and the violation has been satisfactorily addressed. Failure to address a stop-work order in a timely manner may result in civil, criminal, or monetary penalties in accordance with the enforcement measures authorized in this chapter.
- C. Violations. Any land development activity that is commenced or is conducted contrary to this chapter may be restrained by injunction or otherwise abated in a manner provided by this chapter.
- D. Penalties. In addition to or as an alternative to any penalty provided herein or by law, any person who violates the provisions of this chapter shall be guilty of a violation punishable by a fine not exceeding \$350 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 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 not less than \$700 nor more than \$1,000 or imprisonment for a period not to exceed six months, or both. However, for the purposes of conferring jurisdiction upon courts and judicial officers generally, violations of this chapter shall be deemed misdemeanors and for such purposes only all provisions of law relating to misdemeanors shall apply to such violations. Each week, or part thereof, such violation continues following notification by the Village, shall constitute a separate offense punishable in a like manner.

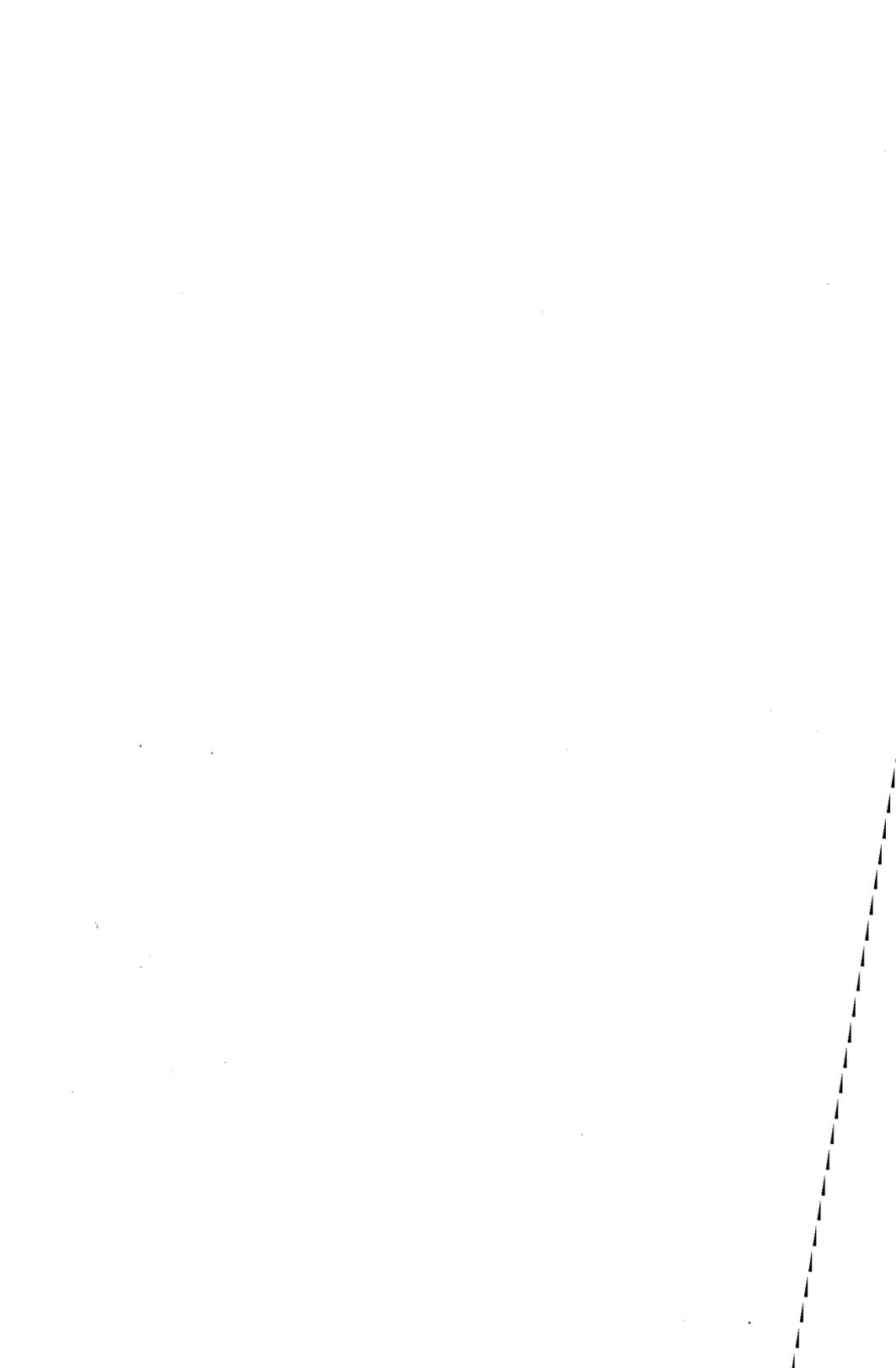
- E. Withholding of certificate of occupancy. If any building or land development activity is installed or conducted in violation of this chapter, the Stormwater Management Officer may prevent the occupancy of said building or land.
- F. Restoration of lands. Any violator may be required to restore land to its undisturbed condition or to such other condition as shall best protect the property and the adjacent properties from the problems of erosion and sediment deposits off the land that may be required by virtue of the actions of the violator, all at the discretion of the SMO. In the event that restoration is not undertaken within a reasonable time after notice, the SMO may either:
- (1) Direct that the remediation and/or restoration work be performed with Village personnel and/or third-party contractors and the cost thereof shall constitute a lien, charge and levy upon the real property by the Village Treasurer. Such charge shall include, among other things, administrative, legal, and actual expenses incurred by the Village, and shall be collected in the same manner provided by law for the collection of delinquent real property taxes; or
 - (2) Seek a court order to take any and all measures reasonably necessary abate the violation and/or restore the property, at the cost and expense, including those of the litigation and the fees of witnesses and attorneys, of the violator.

§ 44-16. Violations deemed a public nuisance.

In addition to the enforcement processes and penalties provided, and condition caused by or permitted to exist in violation of any of the provisions of this chapter is a threat to public health, safety and welfare, and is declared and deemed a nuisance, and may be summarily abated or restored at the violator's expense, and/or a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance may be taken.

§ 44-17. Remedies not exclusive.

The remedies listed in this chapter are not exclusive of any other remedies available under any applicable federal, state or local law and it is within the discretion of the authorized enforcement agency to seek cumulative remedies.



Chapter 45

STORM SEWERS

ARTICLE I

Illicit Discharges and Connections

- § 45-1. Purpose; intent.**
- § 45-2. Definitions.**
- § 45-3. Applicability.**
- § 45-4. Responsibility for administration.**
- § 45-5. Discharge prohibitions; exceptions.**
- § 45-6. Activities contaminating stormwater prohibited.**
- § 45-7. Prevention, control and reduction of stormwater pollutants by use of best management practices.**
- § 45-8. Suspension of access to MS4.**
- § 45-9. Industrial or construction activity discharges.**
- § 45-10. Applicability; access to facilities; monitoring of discharges.**
- § 45-11. Notification of spills.**
- § 45-12. Enforcement; penalties for offenses.**
- § 45-13. Appeal of notice of violation.**
- § 45-14. Corrective measures after appeal.**
- § 45-15. Injunctive relief.**
- § 45-16. Alternative remedies.**
- § 45-17. Violations deemed a public nuisance.**
- § 45-18. Remedies not exclusive.**

[HISTORY: Adopted by the Board of the Trustees of the Village of Asharoken as indicated in article histories. Amendments noted where applicable.]

GENERAL REFERENCES

Erosion and sediment control; stormwater management — See Ch. 44.

Excavations — See Ch. 64.

Flood damage prevention — See Ch. 73.

Subdivision of land — See Ch. 107.

Waterways — See Ch. 122.

Zoning — See Ch. 125.

ARTICLE I

Illicit Discharges and Connections

[Adopted 1-7-2008 by L.L. No. 3-2008]

§ 45-1. Purpose; intent.

The purpose of this article is to provide for the health, safety, and general welfare of the citizens of the Village of Asharoken through the regulation of nonstormwater discharges to the municipal separate storm sewer system (MS4) to the maximum extent practicable as required by federal and state law. This article establishes methods for controlling the introduction of pollutants into the MS4 in order to comply with requirements of the SPDES General Permit for Municipal Storm Sewer Systems. The objectives of this article are:

- A. To meet the requirements of the SPDES General Permit for Stormwater Discharges from MS4s, Permit No. GP-02-02 or as amended or revised;
- B. To regulate the contribution of pollutants to the MS4 since such systems are not designed to accept, process or discharge nonstormwater wastes;
- C. To prohibit illicit connections, activities and discharges to the MS4;
- D. To establish legal authority to carry out all inspection, surveillance and monitoring procedures necessary to

ensure compliance with this article and all applicable laws;
and

- E. To promote public awareness of the hazards involved in the improper discharge of trash, yard waste, lawn chemicals, pet waste, wastewater, grease, oil, petroleum products, cleaning products, paint products, hazardous waste, sediment and other pollutants in the MS4.

§ 45-2. Definitions.

For the purpose of this article, certain terms and words are hereby defined. Whenever used in this article, unless a different meaning is stated in a definition applicable to only a portion of this article, the following terms will have meanings set forth below:

BEST MANAGEMENT PRACTICES (BMPs) — Schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to stormwater, receiving waters, or stormwater conveyance systems. BMPs also include treatment practices, operating procedures and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.

CLEAN WATER ACT — The Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), and any subsequent amendments thereto.

CONSTRUCTION ACTIVITY — Activities requiring authorization under the SPDES Permit for Stormwater Discharges From Construction Activity, GP-02-01, as amended or revised. These activities include construction projects resulting in land disturbance of one or more acres. Such activities include but are not limited to clearing and grubbing, grading, excavating, and demolition.

DEPARTMENT — The New York State Department of Environmental Conservation (DEC).

HAZARDOUS MATERIALS — Any material, including any substance, waste or combination thereof, which because of its quantity, concentration or physical, chemical or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property or the environment when improperly treated, stored transported, disposed of or otherwise managed.

ILLCIT CONNECTIONS — Any drain or conveyance, whether on the surface or subsurface, which allows an illegal discharge to enter the Village's separate storm sewer system (MS4), including but not limited to:

- A. Any conveyance which allows any nonstormwater discharge including treated or untreated sewage, process wastewater and wash water to enter the Village's separate storm sewer system (MS4), and any connections to the storm drain system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted or approved by an authorized enforcement agency.
- B. Any drain or conveyance connected from commercially or industrially utilized property to the Village's separate storm sewer system (MS4) which has not been documented in plans, maps, or equivalent records and has not been approved by an authorized enforcement agency.

ILLCIT DISCHARGE — Any direct or indirect nonstormwater discharge to the Village's separate storm sewer system (MS4), except as exempted in § 45-5A of this article or by an authorized enforcement agency.

MS4 — Municipal separate storm sewer system.

MUNICIPAL SEPARATE STORM SEWER SYSTEM — A conveyance or system of conveyances (including roads with

drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains):

- A. Owned or operated by the Village of Asharoken;
- B. Designed or used for collecting or conveying stormwater;
- C. Which is not a combined sewer; and
- D. Which is not part of a publicly owned treatment works (POTW) as defined at 40 CFR 122.2.

NONSTORMWATER DISCHARGE — Any discharge to the MS4 that is not composed entirely of stormwater.

PERSON — Any individual, association, organization, partnership, firm, corporation or other entity recognized by law and acting as either the owner or as the owner's agent.

POLLUTANT — Dredged spoil, filter backwash, solid waste, incinerator residue, treated or untreated sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand and industrial, municipal, agricultural waste and ballast discharged into water; which may cause or might reasonably be expected to cause pollution of the waters of the state in contravention of the standards.

PREMISES — Any building, lot, parcel of land, or portion of land, whether improved or unimproved, including adjacent sidewalks and parking strips.

SPECIAL CONDITIONS —

- A. Discharge compliance with water quality standards: the condition that applies where a municipality has been notified that the discharge of stormwater authorized under their MS4 permit may have caused or has the reasonable potential to cause or contribute to the violation of an applicable water quality standard. Under this condition, the municipality must take all necessary actions to ensure

future discharges do not cause or contribute to a violation of water quality standards.

- B. 303(d) listed waters: the condition in the municipality's MS4 permit that applies where the MS4 discharges to a 303(d) listed water. Under this condition, the stormwater management program must ensure no increase of the listed pollutant of concern to the 303(d) listed water.
- C. Total maximum daily load (TMDL) strategy: the condition in the municipality's MS4 permit where a TMDL including requirements for control of stormwater discharges has been approved by EPA for a water body or watershed into which the MS4 discharges. If the discharge from the MS4 did not meet the TMDL stormwater allocations prior to September 10, 2003, the municipality was required to modify its stormwater management program to ensure that reduction of the pollutant of concern specified in the TMDL is achieved.
- D. The condition in the municipality's MS4 permit that applies if a TMDL is approved in the future by EPA for any water body or watershed into which an MS4 discharges: Under this condition, the municipality must review the applicable TMDL to see if it includes requirements for control of stormwater discharges. If an MS4 is not meeting the TMDL stormwater allocations, the municipality must, within six months of the TMDL's approval, modify its stormwater management program to ensure that reduction of the pollutant of concern specified in the TMDL is achieved.

STATE POLLUTANT DISCHARGE ELIMINATION SYSTEM (SPDES) STORMWATER DISCHARGE PERMIT — A permit issued by the Department that authorizes the discharge of pollutants to waters of the state.

STORMWATER — Rainwater, surface runoff, snowmelt and drainage.

STORMWATER MANAGEMENT OFFICER (SMO)— An employee, the municipal engineer or other public official(s) designated by the Village of Asharoken to enforce this article. The SMO may also be designated by the municipality to accept and review stormwater pollution prevention plans, forward the plans to the applicable municipal board and inspect stormwater management practices.

303(d) LIST— A list of all surface waters in the state for which beneficial uses of the water (drinking, recreation, aquatic habitat, and industrial use) are impaired by pollutants, prepared periodically by the Department as required by Section 303(d) of the Clean Water Act. 303(d) listed waters are estuaries, lakes and streams that fall short of state surface water quality standards and are not expected to improve within the next two years.

TMDL— Total maximum daily load.

TOTAL MAXIMUM DAILY LOAD— The maximum amount of a pollutant to be allowed to be released into a water body so as not to impair uses of the water allocated among the sources of that pollutant.

WASTEWATER— Water that is not stormwater, is contaminated with pollutants and is or will be discarded.

§ 45-3. Applicability.

This article shall apply to all water entering the MS4 generated on any developed and undeveloped lands unless explicitly exempted by an authorized enforcement agency.

§ 45-4. Responsibility for administration.

The Stormwater Management Officer(s) [SMO(s)] shall administer, implement, and enforce the provisions of this article.

§ 45-5. Discharge prohibitions; exceptions.

- A. Prohibition of illegal discharges. No person shall discharge or cause to be discharged into the MS4 any materials other than stormwater except as provided in Subsection A(1). The commencement, conduct or continuance of any illegal discharge to the MS4 is prohibited except as described as follows:
- (1) The following discharges are exempt from discharge prohibitions established by this article, unless the Department or the Village has determined them to be substantial contributors of pollutants: water line flushing or other potable water sources, landscape irrigation or lawn watering, existing diverted stream flows, rising groundwater, uncontaminated groundwater infiltration to storm drains, uncontaminated pumped groundwater, foundation or footing drains, crawl space or basement sump pumps, air-conditioning condensate, irrigation water, springs, water from individual residential car washing, natural riparian habitat or wetland flows, dechlorinated swimming pool discharges, residential street wash water, water from fire-fighting activities, and any other water source not containing pollutants.
 - (2) Discharges approved in writing by the SMO to protect life or property from imminent harm or damage, provided that such approval shall not be construed to constitute compliance with other applicable laws and requirements, and further provided that such discharges may be permitted for a specified time period and under such conditions as the SMO may deem appropriate to protect such life and property while reasonably maintaining the purpose and intent of this article.
 - (3) Dye testing in compliance with applicable state and local laws is an allowable discharge, but requires a

verbal notification to the SMO prior to the time of the test.

- (4) The prohibition shall not apply to any discharge permitted under an SPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the Department, provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations, and provided that written approval has been granted for any discharge to the MS4.

B. Prohibition of illicit connections.

- (1) The construction, use, maintenance or continued existence of illicit connections to the MS4 is prohibited.
- (2) This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.
- (3) A person is considered to be in violation of this article if the person connects a line conveying sewage to the Village's MS4 or allows such a connection to continue.

§ 45-6. Activities contaminating stormwater prohibited.

A. Activities that are subject to the requirements of this section are those types of activities that:

- (1) Cause or contribute to a violation of the Village's MS4 SPDES permit.
- (2) Cause or contribute to the Village being subject to the special conditions as defined in § 45-2, Definitions, of this article.

- B. Upon notification to a person that he or she is engaged in activities that cause or contribute to violations of the Village's MS4 SPDES permit authorization, that person shall take all reasonable actions to correct such activities such that he or she no longer causes or contributes to violations of the Village's MS4 SPDES permit authorization.

§ 45-7. Prevention, control and reduction of stormwater pollutants by use of best management practices.

- A. Best management practices. Where the SMO has identified illicit discharges as or activities contaminating stormwater, the Village may require implementation of best management practices (BMPs) to control those illicit discharges and activities.
- (1) The owner or operator of a commercial or industrial establishment shall provide, at his or her own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the MS4 through the use of structural and nonstructural BMPs.
 - (2) Any person responsible for a property or premises, which is, or may be, the source of an illicit discharge or an activity contaminating stormwater, may be required to implement, at said person's expense, additional structural and nonstructural BMPs to reduce or eliminate the source of pollutant(s) to the MS4.
 - (3) Compliance with all terms and conditions of a valid SPDES permit authorizing the discharge of stormwater associated with industrial activity, to the extent practicable, shall be deemed compliance with the provisions of this section.

§ 45-8. Suspension of access to MS4.

- A. Illicit discharges in emergency situations. The SMO may, without prior notice, suspend MS4 discharge access to a person when such suspension is necessary to stop an actual or threatened discharge which presents or may present imminent and substantial danger to the environment, to the health or welfare of persons, or to the MS4. The SMO shall notify the person of such suspension within a reasonable time thereafter in writing of the reasons for the suspension. If the violator fails to comply with a suspension order issued in an emergency, the SMO may take such steps as deemed necessary to prevent or minimize damage to the MS4 or to minimize danger to persons.
- B. Suspension due to the detection of illicit discharge. Any person discharging to the Village's MS4 in violation of this article may have his or her MS4 access terminated if such termination would abate or reduce an illicit discharge. The SMO will notify a violator in writing of the proposed termination of its MS4 access and the reasons therefor. The violator may petition the SMO for a reconsideration and hearing. Access may be granted by the SMO if he/she finds that the illicit discharge has ceased and the discharger has taken steps to prevent its recurrence. Access may be denied if the SMO determines in writing that the illicit discharge has not ceased or is likely to recur. A person commits an offense if the person reinstates MS4 access to premises terminated pursuant to this section without the prior approval of the SMO.

§ 45-9. Industrial or construction activity discharges.

Any person subject to an industrial or construction activity SPDES stormwater discharge permit shall comply with all provisions of such permit. Proof of compliance with said permit may be required in a form acceptable to the municipality prior to the allowing of discharges to the MS4.

§ 45-10. Applicability; access to facilities; monitoring of discharges.

- A. Applicability. This section applies to all facilities that the SMO must inspect to enforce any provision of this article, or whenever the authorized enforcement agency has cause to believe that there exists, or potentially exists, in or upon any premises any condition which constitutes a violation of this article.
- B. Access to facilities.
- (1) The SMO shall be permitted to enter and inspect facilities subject to regulation under this article as often as may be necessary to determine compliance with this article. If a discharger has security measures in force which require proper identification and clearance before entry into its premises, the discharger shall make the necessary arrangements to allow access to the SMO.
 - (2) Facility operators shall allow the SMO ready access to all parts of the premises for the purposes of inspection, sampling, examination and copying of records as may be required to implement this article.
 - (3) The Village shall have the right to set up on any facility subject to this article such devices as are necessary in the opinion of the SMO to conduct monitoring and/or sampling of the facility's stormwater discharge.
 - (4) The Village has the right to require the facilities subject to this article to install monitoring equipment as is reasonably necessary to determine compliance with this article. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the discharger as its own expense. All devices used to measure stormwater flow and quality shall be calibrated to ensure their accuracy.

- (5) Unreasonable delays in allowing the Village access to a facility subject to this article is a violation of this article. A person who is the operator of a facility subject to this article commits an offense if the person denies the municipality reasonable access to the facility for the purpose of conducting any activity authorized or required by this article.
- (6) If the SMO has been refused access to any part of the premises from which stormwater is discharged, and he/she is able to demonstrate probable cause to believe that there may be a violation of this article, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program designed to verify compliance with this article or any order issued hereunder, then the SMO may seek issuance of a search warrant from any court of competent jurisdiction.

§ 45-11. Notification of spills.

Notwithstanding other requirements of law, as soon as any person responsible for a facility or operation, or responsible for emergency response for a facility or operation has information of any known or suspected release of materials which are resulting or may result in illegal discharges or pollutants discharging into the MS4, said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release. In the event of such a release of hazardous materials, said person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services. In the event of a release of nonhazardous materials, said person shall notify the municipality in person or by telephone or facsimile no later than the next business day. Notifications in person or by telephone shall be confirmed by written notice addressed and mailed to the municipality within three business days of the telephone notice. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment

shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three years.

§ 45-12. Enforcement; penalties for offenses.

A. Notice of violation.

- (1) When the Village's SMO finds that a person has violated a prohibition or failed to meet a requirement of this article, he/she may order compliance by written notice of violation to the responsible person. Such notice may require, without limitation:
 - (a) The elimination of illicit connections or discharges;
 - (b) That violating discharges, practices, or operations shall cease and desist;
 - (c) The abatement or remediation of stormwater pollution or contamination hazards and the restoration of any affected property;
 - (d) The performance of monitoring, analyses, and reporting;
 - (e) Payment of a fine; and
 - (f) The implementation of source control or treatment BMPs.
- (2) If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a deadline within which such remediation or restoration must be completed. Said notice shall further advise that, should the violator fail to remediate or restore within the established deadline, the work will be done by a designated governmental agency or a contractor and the expense thereof shall be charged to the violator.

- B. Penalties. In addition to or as an alternative to any penalty provided herein or by law, any person who violates the provisions of this article shall be guilty of a violation punishable by a fine not exceeding \$350 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 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 not less than \$700 nor more than \$1,000 dollars or imprisonment for a period not to exceed six months, or both. However, for the purposes of conferring jurisdiction upon courts and judicial officers generally, violations of this article shall be deemed misdemeanors and for such purposes only all provisions of law relating to misdemeanors shall apply to such violations. Each week, or part thereof, such violation continues following notification by the Village shall constitute a separate offense punishable in a like manner.

§ 45-13. Appeal of notice of violation.

Any person receiving a notice of violation may appeal the determination of the SMO to the Village Board of the Incorporated Village of Asharoken within 15 days of its issuance, which shall hear the appeal within 60 days after the filing of the appeal, and within five days of making its decision, file its decision in the office of the Village clerk and mail a copy of its decision by certified mail to the discharger.

§ 45-14. Corrective measures after appeal.

- A. If the violation has not been corrected pursuant to the requirements set forth in the notice of violation, or, in the event of an appeal, within five business days of the decision of the Village authority upholding the decision of the SMO, then the SMO shall request the owner's

permission for access to the subject private property to take any and all measures reasonably necessary to abate the violation and/or restore the property.

- B. If refused access to the subject private property, the SMO may seek a warrant in a court of competent jurisdiction to be authorized to enter upon the property to determine whether a violation has occurred. Upon determination that a violation has occurred, the SMO may seek a court order to take any and all measures reasonably necessary to abate the violation and/or restore the property. The cost of implementing and maintaining such measures shall be the sole responsibility of the discharger. The owner or person in charge or in possession of the property shall reimburse the Village of all direct and indirect costs and expenses incurred by the Village within 10 days of receipt of such demand and invoice. In the event the person fails, refuses and/or neglects to pay the monies due and owing to the Village, the amount so charged shall forthwith become a lien against such lands and shall be added to and become part of the real property taxes next to be assessed and levied upon such lands, the same to bear interest the same rate as taxes, and shall be collected and enforced by the same officers and in the same manner as real property taxes.

§ 45-15. Injunctive relief.

It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this article. If a person has violated or continues to violate the provisions of this article, the SMO may petition for a preliminary or permanent injunction restraining the person from activities which would create further violations or compelling the person to perform abatement or remediation of the violation.

§ 45-16. Alternative remedies.

- A. Where a person has violated a provision of this article, he/she may be eligible for alternative remedies in lieu of a civil penalty, upon recommendation of the Village Attorney and concurrence of the Village Code Enforcement Officer, where:
- (1) The violation was unintentional.
 - (2) The violator has no history of previous violations of this article.
 - (3) Environmental damage was minimal.
 - (4) The violator acted quickly to remedy violation.
 - (5) The violator cooperated in investigation and resolution.
- B. Alternative remedies may consist of one or more of the following:
- (1) Attendance at compliance workshops.
 - (2) Storm drain stenciling or storm drain marking.
 - (3) River, stream or creek cleanup activities.

§ 45-17. Violations deemed a public nuisance.

In addition to the enforcement processes and penalties provided, any condition caused or permitted to exist in violation of any of the provisions of this article is a threat to public health, safety, and welfare, and is declared and deemed a nuisance, and may be summarily abated or restored at the violator's expense, and/or a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance may be taken.

§ 45-18. Remedies not exclusive.

The remedies listed in this article are not exclusive of any other remedies available under any applicable federal, state or local law and it is within the discretion of the authorized enforcement agency to seek cumulative remedies.

Chapter 46**BUILDINGS, UNSAFE**

§ 46-1. Title; intent.

§ 46-2. Definitions.

§ 46-3. Notice of unsafe conditions; procedure.

§ 46-4. Emergency notice; costs.

§ 46-5. Penalties for offenses.

[HISTORY: Adopted by the Board of Trustees of the Village of Asharoken 6-4-1990 by L.L. No. 2-1990. Amendments noted where applicable.]

GENERAL REFERENCES

Building construction administration — See Ch. 42.

§ 46-1. Title; intent.

- A. This chapter shall be known as the “Unsafe Buildings and Structures Local Law of the Village of Asharoken.”
- B. It is the intent of the Village of Asharoken to permit the Board of Trustees to take remedial action regarding dangerous and unsafe conditions of buildings and structures located within the village. The Board of Trustees of the Village of Asharoken finds that such dangerous and unsafe conditions of buildings and structures are a detriment to adjoining buildings, properties and neighborhoods, constituting a nuisance and a threat to the physical well-being of the residents of the Village of Asharoken, especially for children. Such conditions interfere with the promotion of good order, peace, health, safety and welfare of the residents of the village and invite vandalism and necessitate additional

police protection for the security of said property, property owners and other residents of the Village of Asharoken.

§ 46-2. Definitions.

For the purposes of this chapter, the terms used herein are defined as follows:

BUILDING — A combination of materials to form a construction that is designated for or used as a residence, place of business, storage place or public place. The word “building” shall be construed as if followed by the words “or parts thereof.”

OWNER — The person or persons in which title for the particular premises is vested.

STRUCTURE — A combination of materials to form a construction, including but not limited to docks, excavations, bulkheads, platforms, ramps, culverts, drains and sidewalks.

§ 46-3. Notice of unsafe conditions; procedure. [Amended 6-12-2000 by L.L. No. 1-2000]

- A. Investigation and report. Upon notification or upon its own notice that a building is or may become dangerous or unsafe to the general public; is open at the doorways and windows making it accessible to and an object of attention to minors under 18 years of age, as well as to vagrants and other trespassers; is or may become a place of rodent infestation; presents any other danger to the health, safety, morals and general welfare of the public; or is unfit for the purposes for which it may lawfully be used, and such building or structure exists within the corporate limits of the Village of Asharoken, the Board of Trustees shall provide for the Building Inspector to cause or make an inspection thereof and report in

writing to the Board of Trustees of the Village of Asharoken his findings and recommendations in regard to its repair or demolition and removal.

- B. Order. The Board of Trustees of the Village of Asharoken shall thereafter consider such report and by resolution determine, if in its opinion the report so warrants, that such building is unsafe and dangerous and order its repair, if the same can be safely repaired, or its demolition and removal, and further order that a notice be served upon the persons in the manner provided herein.
- C. Notice; contents. The notice shall contain the following:
- (1) A description of the premises.
 - (2) A statement of the particulars in which the building is unsafe or dangerous.
 - (3) An order outlining the manner in which the building is to be made safe and secure, or demolished and removed.
 - (4) A statement that the securing or removal of such building shall commence within 30 days of the service of the notice and shall be completed within 60 days thereafter, unless, for good cause shown, such time shall be extended.
 - (5) A date, time and place for a hearing before the Village Board in relation to such dangerous or unsafe building, which hearing shall be scheduled not less than five business days from the date of service of the notice.
 - (6) A statement that in the event of neglect or refusal to comply with the order to secure or demolish and remove the building, the Village Board is authorized to provide for its demolition and removal, to assess all expenses thereof against the land on which it is located and to institute a special proceeding to

collect the costs of demolition, including legal expenses.

D. Service of notice. The notice shall be served:

- (1) By personal service of a copy thereof upon the owner, executor, administrator, agent, lessee or any person having a vested or contingent interest in such unsafe building as shown by the records of the Village Clerk/Assessor, the Receiver of Taxes or of the County Clerk; or if no such person can be reasonably found, by mailing to such owner by registered mail a copy of such notice directed to his last known address as shown by the above records; and
- (2) By personal service of a copy of such notice upon any adult person residing in or occupying said premises if such person can be reasonably found; and
- (3) By securely affixing a copy of such notice upon the unsafe building.

E. A copy of the notice served as provided herein shall be filed in the office of the County Clerk of the County of Suffolk.

F. Refusal to comply. In the event of the refusal or neglect of the person so notified to comply with said order of the Asharoken Village Board and after the hearing, the Board shall provide for the demolition and removal of such building or structure either by village employees or by contract. Except in the event of an emergency, as provided in § 46-4 of this chapter, any contract for demolition and removal of a building in excess of \$20,000 shall be awarded through competitive bidding.

G. Assessment of expenses. All expenses incurred by the Village of Asharoken in connection with the proceedings to repair and secure or demolish and remove the unsafe building, including the cost of actually removing such building, and all reasonable and necessary legal

expenses incidental hereto, shall, at the option of the Village Board of Trustees, either:

- (1) Be assessed against the land on which such building is located and shall be levied and collected as an assessment against the real property involved by duly adopted resolution. A copy of said resolution shall be mailed to the person or persons who received notice under Subsection C hereof. A lien of special assessment shall thereupon arise as provided for by the Village Law of the State of New York; or
- (2) Be collected by commencement of a special proceeding against the owner of said unsafe or dangerous building or structure pursuant to General Municipal Law § 78-b.

H. Severability. Each separate provision of this section shall be deemed independent of all other provisions herein, and if any provisions shall be deemed invalid, all other provisions hereof shall remain valid and enforceable.

I. When effective. This section shall take effect upon its being duly filed in the office of the Secretary of State of the State of New York as provided in § 27 of the Municipal Home Rule Law.

§ 46-4. Emergency notice; costs.

In the event of emergency involving imminent danger to human life or health, the Superintendent of Buildings shall, upon the direction of the Board of Trustees or Mayor, give such notice forthwith or take such other action, including causing such building to be made safe or removed, as the Board or Mayor may direct. Costs incurred by such action of the Department may be assessed against the land on which the building is located and collected in the manner provided by law.

§ 46-5. Penalties for offenses.

Nothing herein shall prevent the criminal prosecution of a refusal to obey an order issued pursuant to the provisions of this chapter. Upon conviction thereof, the person or corporation violating the provisions of this chapter shall be subject to a fine of not more than \$250 for each offense.

Chapter 54**DISCLOSURE OF INTEREST**

- § 54-1. **Legislative findings.**
- § 54-2. **Disclosure required.**
- § 54-3. **Definitions; word usage.**
- § 54-4. **Supplemental affidavit.**
- § 54-5. **Penalties for offenses.**
- § 54-6. **When effective; applicability.**

[HISTORY: Adopted by the Board of Trustees of the Village of Asharoken 5-9-88 as L.L. No. 3-1988. Amendments noted where applicable.]

GENERAL REFERENCES

Subdivision of land — See Ch. 107.
Zoning — See Ch. 125.

§ 54-1. Legislative findings.

It is hereby found and determined that the village government, its boards, agencies and officials and the public it and they serve have a right and the public interest requires them to know the true identities and interests of those who seek the benefits of various legislative, quasi-judicial, executive and/or administrative actions of the village so as to ensure that:

- A. Representations made in connection therewith are accurate.
- B. Government does not act out of mistaken understanding or in reliance upon misrepresentation.

- C. Determinations made in connection with such applications are made honestly and openly without being affected by conflict of interest or improper influence or the appearance thereof.
- D. Such applications are made for genuine rather than purely partisan reasons.

§ 54-2. Disclosure required.

- A. Every application, petition or request submitted for a variance, amendment, change of zoning, approval of a plat, exemption from a plat or official map, license or permit (other than a building permit) pursuant to the provisions of any local law, rule or regulation constituting the zoning and planning regulations of the Village of Asharoken¹ shall state, under oath, the name and address and the nature and extent of the interest, as defined in § 54-3 of this chapter, of any officers or employees of the State of New York, County of Suffolk or of any municipality, as defined by § 800 of the General Municipal Law, within Suffolk County.
- B. In addition, every application, petition or request submitted for a variance, amendment, change of zoning, approval of a plat, exemption from a plat or official map, license or permit (other than a building permit) pursuant to the provisions of any local law, rule or regulation constituting the zoning and planning regulations of the Village of Asharoken shall state, under oath, the name and address of all other persons having an interest in the application, as defined by § 54-3 of this chapter, and the nature and extent of such interest.

§ 54-3. Definitions; word usage.

- A. Definitions. For the purpose of this chapter, the terms used herein are defined as follows:

CONTRACT VENDEE — Includes the holder of an option to purchase.

¹ Editor's Note: See Ch. 125, Zoning.

CORPORATION — Includes a corporate stockholder, partner, joint venturer or associate.

INTEREST — For the purpose of § 54-2A and B of this chapter, a person shall be deemed to have an “interest” in the application when he, his spouse or their brothers, sisters, parents, children, grandchildren or the spouse of any of them is:

- (1) The applicant or is the owner, contract vendee or lessee or a holder of an instrument creating an encumbrance upon the real property which is the subject of the application.
- (2) An officer, director or stockholder, legally or beneficially, of a corporation which is the applicant, owner, contract vendee or lessee or a holder of an instrument creating an encumbrance upon the real property which is the subject of the application or has an agreement to purchase stock of such a corporation.
- (3) An employee of an applicant or of an owner, contract vendee or lessee or a holder of an instrument creating an encumbrance upon the real property which is the subject of the application.
- (4) A member of a partnership, joint venture or association which is an applicant, owner, contract vendee or lessee or a holder of an instrument creating an encumbrance upon the real property which is the subject of the application or has an agreement to purchase an interest in the partnership, joint venture or association.
- (5) A testator, settlor, personal representative, trustee, holder of ownership interest in or beneficiary of an estate or trust which is an applicant, owner, lessee or contract vendee or a holder of an instrument creating an encumbrance upon the real property which is the subject of an application or has an agreement to purchase an interest in the trust.
- (6) A party to an agreement, express or implied, with such an applicant whereby he may receive any payment or other benefit, whether or not for services rendered,

dependent or contingent upon the favorable approval of such application, petition or request.

OFFICER or EMPLOYEE — All officers, elected or appointed, all special counsel, all members of boards, agencies or commissioners and all committees, whether paid or unpaid, or other persons whose salaries are paid by the state, county or local municipality, but shall not include volunteer firemen or civil defense volunteers, except a chief engineer or assistant chief engineer.

B. Word usage.

- (1) The term “holder of an instrument creating an encumbrance upon” shall be deemed to exclude lending institutions licensed either by the State of New York or the federal government.
- (2) Ownership of less than five percent (5%) of the stock of a corporation whose stock is listed on the New York or American Stock Exchange shall not constitute an “interest” for the purposes of Subsection A of this section; ownership of less than five percent (5%) of the stock or status as an officer or director of a corporation whose stock is listed on any stock exchange which is registered with the Security Exchange Commission of the United States of America shall not constitute an “interest” for the purposes of Subsection A.

§ 54-4. Supplemental affidavit.

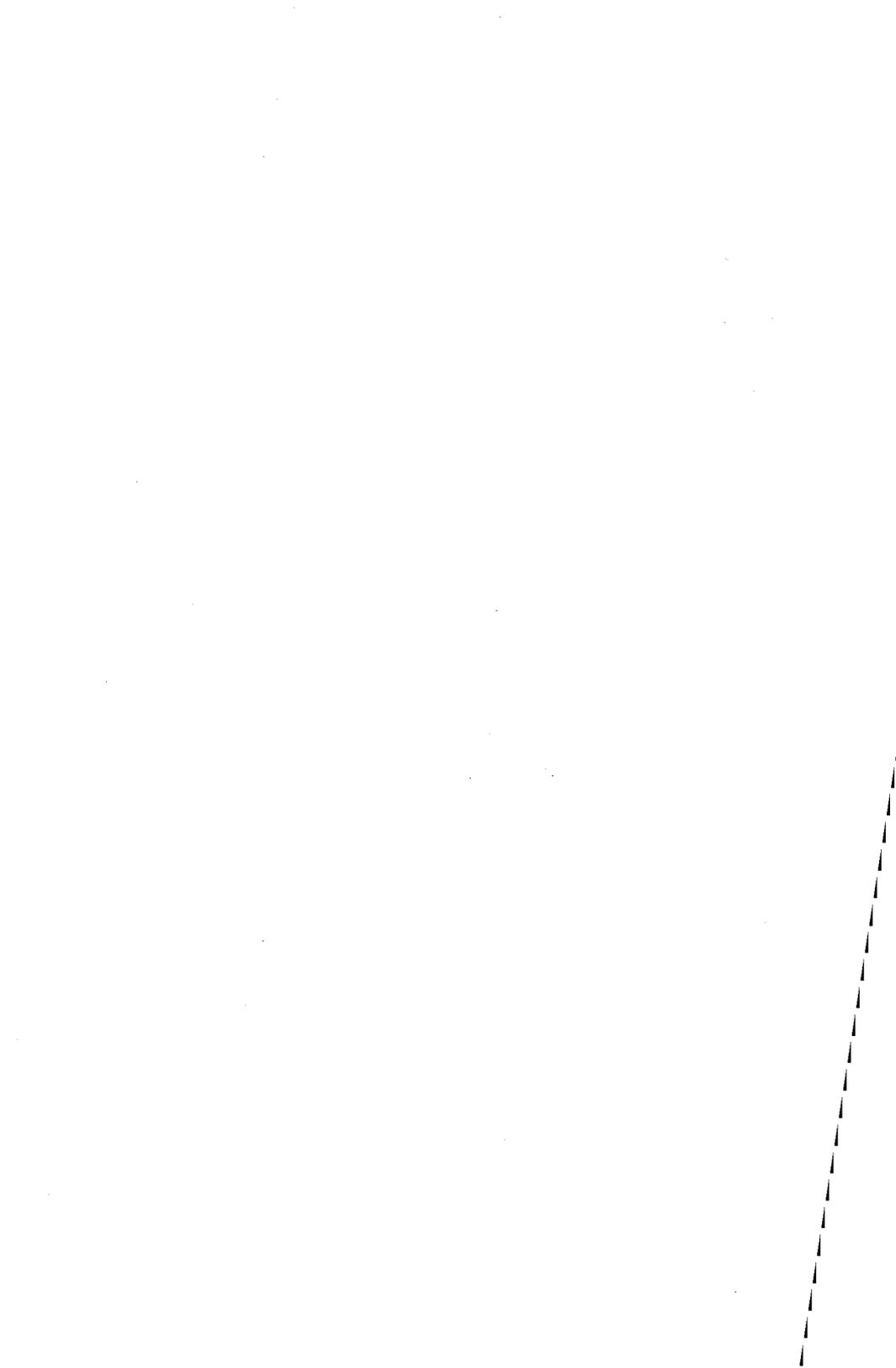
In the event that there is any change in any matter set forth in the submitted application, petition or other request after filing the same but before action by the board or agency having jurisdiction, the applicant shall submit a supplemental affidavit within seventy-two (72) hours after such change.

§ 54-5. Penalties for offenses.

Any person, firm, corporation, trust or agent or employee thereof who violates the provisions of this chapter shall be guilty of a violation and subject to a penalty of up to two hundred fifty dollars (\$250.) and up to fifteen (15) days' imprisonment, or both; and action on any application shall be stayed pending compliance herewith.

§ 54-6. When effective; applicable.

This chapter shall take effect immediately in accordance with law and shall apply to all applications upon which final action shall not have been taken prior to the date of enactment hereof.



DOGS AND OTHER ANIMALS

Chapter 57

DOGS AND OTHER ANIMALS

**ARTICLE I
Poultry**

- § 57-1. Permit required.**
- § 57-2. Definitions.**
- § 57-3. Penalties for offenses.**

**ARTICLE II
Dogs**

- § 57-4. Running at large; restrictions.**
- § 57-5. Seizure; issuance of summons.**
- § 57-6. Barking prohibited.**
- § 57-7. Penalties for offenses.**

[HISTORY: Adopted by the Board of Trustees of the Village of Asharoken: Art. I, 7-16-1934; Art. II, 12-1-1957, amended in its entirety 3-3-1980 by L.L. No. 1-1980. Sections 57-3 and 57-6 amended at time of adoption of Code; see Ch. 1, General Provisions, Art. I. Other amendments noted where applicable.]

GENERAL REFERENCES

Noise — See Ch. 86.

ARTICLE I
Poultry
[Adopted 7-16-1934]

§ 57-1. Permit required.

No live poultry shall be brought into, kept or held in any yard, area, cellar, coop, building or premises, except on premises within the village situate on Eatons Neck or Duck Island, without a permit issued by the Board of Trustees and signed by the Village Clerk or otherwise than in accordance with the terms of said permit and with the regulations of said Board.

§ 57-2. Definitions.

As used in this Article, the following terms shall have the meanings indicated:

POULTRY — Includes chickens, geese, ducks and other fowl and domestic birds used for food purposes.

§ 57-3. Penalties for offenses. [Amended 6-4-1990 by L.L. No. 2-1990]

For each violation of this Article, a fine not exceeding two hundred fifty dollars (\$250.) may be imposed or imprisonment for a term of fifteen (15) days, or both.

ARTICLE II

Dogs

**[Adopted 12-1-1957; amended in its entirety
3-3-1980 by L.L. No. 1-1980]**

**§ 57-4. Running at large; restrictions. [Amended
11-7-1994 by L.L. No. 6-1994¹]**

It shall be and hereby is declared to be unlawful for any person owning, possessing or harboring any dog to allow such dog, whether licensed or not, to run loose or be at large within the territorial limits of the Village of Asharoken, except upon any real property owned, leased or lawfully occupied as a residence or on private lands with the permission of the owner, unless such dog is under immediate and full control of the owner or a person of adequate age and discretion to properly control its actions and said dog is on a suitably strong chain or leash no longer than six (6) feet in length.

**§ 57-5. Seizure; issuance of summons. [Added 11-7-1994
by L.L. No. 6-1994]**

Any Dog Control Officer or the Animal Shelter Supervisor or any police or peace officer may:

- A. Seize any dog running at large.
- B. Seize any dog which is not licensed, whether on or off the owner's premises.
- C. Issue summons to the owners of dogs seized.

§ 57-6. Barking prohibited.

No person owning or harboring a dog, whether licensed or not, shall permit it to bark in such a manner and for such a

¹ Editor's Note: This local law also provided for the renumbering of former §§ 57-5 and 57-6 to §§ 57-6 and 57-7, respectively.

period of time as to constitute a nuisance or interfere with the peace and quiet of neighbors.

§ 57-7. Penalties for offenses. [Amended 6-4-1990 by L.L. No. 2-1990]

Any person violating any provision of this Article shall be subject to a fine of not more than two hundred fifty dollars (\$250.) or imprisonment for a term of fifteen (15) days, or both, for each violation.

Chapter 60**ELECTRICAL STANDARDS**

§ 60-1. Purpose.

§ 60-2. Standards established; exceptions.

§ 60-3. Permit required; application for inspection.

§ 60-4. Inspections; inspectors.

§ 60-5. No waiver or assumption of liability.

§ 60-6. Penalties for offenses.

§ 60-7. Action under SEQRA.

[HISTORY: Adopted by the Board of Trustees of the Village of Asharoken 12-2-2002 by L.L. No. 2-2002. Amendments noted where applicable.]

GENERAL REFERENCES

Building Construction Administration — See Ch. 42.

Unsafe buildings — See Ch. 46.

Fire prevention — See Ch. 70.

Poles and wires — See Ch. 94.

§ 60-1. Purpose.

The Village Board of Trustees of the Village of Asharoken hereby determines that in order to insure the safety of its residents and the public in respect of electrical systems for light, heat or power and signal systems operating on 50 volts or more in or on real property located within the Village, it is necessary and prudent to regulate the installation and alteration of the wiring thereof.

§ 60-2. Standards established; exceptions.

All electrical systems and or wiring installations for properties within the Village of Asharoken shall conform to the requirements of the National Electrical Code. The requirements of the National Electrical Code shall be those known as the "National Fire Protection Association Pamphlet No. 70," as approved and adopted by the American Standards Association, except the provisions of this chapter shall not apply to:

- A. The electrical installations or equipment employed by an electrical or communication utility in the exercise of its function as a utility and located outdoors or in buildings used for this purpose.
- B. Any building or facility which is wholly owned or leased by the government of the United States or the State of New York.

§ 60-3. Permit required; application for inspection.

No person shall alter or install or cause to be altered or installed electrical wiring for light, heat or power in or on properties within the Village of Asharoken until a permit for such work has been issued by the Building Inspector and an application for inspection has been filed with any authorized organization hereunder; no person shall connect, or cause to be connected, electrical wiring in connection with the issuance of a temporary certificate of occupancy or a certificate of occupancy except by an inspector of any authorized organization hereunder.

§ 60-4. Inspections; inspectors.

Inspections shall be made only by qualified inspectors so designated by the Village Board.

- A. Qualifications. Duly appointed inspectors of qualifying organizations may seek designation as Electrical Inspectors by the Village Board as authorized agents of

the Village, so long as they shall satisfy the following minimum qualifications for eligibility:

- (1) A minimum of 10 years' field experience in the maintenance, installation or inspection of electrical systems;
 - (2) Shall hold and maintain a certification from the International Association of Electrical Inspectors (IAEI) for one-family dwellings and for general electrical;
 - (3) Shall be familiar with the National Electrical Code and New York State and Village of Asharoken laws, rules and regulations to the extent that they relate to electrical inspections;
 - (4) Shall shelve active electrical license during the period of appointment, if there may be a conflict of interest.
 - (5) Said qualifying organizations shall:
 - (a) Maintain policies of insurance from any insurance company(ies) duly licensed by the State of New York meeting or exceeding the following minimum coverage requirements and shall provide a certificate of insurance evidencing the same and naming the Village of Asharoken as an additional insured:
 - [1] General liability: \$1,000,000 per occurrence; \$2,000,000 aggregate.
 - [2] Excess liability: \$1,000,000 per occurrence;
 - [3] Workers' compensation and disability: statutory requirements.
 - (b) Verify the existence of a valid building permit with the Building Inspector/Village Clerk.
- B. Powers and duties. Electrical inspector(s) designated as such by the Village Board shall:

- (1) Report, in writing, to the Building Inspector, whose duty it shall be to enforce all provisions of this chapter, all violations of and or deviations from or omissions of the electrical provisions of the National Electrical Code, and of all local laws and/or ordinances. Any of the aforementioned are applicable to electrical installations, alterations and/or repairs.
- (2) Make inspections of electrical installations, alterations and repairs in and on properties within the Village upon the written request of the Building Inspector or his designee; and to make such inspection(s) upon the oral request of the Building Inspector, his designee or otherwise authorized Village official.
- (3) Furnish written reports to the Building Inspector and the owners and/or lessees of property where defective electrical installations, alterations and repairs are identified upon inspection.
- (4) Authorize the issuance of a certificate of compliance for electrical installations, alterations and repairs which are in conformity with the provisions of this section.
- (5) Direct that the certificate of compliance be sent to the Building Inspector.

§ 60-5. No waiver or assumption of liability.

This chapter shall not be construed to alter, diminish or relieve the liability of any person owning, operating, controlling or installing electrical wiring, devices, appliances and/or equipment, for loss of life or damage to persons or property caused by any defect therein; nor shall the Village of Asharoken be deemed to have assumed any such liability by reason of any inspection made pursuant to this chapter.

§ 60-6. Penalties for offenses.

Any violation of this chapter or any part thereof shall be punishable by a fine of not exceeding \$250 for each offense. Each day that a violation continues shall be deemed a separate offense.

§ 60-7. Action under SEQRA.

Pursuant to Section 617.S(b)(20) of 6 NYCRR, the SEQRA Regulations, this action is a Type II action which will have no significant impact on the environment and for which no further action is required pursuant to SEQRA.

Chapter 61

ENVIRONMENTAL QUALITY REVIEW

- § 61-1. **Definitions.**
- § 61-2. **Compliance required.**
- § 61-3. **Effect of actions on environment.**
- § 61-4. **Administration and enforcement.**
- § 61-5. **Determination of significant effect; fee.**
- § 61-6. **Environmental impact statement; fee.**
- § 61-7. **Notice of completion; public hearing.**
- § 61-8. **Final environmental impact statement; notice.**
- § 61-9. **Approval of action; copies; open file.**
- § 61-10. **Multiple agencies.**
- § 61-11. **Prior actions.**
- § 61-12. **Effective dates.**

[HISTORY: Adopted by the Board of Trustees of the Village of Asharoken 3-7-1977 by L.L. No. 2-1977. Amendments noted where applicable.]

GENERAL REFERENCES

Building construction — See Ch. 42.
Unsafe buildings — See Ch. 46.
Subdivision of land — See Ch. 107.
Zoning — See Ch. 125.
Schedule of fees — See Ch. A127.

§ 61-1. Definitions.

- A. Unless the context shall otherwise require, the terms, phrases, words and their derivatives used in this chapter

shall have the same meanings as those defined in § 8-0105 of the Environmental Conservation Law of the State of New York and Part 617 of Title 6 of the New York Codes, Rules and Regulations.

- B. As used in this chapter, the following terms shall have the meanings indicated:

VILLAGE — The Incorporated Village of Asharoken.

§ 61-2. Compliance required.

- A. No decision to carry out or approve an action not involving an application, other than an action listed in § 61-3B hereof or Section 617.12 of Title 6 of the New York Codes, Rules and Regulations as a Type II action, shall be made by the Board of Trustees of the village or by any officer, department, board, commission or employee of the village until there has been full compliance with all requirements of this chapter and Part 617 of Title 6 of the New York Codes, Rules and Regulations.
- B. No application seeking approval of a permit, decision, resolution, variance or certificate and the like for an action, other than an action listed in § 61-3B hereof or Section 617.12 of Title 6 of the New York Codes, Rules and Regulations, shall be accepted for filing by the Board of Trustees of the village or by any officer, department, board, commission or employee of the village until there has been full compliance with all requirements of this chapter and Part 617 of Title 6 of the New York Codes, Rules and Regulations.
- C. Subsections A and B above shall not be construed as prohibiting:
- (1) The conducting of contemporaneous environmental, engineering, economic feasibility or other studies and preliminary planning and budgetary processes necessary to the formulation of a proposal for action

which do not commit the village, Board of Trustees or an officer, department, board, commission or employee of the village to approve, commence or engage in such action; or

- (2) The granting of any part of an application which refers only to technical specifications and requirements, provided that no such partial approval shall entitle or permit the applicant to commence the action until all requirements of this chapter and Part 617 of Title 6 of the New York Codes, Rules and Regulations have been fulfilled.

§ 61-3. Effect of actions on environment.

- A. Consistent with Part 617 of Title 6 of the New York Codes, Rules and Regulations and the criteria therein, the following actions, in addition to those listed in Section 617.12 of Title 6 of the New York Codes, Rules and Regulations as Type I actions, are likely to have a significant effect on the environment:
 - (1) An application to the Village Planning Board for subdivision or resubdivision approval, as the same is defined by the Code of the village.
 - (2) An application to the Board of Zoning Appeals of the village for a use variance of any of the use provisions of the Zoning Ordinance of the village.
 - (3) An application for the demolition or removal of a structure or building located within 1,000 feet of mean high water made pursuant to the Code of the village.
 - (4) An application for burning of a structure or building made to the Superintendent of Buildings of the village. [Amended 6-4-1990 by L.L. No. 2-1990]
 - (5) An application for a permit for a dock, pier, wharf, dam, bulkhead, impounding structure or other similar structure, either temporary or permanent

made to the Board of Trustees pursuant to Article IVA of Chapter 125 of the Code of the village. **[Added 5-26-1994 by L.L. No. 2-1994]**

- B. Consistent with Part 617 of Title 6 of the New York Codes, Rules and Regulations and the criteria therein, the following actions, in addition to those listed in Section 617.12 of Title 6 of the New York Codes, Rules and Regulations as Type II actions, are deemed not to have a significant effect on the environment:
- (1) An application for a building permit for the development of real property other than a subdivision or resubdivision as the same is defined by the Code of the village.
 - (2) An application for an area variance made to the Board of Zoning Appeals pursuant to the Code of the village, unless the same is to facilitate a Type I action as the same is set forth in Section 617.12 of Title 6 of the New York Codes, Rules and Regulations.
 - (3) An appeal to the Board of Zoning Appeals from the determination of the Superintendent of Buildings of the village, except when such appeal is to facilitate a Type I action. **[Amended 6-4-1990 by L.L. No. 2-1990]**
 - (4) All other applications made to the Board of Trustees or any officer, department, board, commission or employee of the village for approval of an action not set forth in Section 617.12 of Title 6 of the New York Codes, Rules and Regulations or by Subsection A hereof.

§ 61-4. Administration and enforcement.

- A. For the purposes of this chapter and to reduce the possibility of multiple jurisdiction, the Board of Trustees of the Village of Asharoken is herewith charged with the

responsibility of enforcement and administration of this chapter.

- B. The Board of Trustees shall be deemed in all cases to be the lead agency as the same is described in Section 617.4 of Title 6 of the New York Codes, Rules and Regulations.
- C. The Board of Trustees may adopt rules and regulations if it deems the same as necessary to assist in the enforcement and administration of this chapter.
- D. The Village Board of Trustees is herewith authorized to employ a professional engineer to assist in carrying out the provisions of this chapter.

§ 61-5. Determination of significant effect; fee.

- A. For the purpose of assisting in the determination of whether an action, as described in § 61-2B hereof, may or will not have a significant effect on the environment, applicants for permits or other approvals shall file a written statement with the Village Board of Trustees. All actions not involving an application as set forth in § 61-2A hereof shall also be subject to the following procedures. The written statement shall set forth the name of the applicant; the location of the real property affected, if any; a description of the nature of the proposed action; and the effect it may have on the environment. In addition, a detailed statement of the reasons why a proposed action may or will not have a significant effect on the environment may be included in this written statement. Where the action involves an application, the statement shall be filed simultaneously with the application for the action. The statement provided herein shall be upon a form prescribed by resolution by the Village Board of Trustees and shall contain such additional relevant information as shall be accompanied by drawings, sketches and maps, if any, together with any other relevant explanatory material required by the Village Board of Trustees.

- B. Upon receipt of a complete application and a statement, the Village Board of Trustees shall cause a notice thereof to be posted on the signboard, if any, of the village maintained by the village and may also cause such notice to be published in the official newspaper of the village describing the nature of the proposed action and stating that written views thereon of any person shall be received by the Village Board of Trustees no later than a date specified in such notice.
- C. The Village Board of Trustees shall render a written determination on such application within 15 days following receipt of a complete application and statement; provided, however, that such period may be extended in an action as described under § 61-2B hereof by mutual agreement of the applicant and the Village Board of Trustees. The determination shall state whether such proposed action may or will not have a significant effect on the environment. The Village Board of Trustees may hold informal meetings with the applicant and may meet with and consult any other person for the purpose of aiding it in making a determination on the application.
- D. The time limitations provided in this chapter shall be coordinated with, to the extent practicable, other time limitations provided by statute or local law, ordinance or regulation of the village.
- E. Every application for determination under this chapter arising under § 61-2B hereof shall be accompanied by a reasonable fee set forth in this section to defray the expenses incurred in rendering such determination. **[Amended 10-4-1999 by L.L. No. 1-1999]**
- F. If the Village Board of Trustees determines that the proposed action is not an exempt action, not an action listed in § 61-3B hereof or Section 617.12 of Title 6 of the New York Codes, Rules and Regulations as a Type II action and that it will not have a significant effect on the environment, the Village Board of Trustees shall

prepare, file and circulate such determination as provided in Section 617.7(b) of Title 6 of the New York Codes, Rules and Regulations, and thereafter the proposed action may be processed without further regard to this chapter. If the Village Board of Trustees, upon the review and analysis of the Village Engineer, determines that the proposed action may have a significant effect on the environment, the Village Board of Trustees shall prepare, file and circulate such determination as provided in Section 617.17(b) of Title 6 of the New York Codes, Rules and Regulations, and thereafter the proposed action shall be reviewed and processed in accordance with the provisions of this chapter and Part 617 of Title 6 of the New York Codes, Rules and Regulations.

§ 61-6. Environmental impact statement; fee.

Following a determination that a proposed action may have a significant effect on the environment, the Village Board of Trustees shall, in accordance with the provisions of Part 617 of Title 6 of the New York Codes, Rules and Regulations:

- A. In the case of an action involving an applicant, immediately notify the applicant of the determination and shall request the applicant to prepare an environmental impact report in the form of a draft environmental impact statement.
- B. In the case of an action not involving an applicant, prepare a draft environmental impact statement. If the applicant, in an action arising under § 61-2B hereof, decides not to submit an environmental impact report, the Village Board of Trustees shall prepare or cause to be prepared the draft environmental impact statement or, in its discretion, notify the applicant that the processing of the application will cease and that no approval will be issued. [Amended 10-4-1999 by L.L. No. 1-1999]

- C. Pursuant to applicable state regulations, there is hereby imposed, upon each and every applicant for a determination by either the Village Board of Trustees or the Planning Board as lead agency under the State Environmental Quality Review Act (SEQRA), a fee to recover the actual cost of preparation of an environmental impact statement (EIS) and/or review of an EIS presented by an applicant. In either event, the fee shall be equal to the actual cost to the village in time and support facilities incurred by each specific application. No fee shall exceed 2% of the total project cost as defined in Section 617.17(b) of Title 6 of the New York Codes, Rules and Regulations for residential projects, or 1/2 of 1% of the total project cost as defined in Section 617.17(c) of Title 6 of the New York Codes, Rules and Regulations for nonresidential projects. **[Added 10-4-1999 by L.L. No. 1-1999]**
- D. The Planning Board shall, with the assistance of the Building Inspector, formulate policies and procedures to properly assess the actual cost to the village of EIS preparation and review. **[Added 10-4-1999 by L.L. No. 1-1999]**
- E. An applicant may dispute the fee assessment by submitting a written request for an explanation. The request, the fee assessment and other pertinent documentation shall be forwarded to the Building Inspector for the village for a determination. Upon review by the Building Inspector, the Building Inspector shall give the applicant a written determination setting forth reasons why the applicant's claims are valid or invalid in whole or in part. The determination by the Building Inspector shall constitute a final administrative determination of the fees and costs. Such appeal procedure shall not interfere with or cause a delay in the EIS process or prohibit action from being undertaken. **[Added 10-4-1999 by L.L. No. 1-1999]**

§ 61-7. Notice of completion; public hearing.

- A. Upon completion of a draft environmental impact statement prepared by or at the request of the Village Board of Trustees, a notice of completion containing the information specified in Section 617.7(d) of Title 6 of the New York Codes, Rules and Regulations shall be prepared, filed and circulated as provided in Section 617.7(e) and (f) of Title 6 of the New York Codes, Rules and Regulations. In addition, it shall be published in the official newspaper, if any, of the village, and a copy thereof shall also be posted on a signboard of the village. Copies of the draft environmental impact statement and the notice of completion shall be filed, sent and made available as provided in Section 617.17(e) and (f) of Title 6 of the New York Codes, Rules and Regulations.
- B. If the Village Board of Trustees determines to hold a public hearing on a draft environmental impact statement, notice thereof shall be filed, circulated and sent in the same manner as the notice of completion and shall be published in the official newspaper of the village at least 14 days prior to such public hearing. Such notice shall also state the place where substantive written comments on the draft environmental impact statement may be sent and the date before which such comments shall be received. The hearing shall commence no less than 15 calendar days nor more than 45 calendar days from the filing of the draft environmental impact statement, except as otherwise provided where the Village Board of Trustees determines by resolution that additional time is necessary for the public or other agency review of the draft environmental impact statement or where a different hearing date is required as appropriate under other applicable law. **[Amended 6-4-1990 by L.L. No. 2-1990]**
- C. If, on the basis of a draft environmental impact statement or a public hearing thereon, the Village Board of Trustees determines that an action will not have a significant effect on the environment, the proposed

action may be processed without further regard to this chapter.

§ 61-8. Final environmental impact statement; notice.

- A. Except as otherwise provided herein, the Village Board of Trustees shall prepare or cause to be prepared a final environmental impact statement in accordance with the provisions of Part 617 of Title 6 of the New York Code, Rules and Regulations; provided further that if the action involves an application arising under § 61-2B hereof, the Village Board of Trustees may direct the applicant to prepare the final environmental impact statement. Such final environmental impact statement shall be prepared within 45 days after the close of any hearing or within 60 days after the filing of the draft environmental impact statement, whichever last occurs; provided, however, that the Village Board of Trustees may extend this time by resolution as necessary to complete the statement adequately or where problems identified with the proposed action require material reconsideration or modification. Where the action involves an application arising under § 61-2B hereof, such final environmental impact statement shall be accompanied by the fee specified in this section to defray the expenses of the village in preparing and/or evaluating the same. Such fees shall be assessed and imposed pursuant to § 61-6C herein. **[Amended 10-4-1999 by L.L. No. 1-1999]**
- B. A notice of completion of a final environmental impact statement shall be prepared, filed and sent in the same manner as provided in § 61-9 herein and shall be sent to all persons to whom the notice of completion of the draft environmental impact statement was sent. Copies of the final environmental impact statement shall be filed and made available for review in the same manner as the draft environmental impact statement.

- C. No decision to carry out or approve an action which has been the subject of a final environmental impact statement by the Village Board of Trustees or by any other agency shall be made until after the filing and consideration of the final environmental impact statement.

§ 61-9. Approval of action; copies; open file.

- A. When the Village Board of Trustees decides to approve an action which may have a significant effect on the environment, it shall make the following findings in a written determination:
 - (1) Consistent with social, economic and other essential considerations of state policy, to the maximum extent practicable, from among the reasonable alternatives thereto, the action to be carried out or approved is one which minimizes or avoids adverse environmental effects, including the effects disclosed in the relevant environmental impact statements; and
 - (2) All practicable means will be taken in carrying out or approving the action to minimize or avoid adverse environmental effects.
- B. For public information purposes, a copy of the determination shall be filed and made available as provided in Part 617 of Title 6 of the New York Codes, Rules and Regulations.
- C. The village shall maintain files open for public inspection of all notices of completion, draft and final environmental impact statements and written determinations prepared or caused to be prepared by the Village Board of Trustees.

§ 61-10. Multiple agencies.

Where more than one agency is involved in an action, the procedures of Sections 617.4 and 617.8 of Title 6 of the New York Codes, Rules and Regulations shall be followed.

§ 61-11. Prior actions.

Actions undertaken or approved prior to the dates specified in Article 8 of the Environmental Conservation Law for local agencies shall be exempt from this chapter and the provisions of Article 8 of the Environmental Conservation Law and Part 617 of Title 6 of the New York Codes, Rules and Regulations; provided, however, that if, after such dates, the Board of Trustees, officer, board, department, commission or employee of the village modifies an action undertaken or approved prior to that date and the Village Board of Trustees determines that the modification may have a significant adverse effect on the environment, such modification shall be an action subject to this chapter and Part 617 of Title 6 of the New York Codes, Rules and Regulations. For the purposes of this chapter, an action including a subdivision or resubdivision which has been preliminarily approved by the Village Board of Trustees, shall not be deemed approved as hereinabove set forth.

§ 61-12. Effective dates. [Amended 9-12-1977 by L.L. No. 4-1977]

This chapter shall take effect on July 1, 1978, with respect to actions described in § 61-2A hereof, and on September 1, 1978, with respect to actions described in § 61-2B and § 61-3A hereof.

Chapter 64

EXCAVATIONS

- § 64-1. **Permit required; exceptions; definitions.**
- § 64-2. **(Reserved)**
- § 64-3. **Application; statutory effects.**
- § 64-4. **Recommendation of Board.**
- § 64-5. **Determination; public hearing.**
- § 64-6. **Issuance of permit.**
- § 64-7. **Commercial activity; clean fill required.**
- § 64-8. **Penalties for offenses.**
- § 64-9. **Proceedings.**

[HISTORY: Adopted by the Board of Trustees of the Village of Asharoken 6-7-1971 as L.L. No. 2-1971. Section 64-3A(8) and B added and §§ 64-4, 64-5 and 64-8 amended at time of adoption of Code; see Ch. 1, General Provisions, Art I. Other amendments noted where applicable.]

GENERAL REFERENCES

Environmental Conservation Board — See Ch. 14.
 Building construction — See Ch. 42.
 Streets and sidewalks — See Ch. 104.
 Zoning — See Ch. 125.

**§ 64-1. Permit required; exceptions; definitions.
 [Amended 2-2-1981 by L.L. No. 3-1981]**

- A. Except as provided in Subsection C hereof, no earth, stone, sand, mud, asphalt or other material, including materials for bulkheads, revetments and/or impounding

or similar structures, either temporary or permanent, shall be moved, deposited, dredged, removed or excavated from or on any land, wetland or underwater land within the jurisdiction of the village unless a permit shall first have been obtained from the Board of Trustees as hereinafter provided. **[Amended 10-2-1995 by L.L. No. 2-1995]**

B. Definitions. As used in this chapter, the following terms shall have the meanings indicated:

WETLAND — Includes land generally covered or intermittently covered to a depth of six (6) feet or less with fresh, brackish or salt water, including but not limited to thatch meadows, salt marshes, salt meadows, marshes, swamps and bogs.

C. Except for any unimproved parcels of land located in Residence Districts A and B on the Official Zoning Map of the Village of Asharoken,¹ no permit shall be required under this section in the following cases:

- (1) If the total amount of such materials to be moved, deposited, dredged, removed or excavated is less than one (1) cubic yard.
- (2) If the total amount of such material to be moved is less than ten (10) cubic yards, provided that such work is done either at least twenty (20) feet above mean sea level or at least one hundred (100) feet from the mean high-water mark of all neighboring bodies of water and at least twenty (20) feet from any wetland.
- (3) For the excavation of the basement or slab of a building or for the filling in of land for which a building permit has been duly issued, provided that the plans submitted to the Superintendent of Buildings in the application for such permit shall include the details of such excavation.

¹ Editor's Note: Said map is on file in the office of the Village Clerk.

- (4) For the repair or improvement of an existing road or driveway.

(Cont'd on page 6403)

- (5) For any work done by the village for public purposes.

§ 64-2. (Reserved)²

§ 64-3. Application; statutory effects. [Amended 6-4-1990 by L.L. No. 2-1990]

A. [Amended 5-26-1994 by L.L. No. 1-1994] Before commencing any such work described in § 64-1; the owner or lessee of the premises or his authorized representative shall apply for a permit at the office of the Village Clerk. The application shall contain such information and shall be accompanied by such of the following or other data and in such form as may reasonably be required:

- (1) A complete description of the proposed work.
- (2) The location and dimensions of the affected premises.
- (3) The present topography of the affected and neighboring premises and the topography which will exist after the proposed work has been completed.
- (4) Distances of the proposed work from the boundaries of the premises, from buildings on the premises and on all adjoining premises, from the mean high-water mark of all neighboring bodies of water, from any wetland and from adjoining public streets, as shown on a topographical map and/or survey prepared by a licensed surveyor.
- (5) The total cubic yards of material to be moved.

² Editor's Note: Former § 64-2, Piers and similar structures, was repealed 5-26-1994 by L.L. No. 1-1994. See now Article IVA of Chapter 125, Zoning.

- (6) The effect of the proposed work on the ecology of the area.
- (7) The method to be employed and the length of time required for the performance of such work.
- (8) Proof of Department of Environmental Conservation and other required approvals.

B. The development of freshwater wetlands may be affected by Article 24 of the Environmental Conservation Law.

§ 64-4. Recommendation of Board. [Amended 6-4-1990 by L.L. No. 2-1990]

Upon receipt of such application in proper form, the Village Clerk shall deliver it to the Chairman of the Village Board for Conservation of the Environment, which Board shall submit its recommendations, thereon, based upon the standards set forth in § 64-6, to the Board of Trustees at its next meeting, or if such application be submitted to the Village Clerk less than ten (10) days prior to the next Board of Trustees meeting, at not later than the next succeeding meeting. If further information is needed from the applicant in order for the Board to make its recommendations, the Chairman shall request it from the applicant directly. The application shall be processed as promptly as possible by the Board.

§ 64-5. Determination; public hearing. [Amended 6-4-1990 by L.L. No. 2-1990]

Upon receipt of the recommendations of the Conservation Board and after consideration of such recommendations, the standards set forth in § 64-6 and other applicable local, state and federal laws, the Board of Trustees shall determine whether such permit should be issued. If the Board deems it advisable, it may call a public hearing upon such application with such notice by publication or otherwise and to such neighboring property owners as it deems appropriate. The applicant shall pay for the cost of any publication. Such permit,

if issued, may be conditioned upon the installation of bulkheads or otherwise conditional or of limited duration and may be revoked at any time if the work appears to be in violation of this chapter.

§ 64-6. Issuance of permit.

No permit shall be issued if the proposed work or the results thereof are likely to have any of the following effects:

- A. Expose the village streets or other property of the village or that of its inhabitants or any part of such property to action of high water, wind or waves which may in any way endanger such property.
- B. Expose such property or any part thereof to harm from the process of moving material involved in such proposed work.
- C. Encroach upon the existing mean high-water mark of any body of water, unless such work constitutes the restoration of upland approved by the Board of Trustees.
- D. Adversely affect the watercourses and wetlands of the village and lands abutting thereof.
- E. Adversely affect the protection and enhancement of the physical and visual environment of the village.
- F. Adversely affect the fish, shellfish, wildlife or other natural resources within the village.
- G. Adversely affect the health, safety, ecology or general welfare of the village or its inhabitants.

§ 64-7. Commercial activity; clean fill required.

- A. Nothing in this chapter shall be deemed to allow or permit any commercial activity other than agriculture within the village or any excavation, moving, depositing or removal of natural material for commercial purposes or for the sale thereof, and the same is forbidden, except

as may be approved pursuant to the Village Zoning Ordinance³ and to this chapter.

- B. No person shall deposit any fill other than clean fill or any land in the village, and any such clean fill so deposited shall be leveled within a period of ten (10) days or, if deposited while construction or alteration of a walk, driveway, building or other structure on such land is actually in process, then prior to the completion thereof.

§ 64-8. Penalties for offenses. [Amended 6-4-1990 by L.L. No. 2-1990]

Any violation of this chapter or any part thereof shall be punishable by a fine of not exceeding two hundred fifty dollars (\$250.) for each offense. Each day that a violation continues shall be deemed a separate offense.

§ 64-9. Proceedings.

Appropriate actions or proceedings may be taken at law or in equity to prevent unlawful moving, depositing, removing, excavating or construction regulated by this chapter or to restrain, correct or abate a violation thereof; and these remedies shall be in addition to the penalties prescribed in the preceding section.

³ Editor's Note: See Ch. 125, Zoning.

Chapter 67**FIREARMS**

§ 67-1. Prohibited actions.

§ 67-2. Exceptions.

§ 67-3. Issuance of permit.

§ 67-4. Penalties for offenses.

[HISTORY: Adopted by the Board of Trustees of the Village of Asharoken 4-5-65. Section 67-10 added and § 67-4 amended at time of adoption of Code; see Ch. 1, General Provisions, Art. I. Other amendments noted where applicable.]

§ 67-1. Prohibited actions.

No person shall:

- A. Carry, point, aim, discharge or otherwise use any shotgun, rifle, revolver, pistol, air rifle, pellet gun or other firearm or weapon within this village.
- B. Cause a projectile or bullet emitted from any shotgun, rifle, revolver, pistol, air rifle, pellet gun or other firearm or weapon to pass over property situated or lying within this village.
- C. Willfully or negligently discharge within this village any shotgun, rifle, revolver, pistol, air rifle, pellet gun or other firearm or weapon in such manner as to endanger any person, property, dog or other domestic animal or game protected by the wildlife laws of the state, notwithstanding that no injury ensues.
- D. Discharge any firearm within five hundred (500) feet of any building.¹

¹ Editor's Note: Added at time of adoption of Code; see Ch. 1, General Provisions, Art. I.

§ 67-2. Exceptions.

None of the foregoing provisions of § 67-1 of this chapter shall apply to a police officer acting in discharge of his duties, and the foregoing provisions of Subsections A and B of § 67-1 of this chapter shall not apply to:

- A. The owner or lessee of a dwelling house or a member of his immediate family or a person in his employ or a person who is a guest of such owner or lessee acting with such owner's or lessee's permission with respect to such owner's or lessee's property, but only when accompanied by such owner or lessee or employee or member of the immediate family sixteen (16) years of age or over of the owner or lessee, provided that such owner or lessee has obtained a permit issued by the Board of Trustees of the village and provided further that no discharge of firearms or weapons shall be done in a reckless or negligent manner or across a public highway or lane or across the property of another.
- B. Any owner or lessee or any member of his immediate family or any person in his employ when reasonably necessary for the protection of life or property, or both, or in the act of self-defense.

§ 67-3. Issuance of permit.

The Board shall only grant a permit pursuant to § 67-2A hereof after the owner or lessee has satisfied the Board that such use of firearms or weapons will occur in an area reasonably isolated and under such circumstances as not to endanger person or property. The permit shall be granted without fee and may be on such terms and conditions as the Board deems reasonable and may be revoked at any time.

§ 67-4. Penalties for offenses.²

Any person violating any provision of this chapter shall be punishable by a fine of not more than one hundred dollars (\$100.) for each and every offense.

² Editor's Note: Amended at time of adoption of Code; see Ch. 1, General Provisions, Art. I.

Chapter 70**FIRE PREVENTION**

§ 70-1. Fire extinguishers required.

§ 70-2. Beach fires; restrictions.

§ 70-3. Ground fires.

[HISTORY: Adopted by the Board of Trustees of the Village of Asharoken 6-12-26. Amendments noted where applicable.]

GENERAL REFERENCES

Beaches — See Ch. 38.

§ 70-1. Fire extinguishers required.

The owner or occupant of any frame or partially framed structure now erected or which shall hereafter be erected in the village shall provide at least one (1) duly approved, adequate and practical fire extinguisher on and for each story or floor of said structure, whether a residence or garage, and, in addition thereto, one (1) such fire extinguisher for the part of such structure used as a kitchen or for the cooking or preparation of food.¹

§ 70-2. Beach fires; restrictions.

No fire shall be started or lit on any beach within the village limits except under the constant supervision of a person of the age of discretion until the same has burned out or extinguished and unless there is then blowing an offshore wind.

¹ Editor's Note: Original Section 2, which immediately followed this section, was deleted at time of adoption of Code; see Ch. 1, General Provisions, Art. I.

§ 70-3. Ground fires.

The owner or occupant of any building in the village shall have and keep available at least one (1) long-handled shovel and one (1) broom to be used in extinguishing any fire which may occur on the grounds so owned or occupied or in the vicinity.

FLOOD DAMAGE PREVENTION

Chapter 73

FLOOD DAMAGE PREVENTION

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ARTICLE IV Variance Procedure

- § 73-21. Appeals board.
- § 73-22. Conditions for variances.

[HISTORY: Adopted by the Board of Trustees of the Village of Asharoken 2-2-1998 by L.L. No. 1-1998.¹ Amendments noted where applicable.]

GENERAL REFERENCES

Building construction administration — See Ch. 42.
Subdivision of land — See Ch. 107.
Zoning — See Ch. 125.

¹ Editor's Note: This local law superseded former Ch. 73, Flood Damage Prevention, adopted 10-3-1994 by L.L. No. 5-1994.

ARTICLE I
General Provisions

§ 73-1. Findings.

The Board of Trustees of the Village of Asharoken finds that the potential and/or actual damages from flooding and erosion may be a problem to the residents of the Village of Asharoken and that such damage may include destruction or loss of private and public housing, damage to public facilities, both publicly and privately owned, and injury to and loss of human life. In order to minimize the threat of such damages and to achieve the purposes and objectives hereinafter set forth, this chapter is adopted.

§ 73-2. Statement of purpose.

It is the purpose of this chapter to promote the public health, safety and general welfare and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

- A. Regulate 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. Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damages at the time of initial construction.
- C. Control the alteration of natural floodplains, stream channels and natural protective barriers which are involved in the accommodation of floodwaters.
- D. Control filling, grading, dredging and other development which may increase erosion or flood damages.
- E. Regulate the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards to other lands.

- F. Qualify for and maintain participation in the National Flood Insurance Program.

§ 73-3. Objectives.

The objectives of this chapter are to:

- A. Protect human life and health.
- B. Minimize expenditure of public money for costly flood control projects.
- C. Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public.
- D. Minimize prolonged business interruptions.
- E. Minimize damage to public facilities and utilities, such as water and gas mains, electric, telephone, sewer lines, streets and bridges located in areas of special flood hazard.
- F. 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.
- G. Provide that developers are notified that property is in an area of special flood hazard.
- H. Ensure that those who occupy the areas of special flood hazard assume responsibility for their actions.

§ 73-4. Definitions and word usage.

- A. Unless specifically defined below, words or phrases used in this chapter shall be interpreted so as to give them the meanings they have in common usage and to give this chapter its most reasonable application.
- B. As used in this chapter, the following terms shall have the meanings indicated:

APPEAL — A request for a review of the local administrator's interpretation of any provision of this chapter or a request for a variance.

AREA OF SHALLOW FLOODING — A designated AO, AH or VO Zone on a community's 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.

AREA OF SPECIAL FLOOD HAZARD — The land in the floodplain within a community subject to a one-percent or greater chance of flooding in any given year. This area may be designated as Zone A, AE, AH, AO, A1-A30, A99, V, VO, VE or V1-V30. It is also commonly referred to as the "base floodplain" or "one-hundred-year floodplain."

BASE FLOOD — The flood having a one-percent chance of being equaled or exceeded in any given year.

BASEMENT — That portion of a building having its floor subgrade (below ground level) on all sides.

BREAKAWAY 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 specific lateral loading forces without causing damage to the elevated portion of the building or the supporting foundation system.

BUILDING — See "structure."

CELLAR — The same meaning as "basement."

COASTAL HIGH-HAZARD AREA — An area of special flood hazard extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity wave action from

storms or seismic sources. The area is designated on a FIRM as Zone V1-V30, VE, VO or V.

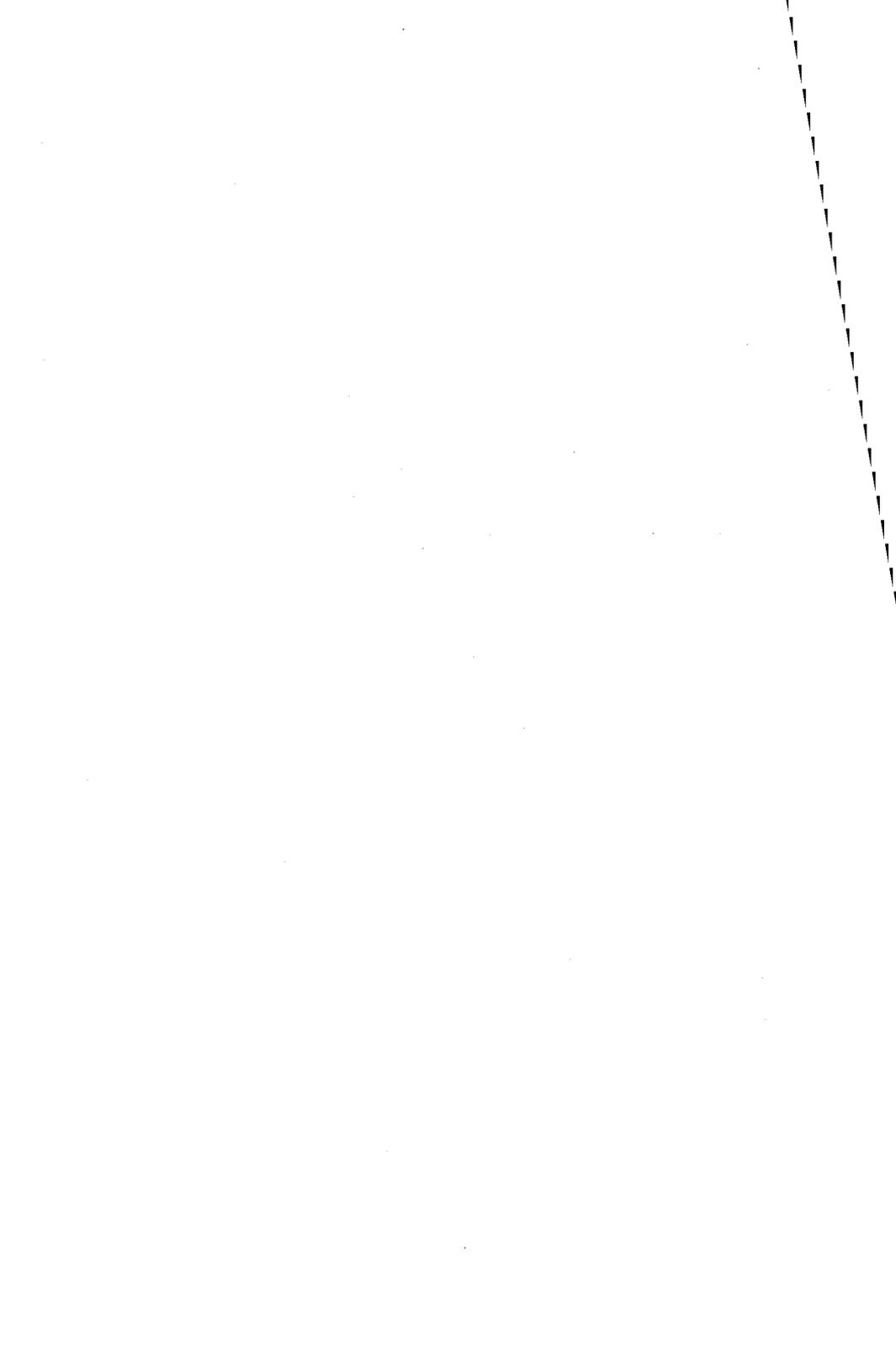
CRAWL SPACE — An enclosed area beneath the lowest elevated floor, eighteen inches or more in height, which is used to service the underside of the lowest elevated floor. The elevation of the floor of this enclosed area, which may be of soil, gravel, concrete or other material, must be equal to or above 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.

DEVELOPMENT — Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, paving, excavation or drilling operations or storage of equipment or materials.

ELEVATED BUILDING — A nonbasement building 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 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. 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. 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.

EXISTING MANUFACTURED HOME PARK OR SUBDIVISION— A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets and either final site grading or the pouring of concrete pads) is complete before the effective date of the floodplain management regulations adopted by the community.

(Cont'd on page 7307)



EXPANSION TO AN EXISTING MANUFACTURED HOME PARK OR SUBDIVISION — The preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets and either final site grading or the pouring of concrete pads).

FEDERAL EMERGENCY MANAGEMENT AGENCY — The federal agency that administers the National Flood Insurance Program.

FLOOD BOUNDARY AND FLOODWAY MAP (FBFM) — An official map of the community published by the Federal Emergency Management Agency as part of a riverine community's Flood Insurance Study. The "FBFM" delineates a regulatory floodway along watercourses studied in detail in the Flood Insurance Study.

FLOOD ELEVATION STUDY — An examination, evaluation and determination of the flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of flood-related erosion hazards.

FLOOD or FLOODING:

- (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) "Flood" or "flooding" also means 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 flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in Subsection (1) of this definition above.

FLOOD HAZARD BOUNDARY MAP (FHBM) — An official map of a community, issued by the Federal Emergency Management Agency, where the boundaries of the areas of special flood hazard have been designated as Zone A but no flood elevations are provided.

FLOOD INSURANCE RATE MAP (FIRM) — An official map of a community, on which the Federal Emergency Management Agency has delineated both the areas of special flood hazard and the risk premium zones applicable to the community.

FLOOD INSURANCE STUDY — See “flood elevation study.”

FLOODPLAIN or FLOOD-PRONE AREA — Any land area susceptible to being inundated by water from any source. (See definition of “flooding.”)

FLOODPROOFING — Any combination of structural and nonstructural additions, changes or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

FLOODWAY — The same meaning as “regulatory floodway.”

FUNCTIONALLY DEPENDENT USE — A use which cannot perform its intended purpose unless it is located or carried out in close proximity to water, such as a docking or port facility necessary for the loading and unloading of cargo or passengers, shipbuilding and ship repair facilities. The term does not include long-term storage, manufacturing, sales or service facilities.

HIGHEST ADJACENT GRADE — The highest natural elevation of the ground surface, prior to construction, next to the proposed walls of a structure.

HISTORIC STRUCTURE — Any structure that is:

- (1) Listed individually in the National Register of Historic Places (a listing maintained by the Department of the Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- (2) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
- (3) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
- (4) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
 - (a) By an approved state program as determined by the Secretary of the Interior; or
 - (b) Directly by the Secretary of the Interior in states without approved programs.

LOCAL ADMINISTRATOR — The person appointed by the community to administer and implement this chapter by granting or denying development permits in accordance with its provisions. This person is often the Code Enforcement Officer, Building Inspector or employee of an engineering department.

LOWEST FLOOR — The lowest floor of the lowest enclosed area (including the basement or cellar). An unfinished or flood-resistant enclosure, usable solely for

parking of vehicles, building access or storage in an area other than a basement area, 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.

MANUFACTURED HOME — A structure, transportable in one (1) or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term does not include a recreational vehicle.

MANUFACTURED HOME PARK OR SUBDIVISION — A parcel (or contiguous parcels) of land divided into two (2) or more manufactured home lots for rent or sale.

MEAN SEA LEVEL — For purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929 or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.

MOBILE HOME — The same meaning as "manufactured home."

NATIONAL GEODETIC VERTICAL DATUM (NGVD) — As corrected in 1929, a vertical control used as a reference for establishing varying elevations within the floodplain.

NEW CONSTRUCTION — Structures for which the start of construction commenced on or after the effective date of a floodplain management regulation adopted by the community and includes any subsequent improvements to such structure.

NEW MANUFACTURED HOME PARK OR SUBDIVISION — A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of

utilities, the construction of streets and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulations adopted by a community.

ONE-HUNDRED-YEAR FLOOD or 100-YEAR FLOOD — The same meaning as “base flood.”

PRIMARY FRONTAL DUNE — A continuous or nearly continuous mound or ridge of sand with relatively steep seaward and landward slopes immediately landward and adjacent to the beach and subject to erosion and overtopping from high tides and waves during major coastal storms. The inland limit of the “primary frontal dune” occurs at the point where there is a distinct change from a relatively steep slope to a relatively mild slope.

PRINCIPALLY ABOVE GROUND — At least fifty-one percent (51%) of the actual cash value of the structure, excluding land value, is above ground.

RECREATIONAL VEHICLE — A vehicle which is:

- (1) Built on a single chassis;
- (2) Four hundred (400) square feet or less when measured at the largest horizontal projections;
- (3) Designed to be self-propelled or permanently towable by a light-duty truck; and
- (4) Not designed primarily for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel or seasonal use.

REGULATORY FLOODWAY — The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height as determined by the Federal Emergency Management Agency in a Flood Insurance Study or by other agencies as provided in § 73-13B of this chapter.

SAND DUNES — Naturally occurring accumulations of sand in ridges or mounds landward of the beach.

START OF CONSTRUCTION — Includes substantial improvement and means the initiation, excluding planning and design, of any phase of a project or 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.

STRUCTURE — A walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.

SUBSTANTIAL DAMAGE — Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed fifty percent (50%) of the market value of the structure before the damage occurred.

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:

- (1) 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

- (2) 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 from the requirements of this chapter which permits construction or use in a manner that would otherwise be prohibited by this chapter.

§ 73-5. Applicability.

This chapter shall apply to all areas of special flood hazard within the jurisdiction of the Village of Asharoken, Suffolk County, New York.

§ 73-6. Basis for establishing areas of special flood hazard.

- A. The areas of special flood hazard for the Village of Asharoken, Community No. 365333, are identified and defined on the following documents prepared by the Federal Emergency Management Agency:
 - (1) A scientific and engineering report entitled "Flood Insurance Study, Suffolk County, New York (all jurisdictions)," dated May 4, 1998.
 - (2) Flood Insurance Rate Map for Suffolk County, New York (all jurisdictions) as shown on Index No. 36103C0000 and Panel(s) 0309, 0317 and 0336, whose effective date is May 4, 1998. [**Amended 4-6-1998 by L.L. No. 3-1998**]
- B. The above documents are hereby adopted and declared to be a part of this chapter. The Flood Insurance Study and/or maps are on file at the Village Hall, One Asharoken Avenue, Asharoken, New York.

§ 73-7. Interpretation; conflict with other laws.

- A. This chapter includes all revisions to the National Flood Insurance Program through November 1, 1989, and shall supersede all previous laws adopted for the purpose of flood damage prevention.
- B. In their interpretation and application, the provisions of this chapter shall be held to be minimum requirements, adopted for the promotion of the public health, safety and welfare. Whenever the requirements of this chapter are at variance with the requirements of any other lawfully adopted rules, regulations or ordinances, the most restrictive, or that imposing the highest standards, shall govern.

§ 73-8. Penalties for offenses.

No structure in an area of special flood hazard shall hereafter be constructed, located, extended, converted or altered and no land shall be excavated or filled without full compliance with the terms of this chapter and any other applicable regulations. Any infraction of the provisions of this chapter by failure to comply with any of its requirements, including infractions of conditions and safeguards established in connection with conditions of the permit, shall constitute a violation. Any person who violates this chapter or fails to comply with any of its requirements shall, upon conviction thereof, be fined no more than \$250 or imprisoned for not more than 15 days, or both. Each day of noncompliance shall be considered a separate offense. Nothing herein contained shall prevent the Village of Asharoken from taking such other lawful action as necessary to prevent or remedy an infraction. Any structure found not compliant with the requirements of this chapter for which the developer and/or owner has not applied for and received an approved variance under Article IV will be declared noncompliant and notification sent to the Federal Emergency Management Agency.

§ 73-9. Warning and disclaimer of liability.

The degree of flood protection required by this chapter is considered reasonable for regulatory purposes and is based on

(Cont'd on page 7315)

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 chapter does not imply that land outside the areas of special flood hazard or uses permitted within such areas will be free from flooding or flood damages. This chapter shall not create liability on the part of the Village of Asharoken, any officer or employee thereof, or the Federal Emergency Management Agency for any flood damages that result from reliance on this chapter or any administrative decision lawfully made hereunder.

ARTICLE II Administration

§ 73-10. Designation of local administrator.

The Superintendent of Buildings is hereby appointed local administrator to administer and implement this chapter by granting or denying floodplain development permits in accordance with its provisions.

§ 73-11. Floodplain development permit required; fees.

- A. Purpose. A floodplain development permit is hereby established for all construction and other development to be undertaken in areas of special flood hazard in this community for the purpose of protecting its citizens from increased flood hazards and ensuring that new development is constructed in a manner that minimizes its exposure to flooding. It shall be unlawful to undertake any development in an area of special flood hazard, as shown on the Flood Insurance Rate Map enumerated in § 73-6, without a valid floodplain development permit. Application for a permit shall be made on forms furnished by the local administrator and may include but not be limited to plans, in duplicate, drawn to scale and showing the nature, location, dimensions and elevations of the area in question;

existing or proposed structures; fill; storage of materials; drainage facilities; and the location of the foregoing.

- B. Fees. All applications for a floodplain development permit shall be accompanied by an application fee of one hundred dollars (\$100.). In addition, the applicant shall be responsible for reimbursing the Village of Asharoken for any additional costs necessary for review, inspection and approval of this project. The local administrator may require a deposit of no more than five hundred dollars (\$500.) to cover these additional costs.

§ 73-12. Permit application information.

The applicant shall provide at least the following information, where applicable. Additional information may be required on the permit application form.

- A. The proposed elevation, in relation to mean sea level, of the lowest floor (including the basement or cellar) of any new or substantially improved structure to be located in Zones A1-A30, AE or AH, or Zone A if base flood elevation data are available. Upon completion of the lowest floor, the permittee shall submit to the local administrator the as-built elevation, certified by a licensed professional engineer or surveyor.
- B. The proposed elevation, in relation to mean sea level, of the bottom of the lowest structural member of the lowest floor (excluding pilings and columns) of any new or substantially improved structure to be located in Zones V1-V30 or VE, or Zone V if base flood elevation data are available. Upon completion of the lowest floor, the permittee shall submit to the local administrator the as-built elevation, certified by a licensed professional engineer or surveyor.
- C. The proposed elevation, in relation to mean sea level, to which any new or substantially improved nonresidential structure will be floodproofed. Upon completion of the floodproofed portion of the structure, the permittee shall

submit to the local administrator the as-built floodproofed elevation, certified by a professional engineer or surveyor.

- D. A certificate from a licensed professional engineer or architect that any utility floodproofing will meet the criteria in § 73-15C, Utilities.
- E. A certificate from a licensed professional engineer or architect that any nonresidential floodproofed structure will meet the floodproofing criteria in § 73-18, Nonresidential structures (except coastal high-hazard areas).
- F. A description of the extent to which any watercourse will be altered or relocated as a result of proposed development. Computations by a licensed professional engineer must be submitted that demonstrate that the altered or relocated segment will provide equal or greater conveyance than the original stream segment. The applicant must submit any maps, computations or other material required by the Federal Emergency Management Agency (FEMA) to revise the documents enumerated in § 73-6, when notified by the local administrator, and must pay any fees or other costs assessed by FEMA for this purpose. The applicant must also provide assurances that the conveyance capacity of the altered or relocated stream segment will be maintained.
- G. A technical analysis, by a licensed professional engineer, if required by the local administrator, which shows whether proposed development to be located in an area of special flood hazard may result in physical damage to any other property.
- H. In Zone A, when no base flood elevation data are available from other sources, base flood elevation data provided by the permit applicant for subdivision proposals and other proposed developments (including proposals for manufactured home and recreational vehicle parks and subdivisions) that are greater than either fifty (50) lots or five (5) acres.

- I. In Zones V1-V30 and VE, and also Zone V if base flood elevation are available, designs and specifications, certified by a licensed professional engineer or architect, for any breakaway walls in a proposed structure with design strengths in excess of twenty (20) pounds per square foot.
- J. In Zones V1-V30 and VE, and also Zone V if base flood elevation are available, for all new and substantial improvements of structures, floodplain development permit applications shall be accompanied by design plans and specifications, prepared in sufficient detail to enable independent review of the foundation support and connection components. Said plans and specifications shall be developed or reviewed by a licensed professional engineer or architect and shall be accompanied by a statement, bearing the signature of the architect or engineer, certifying that the design and methods of construction to be used are in accordance with accepted standards of practice and with all applicable provisions of this chapter.

§ 73-13. Duties and responsibilities of local administrator.

The duties of the local administrator shall include but not be limited to the following:

- A. Permit application review. The local administrator shall conduct the following permit application review before issuing a floodplain development permit:
 - (1) Review all applications for completeness, particularly with the requirements of § 73-12, Permit application information, and for compliance with the provisions and standards of this chapter.
 - (2) Review subdivision and other proposed new development, including manufactured home parks, to determine whether proposed building sites will be reasonably safe from flooding. If a proposed building

site is located in an area of special flood hazard, all new construction and substantial improvements shall meet the applicable standards of Article III, Construction Standards, and, in particular, § 73-14B, Subdivision proposals.

- (3) Determine whether any proposed development in an area of special flood hazard may result in physical damage to any other property (e.g., stream bank erosion and increased flood velocities). The local administrator may require the applicant to submit additional technical analyses and data necessary to complete the determination. If the proposed development may result in physical damage to any other property or fails to meet the requirements of Article III, Construction standards, no permit shall be issued. The applicant may revise the application to include measures that mitigate or eliminate the adverse effects and resubmit the application.
- (4) Determine that all necessary permits have been received from those governmental agencies from which approval is required by state or federal law.

B. Use of other flood data.

- (1) When the Federal Emergency Management Agency has designated areas of special flood hazard on the community's Flood Insurance Rate Map (FIRM) but has neither produced water surface elevation data (these areas are designated Zone A or V on the FIRM) nor identified a floodway, the local administrator shall obtain, review and reasonably utilize any base flood elevation and floodway data available from a federal, state or other source, including data developed pursuant to § 73-12H, as criteria for requiring that new construction, substantial improvements or other proposed development meet the requirements of this chapter.
- (2) When base flood elevation data are not available, the local administrator may use flood information

from any other authoritative source, such as historical data, to establish flood elevations within the areas of special flood hazard, for the purposes of this chapter.

C. Alteration of watercourses. The local administrator shall:

- (1) Notify adjacent communities and the New York State Department of Environmental Conservation prior to permitting any alteration or relocation of a watercourse and submit evidence of such notification to the Regional Director, Region II, Federal Emergency Management Agency.
- (2) Determine that the permit holder has provided for maintenance within the altered or relocated portion of said watercourse so that the flood-carrying capacity is not diminished.

D. Construction stage.

- (1) In Zones A1-A30, AE and AH, and also Zone A if base flood elevation data are available, upon placement of the lowest floor or completion of floodproofing of a new or substantially improved structure, the local administrator shall obtain from the permit holder a certification of the as-built elevation of the lowest floor or floodproofed elevation, in relation to mean sea level. The certificate shall be prepared by or under the direct supervision of a licensed land surveyor or professional engineer and certified by the same. For manufactured homes, the permit holder shall submit the certificate of elevation upon placement of the structure on the site. A certificate of elevation must also be submitted for a recreational vehicle if it remains on a site for one hundred eighty (180) consecutive days or longer (unless it is fully licensed and ready for highway use).

- (2) In Zones V1-V30 and VE, and also Zone V if base flood elevation data are available, upon placement of the lowest floor of a new or substantially improved structure, the permit holder shall submit to the local administrator a certificate of elevation, in relation to mean sea level, of the bottom of the lowest structural member of the lowest floor (excluding pilings and columns). For manufactured homes, the permit holder shall submit the certificate of elevation upon placement of the structure on the site. An elevation certificate must also be submitted for a recreational vehicle if it remains on a site one hundred eighty (180) consecutive days or longer (unless it is fully licensed and ready for highway use).
 - (3) Any further work undertaken prior to submission and approval of the certification shall be at the permit holder's risk. The local administrator shall review all data submitted. Deficiencies detected shall be cause to issue a stop-work order for the project unless immediately corrected.
- E. Inspections. The local administrator and/or the developer's engineer or architect shall make periodic inspections at appropriate times throughout the period of construction in order to monitor compliance with permit conditions and enable said inspector to certify, if requested, that the development is in compliance with the requirements of the floodplain development permit and/or any variance provisions.
- F. Stop-work orders.
- (1) The local administrator shall issue, or cause to be issued, a stop-work order for any floodplain development found ongoing without a development permit. Disregard of a stop-work order shall subject the violator to the penalties described in § 73-8 of this chapter.

- (2) The local administrator shall issue, or cause to be issued, a stop-work order for any floodplain development found noncompliant with the provisions of this chapter and/or the conditions of the development permit. Disregard of a stop-work order shall subject the violator to the penalties described in § 73-8 of this chapter.

G. Certificate of compliance.

- (1) In areas of special flood hazard, as determined by documents enumerated in § 73-6, it shall be unlawful to occupy or to permit the use or occupancy of any building or premises, or both, or part thereof hereafter created, erected, changed, converted or wholly or partly altered or enlarged in its use or structure until a certificate of compliance has been issued by the local administrator stating that the building or land conforms to the requirements of this chapter.
- (2) A certificate of compliance shall be issued by the local administrator upon satisfactory completion of all development in areas of special flood hazard.
- (3) Issuance of the certificate shall be based upon the inspections conducted as prescribed in Subsection E, Inspections, and/or any certified elevations, hydraulic data, floodproofing, anchoring requirements or encroachment analyses which may have been required as a condition of the approved permit.

H. Information to be retained. The local administrator shall retain and make available for inspection copies of the following:

- (1) Floodplain development permits and certificates of compliance.
- (2) Certifications of as-built lowest floor elevations of structures, required pursuant to Subsections D(1)

and D(2) of this § 73-13, and whether or not the structures contain a basement.

- (3) Floodproofing certificates, required pursuant to Subsection D(1) of this § 73-13, and whether or not the structures contain a basement.
- (4) Certifications required pursuant to § 73-17N, Breakaway wall design standards, and Subsection J of § 73-12, Permit application information.
- (5) Variances issued pursuant to Article IV.
- (6) Notices required under Subsection C of this section, Alteration of watercourses.

ARTICLE III Construction Standards

§ 73-14. General standards.

The following standards apply to new development, including new and substantially improved structures, in the areas of special flood hazard shown on the Flood Insurance Rate Map designated in § 73-6:

- A. Coastal high-hazard areas. The following requirements apply within Zones V1-V30, VE and V:
 - (1) All new construction, including manufactured homes and recreational vehicles on site one hundred eighty (180) days or longer and not fully licensed for highway use, shall be located landward of the reach of high tide.
 - (2) The use of fill for structural support of buildings, manufactured homes or recreational vehicles on site one hundred eighty (180) days or longer is prohibited.
 - (3) Man-made alteration of sand dunes which would increase potential flood damage is prohibited.

B. Subdivision proposals. The following standards apply to all new subdivision proposals and other proposed development in areas of special flood hazard (including proposals for manufactured home and recreational vehicle parks and subdivisions):

- (1) Proposals shall be consistent with the need to minimize flood damage.
- (2) Public utilities and facilities, such as sewer, gas, electrical and water systems, shall be located and constructed so as to minimize flood damage.
- (3) Adequate drainage shall be provided to reduce exposure to flood damage.

C. Encroachments.

- (1) Within Zones A1-A30 and AE, on streams without a regulatory floodway, no new construction, substantial improvements or other development (including fill) shall be permitted unless:
 - (a) The applicant demonstrates that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one (1) foot at any location; or
 - (b) The Village of Asharoken agrees to apply to the Federal Emergency Management Agency (FEMA) for a conditional FIRM revision, FEMA approval is received and the applicant provides all necessary data, analyses and mapping and reimburses the Village of Asharoken for all fees and other costs in relation to the application. The applicant must also provide all data, analyses and mapping and reimburse the Village of Asharoken for all costs related to the final map revision.

- (2) On streams with a regulatory floodway, as shown on the Flood Boundary and Floodway Map or the Flood Insurance Rate Map adopted in § 73-6, no new construction, substantial improvements or other development in the floodway (including fill) shall be permitted unless:
 - (a) A technical evaluation by a licensed professional engineer shows that such an encroachment shall not result in any increase in flood levels during occurrence of the base flood; or
 - (b) The Village of Asharoken agrees to apply to the Federal Emergency Management Agency (FEMA) for a conditional FIRM and floodway revision, FEMA approval is received and the applicant provides all necessary data, analyses and mapping and reimburses the Village of Asharoken for all fees and other costs in relation to the application. The applicant must also provide all data, analyses and mapping and reimburse the Village of Asharoken for all costs related to the final map revisions.

§ 73-15. Standards for all structures.

- A. Anchoring. New structures and substantial improvement to structures in areas of special flood hazard shall be anchored to prevent flotation, collapse or lateral movement during the base flood. This requirement is in addition to applicable state and local anchoring requirements for resisting wind forces.
- B. Construction materials and methods.
 - (1) New construction and substantial improvements to structures shall be constructed with materials and utility equipment resistant to flood damage.

- (2) New construction and substantial improvements to structures shall be constructed using methods and practices that minimize flood damage.
- (3) Enclosed areas below lowest floor.
 - (a) For enclosed areas below the lowest floor of a structure within Zones A1-A30, AE or AH, and also Zone A if base flood elevation data are available, new and substantially improved structures shall have fully enclosed areas below the lowest floor that are usable solely for parking of vehicles, building access or storage in an area other than a basement and which are subject to flooding, 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 licensed professional engineer or architect or meet or exceed the following minimum criteria:
 - [1] 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; and
 - [2] The bottom of all such openings no higher than one (1) foot above the lowest adjacent finished grade.
 - (b) Openings may be equipped with louvers, valves, screens or other coverings or devices, provided that they permit the automatic entry and exit of floodwaters.
- (4) Within Zones V1-V30 and VE, and also within Zone V if base flood elevation data are available, new construction and substantial improvements shall have the space below the lowest floor either free from obstruction or constructed with nonsupporting breakaway walls, open wood latticework or insect

screening intended 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. The enclosed space below the lowest floor shall be used only for parking vehicles, building access or storage. Use of this space for human habitation is expressly prohibited. The construction of stairs, stairwells and elevator shafts are subject to the design requirements for breakaway walls.

C. Utilities.

- (1) Machinery and equipment servicing a building must either be elevated to or above the base flood level or designed to prevent water from entering or accumulating within the components during a flood. This includes heating, ventilating and air-conditioning equipment, hot-water heaters, appliances, elevator lift machinery and electrical junction and circuit breaker boxes. When located below the base flood elevation, a professional engineer's or architect's certification of the design is required.
- (2) New and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system.
- (3) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters. Sanitary sewer and storm drainage systems for buildings that have openings below the base flood elevation shall be provided with automatic backflow valves or other automatic backflow devices that are installed in each discharge line passing through a building's exterior wall.
- (4) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

§ 73-16. Elevation standards for residential structures (except coastal high-hazard areas).

The following standards, in addition to the standards in § 73-14B, Subdivision proposals, and § 73-14C, Encroachments, and § 73-15, Standards for all structures, apply to structures located in areas of special flood hazard as indicated:

- A. Within Zones A1-A30, AE and AH, and also Zone A if base flood elevation data are available, new construction and substantial improvements shall have the lowest floor (including the basement) elevated to or above the base flood level.
- B. Within Zone A, when no base flood elevation data are available, new and substantially improved structures shall have the lowest floor (including the basement) elevated at least three (3) feet above the highest adjacent grade.
- C. Within Zone AO, new and substantially improved structures shall have the lowest floor (including the basement) elevated above the highest adjacent grade at least as high as the depth number specified in feet on the community's Flood Insurance Rate Map enumerated in § 73-6 [at least two (2) feet if no depth number is specified].
- D. Within Zones AH and AO, adequate drainage paths are required to guide floodwaters around and away from proposed structures on slopes.

§ 73-17. Residential structures (coastal high-hazard areas).

The following standards, in addition to the standards in § 73-14A, Coastal high-hazard areas, and § 73-14B, Subdivision proposals, and § 73-15, Standards for all structures, apply to structures located in areas of special flood hazard shown as Zones V1-V30, VE or V on the community's Flood Insurance Rate Map designated in § 73-6:

- A. Elevation. New construction and substantial improvements shall be elevated on pilings, columns or shear walls such that the bottom of the lowest horizontal structural member supporting the lowest elevated floor (excluding columns, piles, diagonal bracing attached to the piles or columns, grade beams, pile caps and other members designed to either withstand storm action or break away without imparting damaging loads to the structure) is elevated to or above the level of the base flood so as not to impede the flow of water.
- B. Determination of loading forces.
- (1) Structural design shall consider the effects of wind and water loads acting simultaneously during the base flood on all building components.
 - (2) The structural design shall be adequate to resist water forces that would occur during the base flood. Horizontal water loads considered shall include inertial and drag forces of waves, current drag forces and impact forces from waterborne storm debris. Dynamic uplift loads shall also be considered if bulkheads, walls or other natural or man-made flow obstructions could cause wave runoff beyond the elevation of the base flood.
 - (3) Buildings shall be designed and constructed to resist the forces due to wind pressure. Wind forces on the superstructure include windward and leeward forces on vertical walls, uplift on the roof, internal forces when openings allow wind to enter the house and upward force on the underside of the house when it is exposed. In the design, the wind should be assumed to blow potentially from any lateral direction relative to the house.
 - (4) Wind loading values used shall be those required by the Building Code.²

² Editor's Note: See Ch. 42, Building Construction Administration.

C. Foundation standards.

- (1) The pilings or column foundation and structure attached thereto shall be adequately anchored to resist flotation, collapse or lateral movement due to the effects of wind and water pressures acting simultaneously on all building components. Foundations must be designed to transfer safely to the underlying soil all loads due to wind, water, dead load, live load and other loads (including uplift due to wind and water).
- (2) Spread footings and fill material shall not be used for structural support of a new building or substantial improvement of an existing structure.

D. Pile foundation design.

- (1) The design ratio of pile spacing to pile diameter shall not be less than eight to one (8:1) for individual piles. (This shall not apply to pile clusters located below the design grade.) The maximum center-to-center spacing of wood piles shall not be more than twelve (12) feet on center under load-bearing sills, beams or girders.
- (2) Pilings shall have adequate soil penetration (bearing capacity) to resist the combined wave and wind loads (lateral and uplift) associated with the base flood acting simultaneously with typical structure (live and dead) loads, and shall include consideration of decreased resistance capacity caused by erosion of soil strata surrounding the piles. The minimum penetration for foundation piles is to an elevation of five (5) feet below mean sea level (msl) datum if the BFE is +10 msl or less, or to be at least ten (10) feet below msl if the BFE is greater than +10 msl.
- (3) Pile foundation analysis shall also include consideration of piles in column action from the bottom of the structure to the stable soil elevation of

the site. Pilings may be horizontally or diagonally braced to withstand wind and water forces.

- (4) The minimum acceptable sizes for timber piles are a tip diameter of eight (8) inches for round timber piles and eight by eight (8 x 8) inches for square timber piles. All wood piles must be treated in accordance with requirements of EPEE-C3 to minimize decay and damage from fungus.
- (5) Reinforced concrete piles shall be cast of concrete having a twenty-eight-day ultimate compressive strength of not less than five thousand (5,000) pounds per square inch and shall be reinforced with a minimum of four (4) longitudinal steel bars having a combined area of not less than one percent (1%) nor more than four percent (4%) of the gross concrete area. Reinforcing for precast piles shall have a concrete cover of not less than one and one-fourth (1¹/₄) inches for No. 5 bars and smaller and not less than one and one-half (1¹/₂) inches for No. 6 through No. 11 bars. Reinforcement for piles cast in the field shall have a concrete cover of not less than two (2) inches.
- (6) Piles shall be driven by means of a pile driver or drop hammer, jettted or augered into place.
- (7) Additional support for piles in the form of bracing may include lateral or diagonal bracing between piles.
- (8) When necessary, piles shall be braced at the ground line in both directions by a wood timber grade beam or a reinforced concrete grade beam. These at-grade supports should be securely attached to the piles to provide support even if scoured from beneath.
- (9) Diagonal bracing between piles, consisting of two-inch by eight-inch (minimum) members bolted to the piles, shall be limited in location to below the lowest supporting structural member and above the stable

soil elevation and aligned in the vertical plane along pile rows perpendicular to the shoreline. Galvanized steel rods [minimum diameter one-half ($1/2$) inch] or cable-type bracing is permitted in any plane.

- (10) Knee braces, which stiffen both the upper portion of a pile and the beam-to-pile connection, may be used along pile rows perpendicular and parallel to the shoreline. Knee braces shall be two by eight (2 x 8) lumber bolted to the sides of the pile/beam, or four by four (4 x 4) or larger braces framed into the pile/beam. Bolting shall consist of two (2) five-eighths-inch galvanized steel bolts (each end) for two by eight (2 x 8) members, or one (1) five-eighths-inch lag bolt (each end) for square members. Knee braces shall not extend more than three (3) feet below the elevation of the base flood.
- E. Column foundation design. Masonry piers or poured-in-place concrete piers shall be internally reinforced to resist vertical and lateral loads and be connected with a movement-resisting connection to a pile cap or pile shaft.
- F. Connectors and fasteners. Galvanized metal connectors, wood connectors or bolts of size and number adequate for the calculated loads must be used to connect adjoining components of a structure. Toe nailing as a principal method of connection is not permitted. All metal connectors and fasteners used in exposed locations shall be steel, hot-dipped galvanized after fabrication. Connectors in protected interior locations shall be fabricated from galvanized sheet.
- G. Beam-to-pile connections. The primary floor beams or girders shall span the supports in the direction parallel to the flow of potential floodwater and wave action and shall be fastened to the columns or pilings by bolting, with or without cover plates. Concrete members shall be connected by reinforcement, if cast in place, or (if precast) shall be securely connected by bolting and welding. If sills, beams or girders are attached to wood

piling at a notch, a minimum of two (2) five-eighths-inch galvanized steel bolts or two (2) hot-dipped galvanized straps three-sixteenths by four by eighteen ($\frac{3}{16} \times 4 \times 18$) inches each bolted with two (2) one-half-inch lag bolts per beam member shall be used. Notching of pile tops shall be the minimum sufficient to provide ledge support for beam members without unduly weakening pile connections. Piling shall not be notched so that the cross section is reduced below fifty percent (50%).

H. Floor and deck connections.

- (1) Wood two-by-four-inch (minimum) connectors or metal joist anchors shall be used to tie floor joists to floor beams/girders. These should be installed on alternate floor joists, at a minimum. Cross bridging of all floor joists shall be provided. Such cross bridging may be one-by-three-inch members, placed eight (8) feet on-center maximum, or solid bridging of same depth as joist at same spacing.
- (2) Plywood should be used for subflooring and attic flooring to provide good torsional resistance in the horizontal plane of the structure. The plywood should not be less than three-fourths-inch total thickness and should be exterior grade and fastened to beams or joists with 8d annular or spiral thread galvanized nails. Such fastening shall be supplemented by the application of waterproof industrial adhesive applied to all bearing surfaces.

- I. Exterior wall connections. All bottom plates shall have any required breaks under a wall stud or an anchor bolt. Approved anchors will be used to secure rafters or joists and top and bottom plates to studs in exterior and bearing walls to form a continuous tie. Continuous fifteen thirty-seconds ($\frac{15}{32}$) inch or thicker plywood sheathing, overlapping the top wall plate and continuing down to the sill, beam or girder, may be used to provide the continuous tie. If the sheets of plywood are not vertically continuous, then two by four (2 x 4) nailer

blocking shall be provided at all horizontal joints. In lieu of the plywood, galvanized steel rods of one-half-inch diameter or galvanized steel straps not less than one (1) inch wide by one-sixteenth ($\frac{1}{16}$) inch thick may be used to connect from the top wall plate to the sill, beam or girder. Washers with a minimum diameter of three (3) inches shall be used at each end of the one-half-inch round rods. These anchors shall be installed no more than two (2) feet from each corner rod, no more than four (4) feet on center.

J. Ceiling joist/rafter connections.

- (1) All ceiling joists or rafters shall be installed in such a manner that the joists provide a continuous tie across the rafters. Ceiling joists and rafters shall be securely fastened at their intersections. A metal or wood connector shall be used at alternate ceiling joist/rafter connections to the wall top plate.
- (2) Gable roofs shall be additionally stabilized by installing two-by-four blocking on two-foot centers between the rafters at each gable end. Blocking shall be installed a minimum of eight (8) feet toward the house interior from each gable end.

K. Projecting members. All cantilevers and other projecting members must be adequately supported and braced to withstand wind and water uplift forces. Roof eave overhangs shall be limited to a maximum of two (2) feet and joist overhangs to a maximum of one (1) foot. Larger overhangs and porches will be permitted if designed or reviewed by a registered professional engineer or architect and certified in accordance with § 73-12J of this chapter.

L. Roof sheathing.

- (1) Plywood, or other wood material, when used as roof sheathing, shall not be less than fifteen thirty-seconds ($\frac{15}{32}$) inch in thickness and shall be of exterior sheathing grade or equivalent. All attaching

devices for sheathing and roof coverings shall be galvanized or be of other suitable corrosion-resistant material.

- (2) All corners, gable ends and roof overhangs exceeding six (6) inches shall be reinforced by the application of waterproof industrial adhesive applied to all bearing surfaces of any plywood sheet used in the sheathing of such corner, gable end or roof overhang.
- (3) In addition, roofs should be sloped as steeply as practicable to reduce uplift pressures, and special care should be used in securing ridges, hips, valleys, eaves, vents, chimneys and other points of discontinuity in the roofing surface.

M. Protection of openings. All exterior glass panels, windows and doors shall be designed, detailed and constructed to withstand loads due to the design wind speed of seventy-five (75) miles per hour. Connections for these elements must be designed to transfer safely the design loads to the supporting structure. Panel widths of multiple panel sliding glass doors shall not exceed three (3) feet.

N. Breakaway wall design standards.

- (1) The breakaway wall shall have a design safe loading resistance of not less than ten (10) and not more than twenty (20) pounds per square foot, with the criterion that the safety of the overall structure at the point of wall failure be confirmed using established procedures. Grade beams shall be installed in both directions for all piles considered to carry the breakaway wall load. Knee braces are required for front row piles that support breakaway walls.
- (2) Use of breakaway wall strengths in excess of twenty (20) pounds per square foot shall not be permitted unless a registered professional engineer or

architect has developed or reviewed the structural design and specifications for the building foundation and breakaway wall components and certifies that the breakaway walls will fail under water loads less than those that would occur during the base flood and the elevated portion of the building and supporting foundation system will 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). Water-loading values used shall be those associated with the base flood. Wind loading values shall be those required by the Building Code.³

§ 73-18. Nonresidential structures (except coastal high-hazard areas).

The following standards apply to new and substantially improved commercial, industrial and other nonresidential structures, in addition to the requirements in § 73-14B, Subdivision proposals, and § 73-14C, Encroachments, and § 73-15, Standards for all structures.

- A. Within Zones A1-A30, AE and AH, and also Zone A if base flood elevation data are available, new construction and substantial improvements of any nonresidential structure, together with attendant utility and sanitary facilities, shall either:
- (1) Have the lowest floor, including basement or cellar, elevated to or above the base flood elevation; or
 - (2) Be floodproofed so that the structure is watertight below the base flood level with walls substantially impermeable to the passage of water. All structural components located below the base flood level must

³ Editor's Note: See Ch. 42, Building Construction Administration.

be capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy.

B. Within Zone AO, new construction and substantial improvements of nonresidential structures shall:

- (1) Have the lowest floor (including the basement) elevated above the highest adjacent grade at least as high as the depth number specified in feet on the community's FIRM [at least two (2) feet if no depth number is specified]; or
- (2) Together with attendant utility and sanitary facilities, be completely floodproofed to that level to meet the floodproofing standard specified in Subsection A(2) above.
- (3) If the structure is to be floodproofed, a licensed professional engineer or architect shall develop and/or review structural design, specifications and plans for construction. A floodproofing certificate or other certification shall be provided to the local administrator that certifies that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of Subsection A(2), including the specific elevation (in relation to mean sea level) to which the structure is to be floodproofed.
- (4) Within Zones AH and AO, adequate drainage paths are required to guide floodwaters around and away from proposed structures on slopes.
- (5) Within Zone A, when no base flood elevation data are available, the lowest floor (including the basement) shall be elevated at least three (3) feet above the highest adjacent grade.

§ 73-19. Nonresidential structures (coastal high-hazard areas).

In Zones V1-V30 and VE, and also Zone V if base flood elevations are available, new construction and substantial improvements of any nonresidential structure, together with attendant utility and sanitary facilities, shall have the bottom of the lowest member of the lowest floor elevated to or above the base flood elevation. Floodproofing of structures is not an allowable alternative to elevating the lowest floor to the base flood elevation in Zones V1-V30, VE and V.

§ 73-20. Manufactured homes and recreational vehicles.

The following standards, in addition to the standards in § 73-14, General standards, and § 73-15, Standards for all structures, apply in areas of special flood hazard to manufactured homes and to recreational vehicles which are located in areas of special flood hazard:

A. Recreational vehicles.

- (1) Recreational vehicles placed on sites within Zones A1-A30, AE, AH, V1-V30, V and VE shall:
 - (a) Be on site fewer than one hundred eighty (180) consecutive days;
 - (b) Be fully licensed and ready for highway use; or
 - (c) Meet the requirements for manufactured homes in Subsections B, D and E of this section.
- (2) A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect-type utilities and security devices and has no permanently attached additions.

B. A manufactured home that is placed or substantially improved in Zones A1-A30, AE, AH, V1-V30 or VE that is on a site outside of an existing manufactured home park or subdivision as herein defined, in a new

manufactured home park or subdivision as herein defined, in an expansion to an existing manufactured home park or subdivision as herein defined or in an existing manufactured home park or subdivision as herein defined on which a manufactured home has incurred substantial damage as the result of a flood shall, within Zones A1-A30, AE and AH, be elevated on a permanent foundation such that the lowest floor is elevated to or above the base flood elevation and is securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement; or, within Zones V1-V30 and VE, be elevated on a pile foundation such that the bottom of the lowest structural member of the lowest floor (excluding pilings and columns) is elevated to or above the base flood elevation and securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement. Elevation on piers consisting of dry stacked blocks is prohibited. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors.

- C. A manufactured home to be placed or substantially improved in Zone A1-A30, AE, AH, V1-V30 or VE, in an existing manufactured home park or subdivision that is not to be placed on a site on which a manufactured home has incurred substantial damage shall be:
- (1) Elevated in a manner such as required in Subsection B; or
 - (2) Elevated such that the manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than thirty-six (36) inches in height above grade and are securely anchored to an adequately anchored foundation system to resist flotation, collapse or lateral movement. Elevation on piers consisting of dry stacked blocks is prohibited.

- D. Within Zone A or V, when no base flood elevation data are available, new and substantially improved manufactured homes shall be elevated such that the manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than thirty-six (36) inches in height above the lowest adjacent grade and are securely anchored to an adequately anchored foundation system to resist flotation, collapse or lateral movement. Elevation on piers consisting of dry stacked blocks is prohibited.
- E. Within Zone AO, the floor shall be elevated above the highest adjacent grade at least as high as the depth number specified on the Flood Insurance Rate Map enumerated in § 73-6 [at least two (2) feet if no depth number is specified]. Elevation on piers consisting of dry stacked blocks is prohibited.

ARTICLE IV Variance Procedure

§ 73-21. Appeals board.

- A. The Board of Zoning Appeals as established by the Village of Asharoken shall hear and decide appeals and requests for variances from the requirements of this chapter.
- B. The Board of Zoning Appeals shall hear and decide appeals when it is alleged that there is an error in any requirement, decision or determination made by the local administrator in the enforcement or administration of this chapter.
- C. Those aggrieved by the decision of the Board of Zoning Appeals may appeal such decision to the Supreme Court pursuant to Article 78 of the Civil Practice Law and Rules.

D. In passing upon such applications, the Board of Zoning Appeals shall consider all technical evaluations, all relevant factors, standards specified in other sections of this chapter and:

- (1) The danger that materials may be swept onto other lands to the injury of others.
- (2) The danger to life and property due to flooding or erosion damage.
- (3) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner.
- (4) The importance of the services provided by the proposed facility to the community.
- (5) The necessity to the facility of a waterfront location, where applicable.
- (6) The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage.
- (7) The compatibility of the proposed use with existing and anticipated development.
- (8) The relationship of the proposed use to the Comprehensive Plan and floodplain management program of that area.
- (9) The safety of access to the property in times of flood for ordinary and emergency vehicles.
- (10) The costs to local governments and the dangers associated with conducting search and rescue operations during periods of flooding.
- (11) 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.

- (12) The costs of providing governmental services during and after flood conditions, including search and rescue operations, maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems and streets and bridges.
- E. Upon consideration of the factors of Subsection D, and the purposes of this chapter, the Board of Zoning Appeals may attach such conditions to the granting of variances as it deems necessary to further the purposes of this chapter.
- F. The local administrator shall maintain the records of all appeal actions, including technical information, and report any variances to the Federal Emergency Management Agency upon request.

§ 73-22. Conditions for variances.

- A. Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of one-half 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 § 73-21D(1) through (12) have been fully considered. As the lot size increases beyond one-half acre, the technical justification required for issuing the variance increases.
- B. Variances may be issued for the repair or rehabilitation of historic structures upon determination that:
- (1) The proposed repair or rehabilitation will not preclude the structure's continued designation as an historic structure.
 - (2) The variance is the minimum necessary to preserve the historic character and design of the structure.
- C. Variances may be issued by a community for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use, provided that:

- (1) The criteria of Subsections A, D, E and F of this section are met.
 - (2) The structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threat to public safety.
- D. Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
- E. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- F. Variances shall only be issued upon receiving written justification of:
- (1) A showing of good and sufficient cause;
 - (2) A determination that failure to grant the variance would result in exceptional hardship to the applicant; and
 - (3) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety and extraordinary public expense; create nuisances; cause fraud on or victimization of the public; or conflict with existing local laws or ordinances.
- G. Any applicant to whom a variance is granted for a building with the lowest floor below the base elevation shall be given written notice over the signature of a community official that the cost of flood insurance will be commensurate with the increased risk resulting from lowest floor elevation.⁴

⁴ Editor's Note: Attachment A, Model Floodplain Development Application Form, and Attachment B, Sample Certificate of Compliance for Development in a Special Flood Hazard Area, which followed this section, are on file in the Clerk's office.

Chapter 77

HANDBILLS AND POSTERS

§ 77-1. Distribution unlawful; exception.

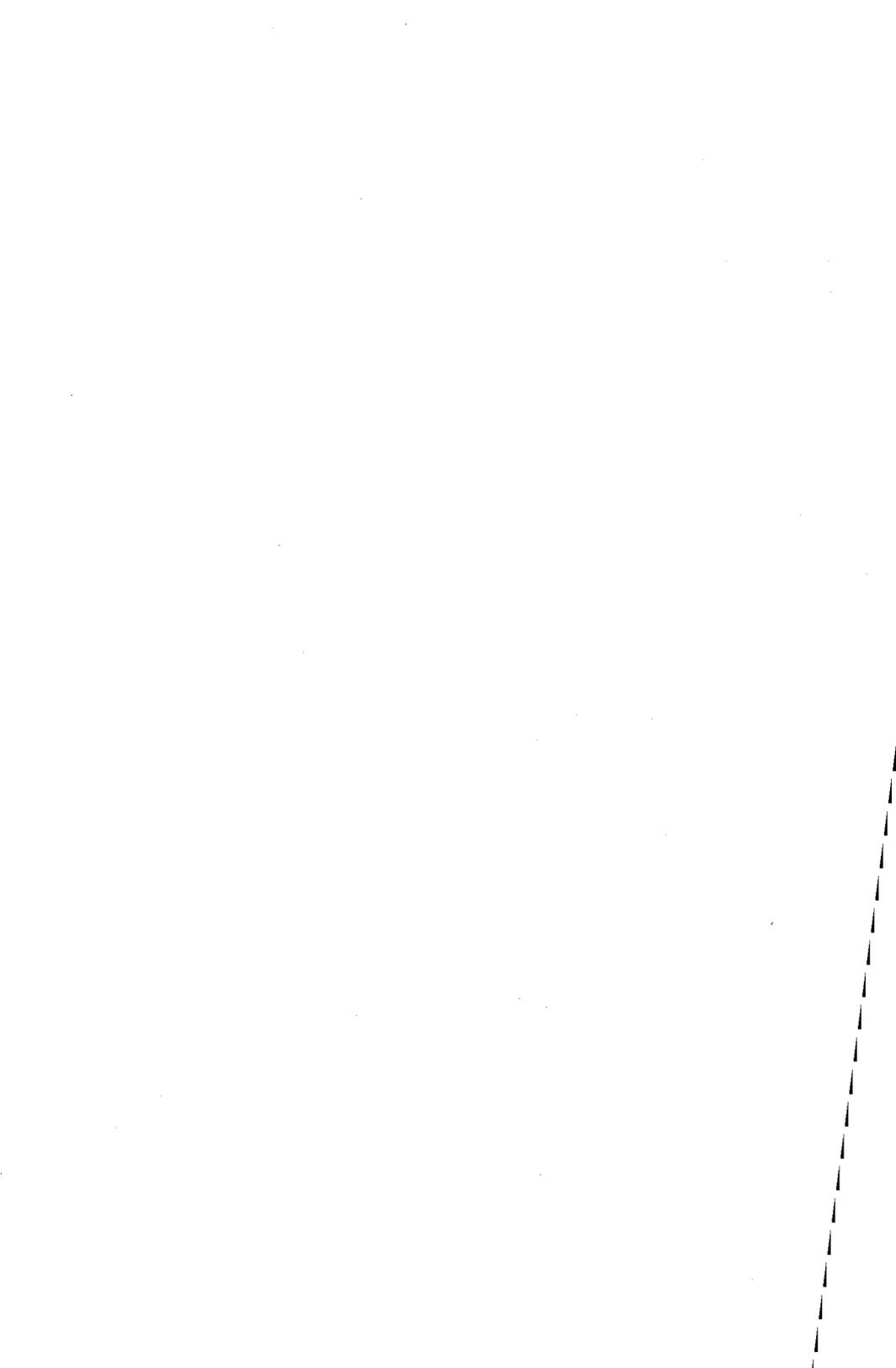
[HISTORY: Adopted by the Board of Trustees of the Village of Asharoken 6-12-26 as Ord. No. 2, Section 6. Amendments noted where applicable.]

GENERAL REFERENCES

Peddling and soliciting — See Ch. 91.

§ 77-1. Distribution unlawful; exception.

No person shall place upon any tree, telegraph or telephone pole, barrel or box in any road or street or public place of the village any handbill, poster, notice, sign or advertisement or distribute the same within the limits of said village, except those relating to the official business of the village.



Chapter 79

HEALTH AND SANITATION

- § 79-1. Dumping of garbage into waters prohibited.
- § 79-2. Running of cesspool prohibited.
- § 79-3. Continuance of faulty cesspool prohibited.
- § 79-4. Annual upkeep.
- § 79-5. Structures to be flyproof.
- § 79-6. Location restrictions.
- § 79-7. (Reserved)
- § 79-8. Fill to be clean.
- § 79-9. Private and public dumping restrictions.

[HISTORY: Adopted by the Board of Trustees of the Village of Ashroken 6-12-26. Section 79-7 amended at time of adoption of Code; see Ch. 1, General Provisions, Art. I. Amendments noted where applicable.]

GENERAL REFERENCES

Beaches — See Ch. 38.
Excavations — See Ch. 64.
Streets and sidewalks — See Ch. 104.

§ 79-1. Dumping of garbage into waters prohibited.

No person shall dump, empty or throw or permit to be dumped, emptied or thrown any garbage, ashes, sewage or refuse of any kind into the waters of Northport Bay, Duck Island Harbor or Long Island Sound, within the jurisdiction of the village.

§ 79-2. Running of cesspool prohibited.

No person shall deposit or allow to run or go into any road or street or upon any land within the limits of the village the contents of any cistern cesspool or send or permit the contents thereof to flow therefrom or to become offensive.

§ 79-3. Continuance of faulty cesspool prohibited.

No cesspool, septic tank or plant for the disposal of sewage now existing shall be continued, maintained or be hereafter constructed in any situation or in any manner whereby through the escape of its contents it may cause pollution of the soil near any well used for drinking or culinary purposes, nor shall the escape of any gases or offensive odors from any such receptacle be permitted to the extent that the same shall be hazardous to health or a source of discomfort to persons living in or passing the vicinity.

§ 79-4. Annual upkeep.

Every such cesspool, septic tank or plant shall be cleaned and the contents removed, if necessary, once a year or oftener if the Board of Health so directs.

§ 79-5. Structures to be flyproof.

Every such cesspool, septic tank or plant shall be so constructed and maintained so as to be flyproof.

§ 79-6. Location restrictions.

No such cesspool, septic tank or plant shall be constructed or maintained on any premises within fifty (50) feet of any well or any well be located within fifty (50) feet of any such cesspool, septic tank or plant, and no such cesspool, septic tank or plant shall be constructed or maintained within five (5) feet of any party line or fence or within twenty-five (25) feet of the door or window of any house or within fifteen (15) feet of the line of any road, street or high-water mark.

§ 79-7.1 (Reserved)²**§ 79-8. Fill to be clean. [Amended 11-6-64]**

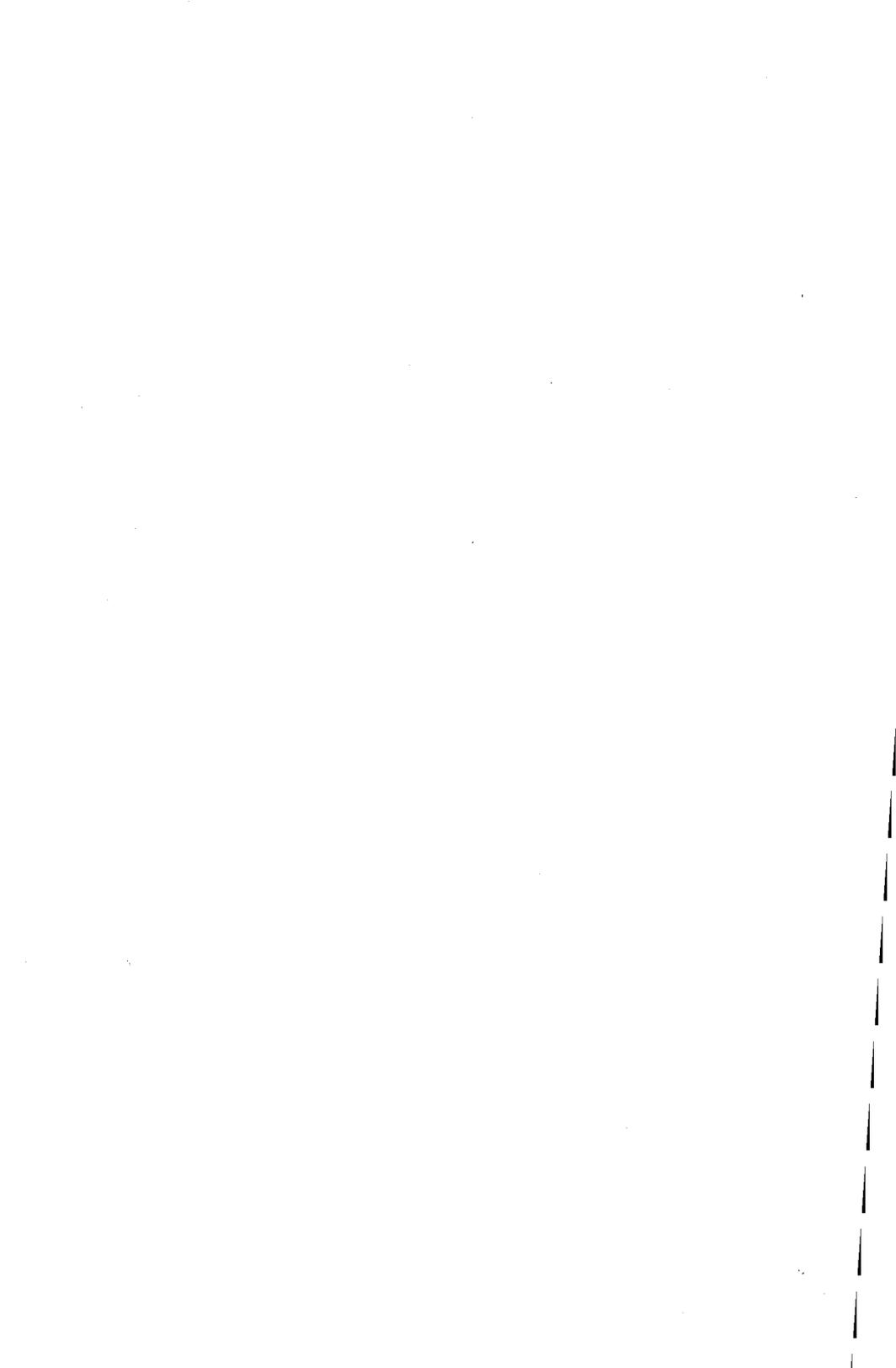
No person shall deposit any fill other than clean fill on any land in the village, and any such clean fill so deposited shall be leveled within a period of ten (10) days or, if deposited while the construction or alteration of a walk, driveway, building or other structure on such land is actually in process, then prior to completion thereof.

§ 79-9. Private and public dumping restrictions. [Amended 9-26-66]

No person shall throw, place, deposit or dump any dead animals, unregistered automobiles, automobile parts, bottles, branches, grass, flammable materials, junk, leaves, metal, plastic, putrescible substances, rubbish, tin cans, waste, wastepaper or refuse matter of any kind on the surface of any street, public grounds or private property in this village, including such person's own property if such matter is visible from any road, waterway or neighboring property, for the purpose of abandonment or otherwise; provided, however, that the foregoing provision shall not be deemed to prohibit a private property owner from using any of such matter for normal gardening or land improvement purposes, nor prohibit the storage of building material while construction is actually in process on the premises.

¹ Editor's Note: Original Sections 8 through 10, which immediately followed this section, were deleted at time of adoption of Code; see Ch. 1, General Provisions, Art. I.

² Editor's Note: Former § 79-7, Placement of garbage and refuse, amended 6-4-1990 by L.L. No. 2-1990, was repealed 9-1-1992 by L.L. No. 2-1992. See now Ch. 80, Garbage and Recycling.



Chapter 80

GARBAGE AND RECYCLING

- § 80-1. Title.
- § 80-2. Legislative findings; purpose.
- § 80-3. Definitions.
- § 80-4. Separation of recyclables required; additional requirements.
- § 80-5. Requirements for collection.
- § 80-6. Disposal of prohibited material.
- § 80-7. General provisions.
- § 80-8. Enforcement.
- § 80-9. Penalties for offenses.

[HISTORY: Adopted by the Board of Trustees of the Village of Asharoken 9-1-1992 as L.L. No. 2-1992. Amendments noted where applicable.]

GENERAL REFERENCES

Health and sanitation — See Ch. 79.

§ 80-1. Title.

This chapter shall be known and may be cited as the “Village of Asharoken Local Law Relating to Garbage and Recycling.”

§ 80-2. Legislative findings; purpose.

The Board of Trustees of the Village of Asharoken finds that the proper management and disposal of waste materials is necessary to protect the public health, safety and general welfare of the Village of Asharoken. It is also the purpose of this legislation to provide for the mandatory program for the collection of waste materials by residents of the village and pursuant to the New York State General Municipal Law § 120-aa and to require the source separation and segregation of recyclable materials from solid waste in order to conserve recyclable materials and reduce the cost of solid waste disposal.

§ 80-3. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

GARBAGE — Discarded nonrecyclables and putrescible animal or vegetable waste resulting from the handling, preparation, cooking and consumption of food.

NONRECYCLABLES — Discarded materials which may not be reclaimed comprising solid waste in the form of plastic bags, mirrors, ceramic items, aerosol cans, plate glass, styrofoam, pots, pans, plastic toys, oil cans, paint cans, brown paper bags, plastic hangers, egg crates and cartons, press-board, sweepings, excelsior, rubber, leather, insulation, packing, crockery, shells, clothing, straw, dirt, telephone books, large catalogs, drinking glasses, tree parts and wastepaper but excluding all prohibited materials as defined in this chapter.

PROHIBITED MATERIALS — All waste materials not originated in the Village of Asharoken; all waste materials not generated by residents of the village; hazardous waste materials; grass clippings; leaves; all nonburnable material; wall board; sheet rock; plaster board; tires; infectious waste; auto and truck parts; furniture; metal and plastic chairs; household and other batteries; carpets; rugs; construction and demolition materials; white goods; bulk metal and plastic goods; and mattresses.

RECYCLABLES — Discarded materials which may be reclaimed comprising solid waste in the form of newspapers, magazines, junk mail, corrugated cardboard, glass bottles, jars and metal cans.

RECYCLING BINS — Colored plastic containers supplied by the village or such other containers as are approved by the Village Sanitation Commissioner.

RESIDENT — The owner, agent, landlord, tenant or occupant of any building used for residential dwelling purposes located in the Village of Asharoken.

WASTE MATERIALS — Recyclables, nonrecyclables, garbage and prohibited materials as defined hereinafter.

§ 80-4. Separation of recyclables required; additional requirements.

- A. All recyclables shall be properly separated from all other garbage and nonrecyclables and shall be placed in recycling bins.
- B. Recyclables placed in recyclable bins shall be placed roadside before 8:00 a.m. on the morning on which collection is scheduled in accordance with a schedule promulgated by the village.
- C. Recycling bins shall be removed from the roadside as soon as possible after collection of recyclables on the collection day.
- D. Newspapers, junk mail and magazines shall be bundled and tied with twine in one-foot stacks and placed in a recycling bin. In inclement weather, these stacks should be protected from the elements by either covering the recycling bin or placing the recycling bins upside down over the stacks.
- E. Corrugated boxes shall be flattened and tied with twine in bundles no longer or wider than four (4) feet and placed on top of the recycling bin.
- F. Glass bottles, jars and metal cans shall be rinsed and cleaned, all caps removed, and placed in recycling bins.

- G. The pickup and removal of all recyclables strewn by humans, animals, birds or weather shall be the responsibility of the resident, and they shall be picked up and collected by the village in accordance with a schedule promulgated to all residents by the Village Sanitation Commissioner.

§ 80-5. Requirements for collection.

- A. All garbage must be placed in a readily available location and in a container which is tightly covered and weighs, when loaded, no more than fifty (50) pounds. Accessible locations include inside an unlocked garage, separate outside bins and the side of the driveway, street or road.
- B. All garbage shall be placed accessible for pickup before 8:00 a.m. on the day scheduled for garbage collection, but garbage containers shall not be placed for collection on the street- or roadside on the night before the scheduled collection day. Garbage containers placed streetside or roadside shall be removed therefrom as soon as possible on the same day after the scheduled collection.
- C. The pickup and removal of all garbage strewn by humans, animals, birds or weather shall be the responsibility of the resident, and it shall be picked up as soon as possible.
- D. Garbage shall be picked up and collected in accordance with a schedule promulgated by the Village Sanitation Commissioner.

§ 80-6. Disposal of prohibited material.

- A. Prohibited materials shall not be left out for collection with either recyclables or garbage, and it shall be the responsibility of the resident to dispose of prohibited materials.
- B. Prohibited materials that comprise household hazardous waste and home and garden pesticides shall be delivered by the resident to the Town of Huntington STOP (Stop Throwing Out Pollutants) Facility.

§ 80-7. General provisions.

- A. From the time of placement of garbage and recyclables for pickup and collection, such materials shall be deemed to have become the property of the Village of Asharoken. It shall be unlawful for any person to remove such materials from the garbage containers or recycling bins and collect or dispose of such materials without the consent of the Board of Trustees of the Village of Asharoken.
- B. In no event shall prohibited materials be deemed to have become the property of the Village of Asharoken.
- C. Recycling bins delivered to a resident shall at all times be the property of the resident. Replacements for lost, damaged or stolen recycling bins may be obtained from the Village Clerk on payment of a purchase price determined by resolution of the Board of Trustees.

§ 80-8. Enforcement.

- A. The Village of Asharoken shall be under no obligation to collect any waste materials other than recyclables and garbage that have been placed, separated, tied and secured pursuant to the provisions of this chapter. Failure to comply with the requirements of this chapter covering recyclables and garbage may result in the village suspending or terminating the pickup service for the resident failing to comply.
- B. It shall be the duty of the Mayor, Sanitation Commissioner or the Village Police Department to administer and enforce the provisions of this chapter.

§ 80-9. Penalties for offenses.

- A. A person convicted of violating any of the provisions of this chapter other than the provisions applicable to prohibited materials shall be guilty of a violation and punishable as follows:
 - (1) For a first conviction, by a fine of not less than fifty dollars (\$50.) nor more than one hundred dollars (\$100.).

- (2) For a second or more convictions within one (1) calendar year, by a fine of not less than one hundred fifty dollars (\$150.) nor more than five hundred dollars (\$500.).
- B. A person convicted of violating any of the provisions of this chapter applicable to prohibited materials shall be guilty of a misdemeanor and punishable by a sentence of imprisonment of not more than six (6) months and/or a fine not exceeding one thousand dollars (\$1,000.).

Chapter 86

NOISE

- § 86-1. Title.
- § 86-2. Legislative intent.
- § 86-3. Definitions.
- § 86-4. Creation and continuation unlawful.
- § 86-5. Prohibited acts.
- § 86-6. Exceptions.
- § 86-7. Penalties for offenses.

[HISTORY: Adopted by the Board of Trustees of the Village of Asharoken 2-2-81 as L.L. No. 2-1981. Sections 86-5E and 86-7 amended at time of adoption of Code. See Ch. 1, General Provisions, Art. I. Other amendments noted where applicable.]

GENERAL REFERENCES

Building construction — See Ch. 42.
 Excavations — See Ch. 64.
 Firearms — See Ch. 67.

§ 86-1. Title.

This chapter shall be known and may be cited as “Village of Asharoken Local Law Relating to Noise.”

§ 86-2. Legislative intent.

Loud, unnatural or unusual noises which are intermittent or prolonged are detrimental to the public health, comfort, safety and welfare and constitute a disturbance to the peace of the residents of

the Village of Asharoken. The provisions hereinafter set forth and enacted are for the purpose of securing and promoting public health, comfort, safety, welfare and peace of the Village of Asharoken and its inhabitants.

§ 86-3. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

MOTOR VEHICLE — Every vehicle operated or driven by an internal combustion engine.

§ 86-4. Creation and continuation unlawful.

It shall be unlawful for any person to make or cause to be made or continued or for any owner, lessee or occupant of land in the Village of Asharoken to permit to be made or continued on premises under such person's control any loud, unnecessary, unusual or unnatural noise.

§ 86-5. Prohibited acts.

The following acts, without limiting the provisions of § 86-4 hereof, are expressly declared to be loud, disturbing, unnecessary or unusual noises in violation of this chapter:

- A. Horns, signaling devices, etc. The sounding of any horns or signaling devices on any automobile, motorcycle or other vehicle except as a danger signal or warning signal; the creation by means of any such signaling device of any unreasonable or harsh sound; and the sounding of any such device for an unnecessary or intermittent or unreasonable length of time.
- B. Loudspeakers or amplifiers for advertising or broadcasting. The operating of or permitting to be operated any loudspeaker, sound amplifier or other machine or device for the producing or reproducing of sound for the purpose of advertising or broadcasting.

- C. Exhausts. The discharge into the open air of the exhaust of any motor vehicle or stationary internal combustion engine, except through a muffler or other device which will effectively prevent loud or explosive noises therefrom.
- D. Noisemaking devices. The using, operating, discharging or causing to be used, operated or discharged, including the installation of any noisemaking device of any design or manufacture, which in its use, or if used, will disturb or tend to disturb the peace, comfort, repose, health or safety of village residents or scare, frighten or disturb domestic animals or wildlife.
- E. Construction and operation of machinery. The erection, including excavation, demolition or alteration of any building, except interior alteration to a building which is entirely enclosed, or the operation of tractors, earth-moving machines or cranes other than between the hours of 8:00 a.m. and 5:00 p.m. from Monday and Friday, inclusive, except legal holidays and except in cases of urgent emergency in the interest of health and safety, and then only when a permit shall be issued by the Superintendent of Buildings for the period of the emergency.¹

§ 86-6. Exceptions.

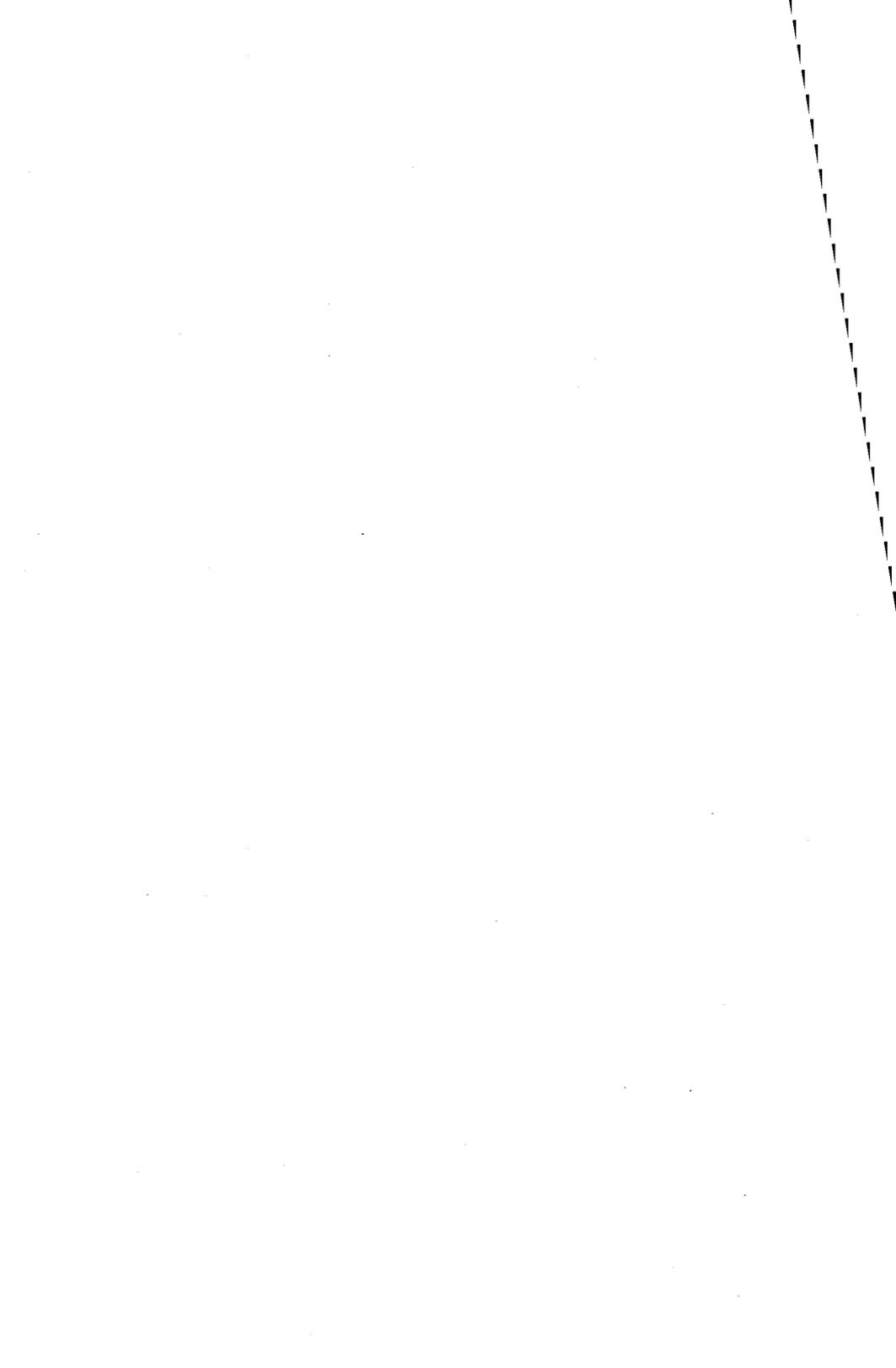
This chapter shall not apply to the legal use of firearms or explosives when the same are used pursuant to a permit issued by the Board of Trustees of the Village of Asharoken and to such permits as may be required by other governmental authorities having jurisdiction of the use of firearms and explosives.

§ 86-7. Penalties for offenses.²

Any person violating the terms and provisions of this chapter shall be subject to a fine not exceeding two hundred fifty dollars (\$250.) for each offense.

¹ Editor's Note: Amended at time of adoption of Code; see Ch. 1, General Provisions, Art. I.

² Editor's Note: Amended at time of adoption of Code; see Ch. 1, General Provisions, Art. I.



Chapter 91**PEDDLING AND SOLICITING**

§ 91-1. Consent or invitation required.

§ 91-2. Penalties for offenses.

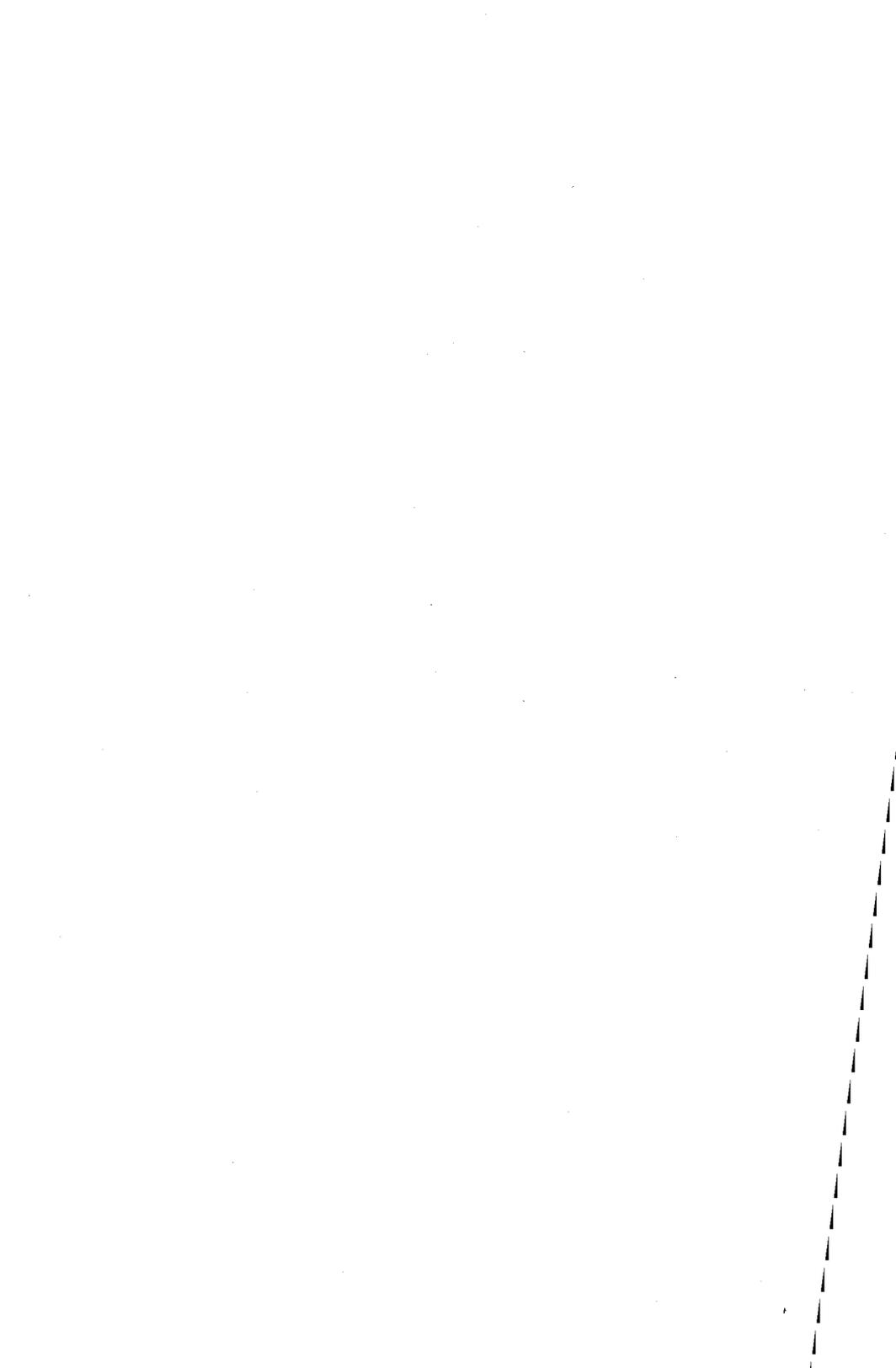
[HISTORY: Adopted by the Board of Trustees of the Village of Asharoken 7-27-56; amended in its entirety at time of adoption of Code, see Ch. 1, General Provisions, Art. I. Subsequent amendments noted where applicable.]

§ 91-1. Consent or invitation required.

No person shall enter upon any private residential property in the village, without the prior consent or invitation of the occupant thereof, for the purpose of soliciting orders for the sale of goods, wares or merchandise or of disposing of or peddling the same or for the purpose of distributing any handbill, pamphlet, tract, notice or advertising matter, provided that this prohibition shall not apply to any person specifically excepted by law.

§ 91-2. Penalties for offenses.

Violation of this chapter shall be punishable by a fine not exceeding two hundred fifty dollars (\$250.) for each offense.



Chapter 94

POLES AND WIRES

§ 94-1. Permission for erection required.

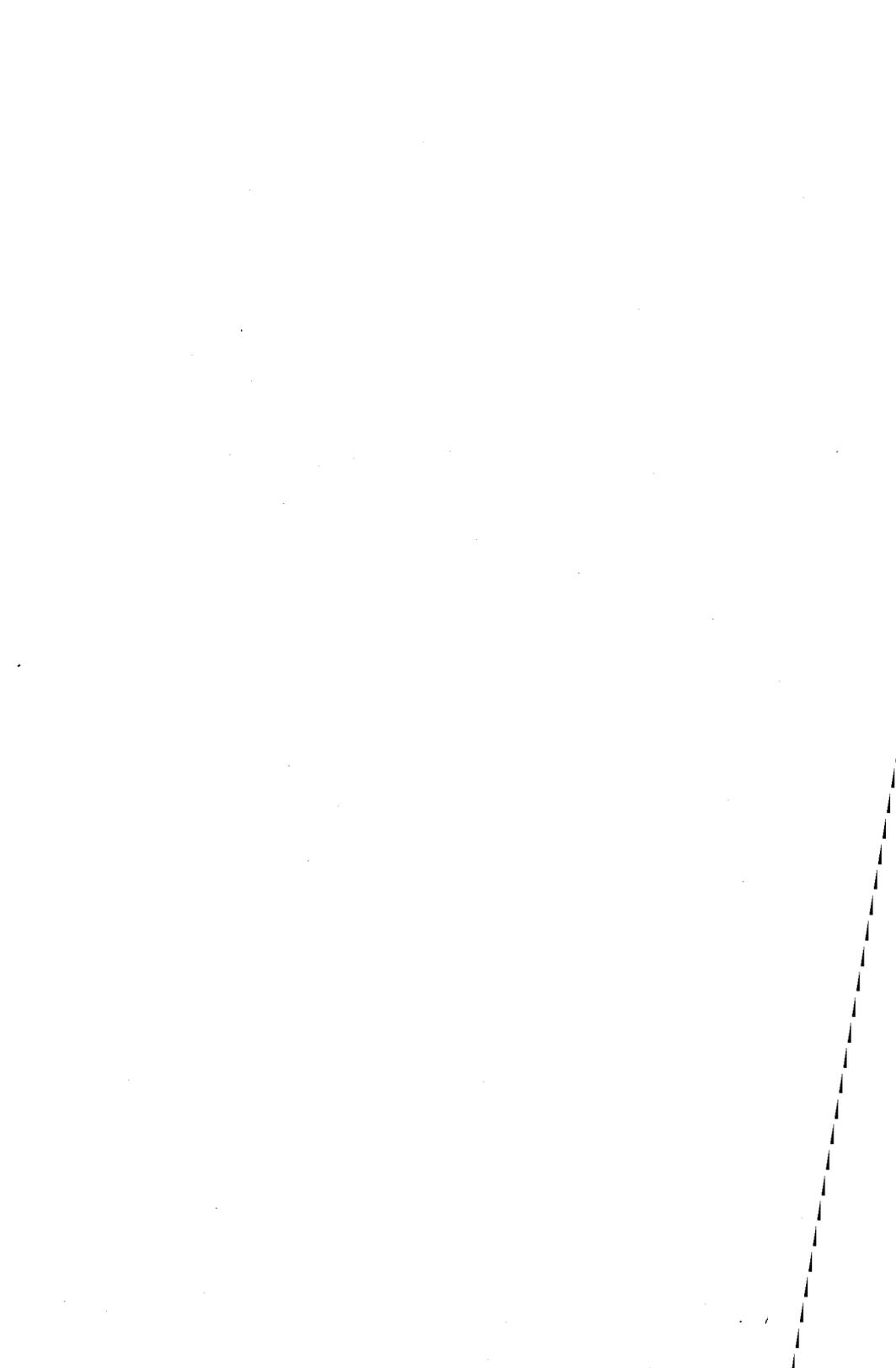
[HISTORY: Adopted by the Board of Trustees of the Village of Asharoken 6-12-26 as Ord. No. 2, Section 9. Amendments noted where applicable.]

GENERAL REFERENCES

Streets and sidewalks — See Ch. 104.

§ 94-1. Permission for erection required.

No person shall erect or cause to be erected any telegraph, telephone or electric light pole in or upon any road or street in the village or string any wires in or over such road or streets without permission from the Board of Trustees of the village.



RECORDS

Chapter 97

RECORDS

**ARTICLE I
Police**

§ 97-1. Accident reports; fee.

**ARTICLE II
Public Access**

§ 97-2. Designation of officer; written requests.

§ 97-3. Availability; fees.

§ 97-4. Appeal of denial.

§ 97-5. Removal prohibited.

[HISTORY: Adopted by the Board of Trustees of the Village of Asharoken: Art. I, 12-5-66 by resolution; Art. II, 11-4-74 by resolution. Sections 97-2 and 97-4 amended at time of adoption of Code; see Ch. 1, General Provisions, Art. I. Other amendments noted where applicable.]

GENERAL REFERENCES

Schedule of fees — See Ch. A127.

ARTICLE I

Police

[Adopted 12-5-66 by resolution]

§ 97-1. Accident reports; fee.

Hereafter, a fee of two dollars (\$2.) shall be charged by the village policemen for the preparation of any written accident report rendered by them pursuant to request.

ARTICLE II

Public Access

[Adopted 11-4-74 by resolution]

§ 97-2. Designation of officer; written requests.¹

The Village Clerk is designated as the records officer and may require a request for such records to be in writing.

§ 97-3. Availability; fees.

Such officer is directed to make available to persons requesting records those public records of the village which are required to be made available for public inspection and copying and to do so at reasonable hours made known to the public and to charge for making copies twenty-five cents (\$0.25) per page.

§ 97-4. Appeal of denial.²

The Mayor shall hear appeals of denial of access to records hereof.

§ 97-5. Removal prohibited.

No record shall be removed from the lawful custody of the Clerk.

¹ Editor's Note: Amended at time of adoption of Code; see Ch. 1, General Provisions, Art. I.

² Editor's Note: Amended at time of adoption of Code; see Ch. 1, General Provisions, Art. I.

Chapter 104

STREETS AND SIDEWALKS

- § 104-1. **Obstruction unlawful; removal; penalties.**
- § 104-2. **Deposit of garbage prohibited.**
- § 104-3. **Sharp or penetrating substances to be removed.**
- § 104-4. **Excavation permit required; notice.**
- § 104-5. **Pavement.**
- § 104-6. **Written notice of defects required.**
- § 104-7. **Insufficient notice.**
- § 104-8. **Statement of location and condition.**
- § 104-9. **Index of notices.**

[HISTORY: Adopted by the Board of Trustees of the Village of Asharoken 6-12-1926 as Ord. No. 2, Sections 2 through 5. Amendments noted where applicable.]

GENERAL REFERENCES

Excavations — See Ch. 64.
 Health and sanitation — See Ch. 79.
 Vehicles and traffic — See Ch. 115.
 Schedule of fees — See Ch. A127.

**§ 104-1. Obstruction unlawful; removal; penalties.
 [Amended 6-4-1990 by L.L. No. 2-1990; 3-6-2006 by
 L.L. No. 3-2006]**

- A. Definitions. As used in this section, the following terms shall have the meanings indicated:

FOG LINE — The white line that runs down the side of the road and separates the travel surface of the road from the shoulder of the road.

OBSTRUCTION — Any structure, substance or any combination of materials that interferes with, encroaches on or encumbers the safe travel of the road, including but not limited to trees, rocks, walls, lumber, wood or logs, earth, stone or other material, statues, guardrails and posts.

B. No person shall encumber or obstruct or encroach upon any road or street in the Village with any material, building, automobile or vehicle or other substance or structure, or place any obstruction within four feet of the fog line, which structure or obstruction does not comply with the standards set forth below:

- (1) No such obstruction shall exceed six inches in height, with the exception of mailboxes, fire hydrants and utility poles. Plantings, including grass and flower beds, may be included in the area within four feet of the fog line, provided such plantings do not overhang the paved surface of the road.
- (2) The face of any mailbox installed pursuant to the standards set forth herein shall be at least six inches behind the paved edge of the road surface. Mailbox costs shall be made of four-inch-by-four-inch wooden posts, or a breakaway construction, and shall not be protected or surrounded by rocks.
- (3) All parking areas shall be set back as provided in § 115-1 of the Code of the Village of Asharoken.
- (4) All driveway curbing within four feet of the fog line is to be tapered down prior to entering this area so that it is at road level when it meets the paved surface of the road.

- (5) Notwithstanding the above, any object placed within the Village right-of-way, even if more than four feet from the fog line, which exceeds three feet in height, and/or weighs more than 100 pounds, shall require review by the Village Superintendent of Highways for conformance with road safety standards prior to its installation in the right-of-way. In order to facilitate such review, the proper owner or his designee must provide to the Highway Superintendent a written description of the work to be performed and/or the obstruction to be placed in the right-of-way.
- C. If the work to be performed or the obstruction is deemed to be nonconforming with the standards set forth above, it shall require a permit. The Village Highway Superintendent shall make a recommendation to the Village Board of Trustees, based upon the impact of said obstruction, structure and/or substance on the safety of the traveled portion of the road, and based on any potential interference of the obstruction, structure and/or substance on the operation of the highway or road, as to whether it should issue a permit. In order to obtain a permit, the property owner, or his or her designee, must sign a hold-harmless agreement, in a form acceptable to the Village, wherein the property owner, or his designee, shall agree to maintain and assume responsibility for the obstruction, structure and/or substance, and release and hold harmless the Village from any damages inadvertently caused to the obstruction, structure or substance by Village equipment or by the equipment of any agency contracted by the Village in servicing the roadway. The property owner and/or his designee must also agree to hold the Village harmless from any personal injury or property damage caused by the obstruction, structure or substance to a third party and will be required to pay the fee for recording said hold harmless in the County Clerk's office so that it becomes a covenant and restriction running

with the land, unless revoked or terminated in writing by the Village Highway Superintendent.

- D. Where any encumbrance, obstruction or encroachment exists at the effective date of this legislation, or hereafter shall exist, that it not in conformance with the standards set forth in Subsection B above, or does not have a permit issued pursuant to Subsection C above, it shall be removed by the person causing the same, or by the owner of the property, within 30 days after notice by mail from the Village Board of Trustees, which said notice shall contain:
- (1) A description of the object to be removed;
 - (2) A statement that said removal must commence within 30 days from the service of the notice and be completed within 60 days thereafter, unless for good cause shown such time shall be extended;
 - (3) A date, time and place for a hearing before the Village Board of Trustees in relation to the removal of said object, which hearing shall be scheduled not less than five business days from the date of service of the notice; and
 - (4) A statement that in the event of neglect or refusal to comply with the order for removal, the Village Board is authorized to provide for the removal of said object that is situate in the Village right-of-way and to cause such expenses to, at the option of the Village Board of Trustees, either:
 - (a) Be assessed against the land on which such obstruction is located and shall be levied and collected as an assessment against the real property involved by duly adopted resolution. A copy of such resolution shall be mailed to the person or persons who received notice under Subsection D hereof. A lien of special assessment shall thereupon arise as provided

for by the Village Law of the State of New York;
or

- (b) Be collected by commencement of a special proceeding against the owner of the the unsafe obstruction or structure pursuant to General Municipal Law § 78-b.

E. Any person violating the above provisions of this section shall be liable to a penalty not exceeding \$250 for each offense.

§ 104-2. Deposit of garbage prohibited.

No person shall deposit or allow to be deposited, throw, cast or lay or permit the same to be done any offal, garbage, refuse, ashes or rubbish of any kind in any road or street or in any vacant lot or space within the village limits.

§ 104-3. Sharp or penetrating substances to be removed.

Any person having accidentally or otherwise caused glassware, nails, tacks, metalware or other sharp or penetrating substances to be upon the surface of any road or street in said village shall immediately remove the same.

§ 104-4. Excavation permit required; notice. [Amended 9-11-1978 by L.L. No. 2-1978]

A. Permit.

- (1) No person, firm or corporation, including public service companies and public authorities, shall make any excavation in any street, highway or sidewalk or in any village property in the Village of Asharoken for any purpose without first obtaining a permit therefor from the Board of Trustees of the

(Cont'd on page 10403)

Village of Asharoken or its duly constituted designee, as hereinafter provided.

- (a) Application, in writing, shall be filed with the Village Clerk on application blanks which he shall provide.
- (b) An application to excavate in or disturb any portion of a street or any village property shall contain or shall be accompanied by an agreement on the part of the applicant to replace the affected street, highway, pavement or property in accordance with the requirements of the Superintendent of Buildings and at no expense to the village, and in no event with pavement of less than equal quality to that existing. Each such application shall be accompanied by a surety bond in such form and of such surety as may be approved by the Village Clerk and for an amount determined by him, which bond shall be conditioned upon the performance of the aforementioned agreement by the applicant. If the amount of such bond shall be insufficient to cover all costs of performing the work agreed to be performed by the applicant, the applicant shall be responsible for the deficiency. In the event that the work for which application is presented is done to the satisfaction of the Superintendent of Buildings, the bond shall be released and returned to the applicant.
- (c) Public utility companies and public authorities may, at their option, file with the Village Clerk a surety bond in the amount of five thousand dollars (\$5,000.) to cover all applications under this section for work to be done within the term of the bond. If such blanket bond be filed, the Village Clerk may, at his discretion, require additional security by a further bond or cash should any individual application involve

construction to such an extent that the blanket bond shall, in his opinion, furnish inadequate security to the village.

- (d) All applications shall be accompanied by a certificate of liability insurance issued to the applicant evidencing that there is then in effect a policy of liability insurance covering all risks inherent in the work to be done with minimum limits of one hundred thousand dollars/three hundred thousand dollars (\$100,000./\$300,000.) bodily injury, including death, and one hundred thousand dollars (\$100,000.) property damage, including certification of coverage for explosion, collapse and underground property damage and with completed operations endorsement and with the Village of Asharoken named as an additional insured. The applicant shall also keep such insurance in force at all times during the terms of the permit.
- (e) An application fee of twenty-five dollars (\$25.) per excavation for which permission is requested must be paid to the Incorporated Village of Asharoken in connection with each application hereunder, except that no fee shall be required of an applicant which is a public benefit corporation. **[Amended 6-4-1990 by L.L. No. 2-1990]**

- (2) Upon compliance with the foregoing requirements, a permit shall be issued.

B. Notice. The permittee shall give notice of such excavation to public service companies, public authorities or municipal districts or departments having lines, mains or other property in the street and within twenty (20) feet of the proposed work; and when such notice shall have been required, no work shall be commenced or done under such permit until such requirement of notice has been fully complied with to the

satisfaction of the Village Clerk. Before commencing work under any permit, the permittee shall give twenty-four (24) hours advance written notice thereof to the Police and Fire Departments and the Village Clerk. Such notice shall specify the date and hour when such work will be commenced. Upon completion of such work, similar notice thereof shall be given said Departments and the Village Clerk.

- C. Any permittee making an excavation or doing any construction covered by this section shall erect suitable barriers or guards for the protection of persons using the streets or sidewalks, shall set up and maintain, during the hours of darkness, sufficient lights or flares to properly illuminate the area, shall take all necessary precautions for the protection of all property which may be endangered by such excavation or construction or other work incident thereto and shall comply with all directions given by the Commissioner of Roads and/or Superintendent of Buildings in respect to such barriers, lights, flares and protective measures. In connection with the operations under such permit, no matter shall be deposited or piled up within fifteen (15) feet of any fire hydrant, fire-fighting facility or village drainage facility. **[Amended 6-4-1990 by L.L. No. 2-1990]**
- D. Completion of work. Permittees shall notify the Fire and Police Departments and the Village Clerk when work has been completed, after which an inspection will be made by the village, and, upon approval of the work, a release will be granted to the applicant. Until the granting of such release, the applicant shall remain liable for proper guarding and protection as provided herein. No approval or release shall be given by the village until a sufficient period of time, not less than thirty (30) days, has expired in which the actual work may be observed under normal conditions.
- E. Emergency work. In the event that any emergency threatening damage to life or property requires prompt beginning or work covered hereby, the person, firm or

utility undertaking such work shall give immediate notice thereof to the Asharoken Village Police and Fire Departments and shall make application for a permit at least on the next business day at the office of the Village Clerk. The fact that the work required, because of an emergency, to be begun or to be done without first obtaining a permit, shall not, except as in the subsection is otherwise provided, excuse noncompliance with this section.

§ 104-5. Pavement. [Added 6-4-1990 by L.L. No. 2-1990]

No concrete pavement is to be cut. Replacement pavement shall be made in kind and as directed by Superintendent of Buildings or Commissioner of Roads.

§ 104-6. Written notice of defects required. [Added 3-4-1996 by L.L. No. 1-1996]

No civil action shall be maintained against the Village of Asharoken for damages or injuries to persons or property sustained by reason of any street, highway, bridge, culvert, sidewalk or crosswalk being defective, out of repair, unsafe, dangerous or obstructive or for damage or injuries to persons or property sustained solely by reason of the existence of snow or ice upon any sidewalk, crosswalk, street, highway, bridge or culvert unless written notice of the defective, unsafe, dangerous or obstructive condition or of the existence of snow or ice, relating to the particular place, was actually given to the Village Clerk and there was a failure or neglect within a reasonable time after the receipt of such notice to repair or remove the defect, danger or obstruction complained of or to cause the snow or ice to be removed or the place otherwise made reasonably safe.

§ 104-7. Insufficient notice. [Added 3-4-1996 by L.L. No. 1-1996]

- A. In the absence of written notice that is required above, no civil claim shall be maintained against the Village of Asharoken, nor shall any civil claim be maintained based on an allegation that such defect, danger or obstruction existed for so long a period of time that the same should have been discovered and remedied in the exercise of reasonable care and diligence, nor a claim that any village employee possessed actual knowledge of such defect, danger or obstruction, unless written notice is filed with the Village Clerk as required above.
- B. Nothing herein shall be construed to relieve a claimant of the obligation to serve a notice of claim on the Village of Asharoken as provided in § 50-e of the General Municipal Law.

§ 104-8. Statement of location and condition. [Added 3-4-1996 by L.L. No. 1-1996]

The written notice required by § 104-6 shall state the exact location of the alleged defect, danger or obstruction and shall specifically state the condition complained of. If this requirement is not met, such notice shall be void.

§ 104-9. Index of notices. [Added 3-4-1996 by L.L. No. 1-1996]

The Village Clerk of the Village of Asharoken shall keep an indexed record of all written notices pursuant to § 4-402, Subdivision g, of the Village Law.

Chapter 107

SUBDIVISION OF LAND

ARTICLE I

Declaration of Policy

- § 107-1. **Authority and policy of Planning Board; adoption.**

ARTICLE II

Definitions

- § 107-2. **Definitions.**

ARTICLE III

Applications; Procedures

- § 107-3. **Approval required.**
- § 107-4. **Sketch plan.**
- § 107-5. **Minor subdivision.**
- § 107-6. **Preliminary layout for major subdivision.**
- § 107-7. **Plat for major subdivision.**
- § 107-8. **Improvements.**
- § 107-9. **Filing of approved subdivision.**
- § 107-10. **Public streets, recreation area.**

ARTICLE IV

Streets; Lots; Open Areas

- § 107-11. **Standards to be minimum requirements.**
- § 107-12. **General standards.**

ASHAROKEN CODE

- § 107-13. **Street layout.**
- § 107-14. **Street design.**
- § 107-15. **Street names.**
- § 107-16. **Lots.**
- § 107-17. **Drainage.**
- § 107-18. **Recreation areas; school sites.**

ARTICLE V Documents to be Submitted

- § 107-19. **Sketch plan.**
- § 107-20. **Major subdivision preliminary layout.**
- § 107-21. **Final subdivision plat.**

ARTICLE VI Variances; Waivers

- § 107-22. **Hardship.**
- § 107-23. **Waiver of improvements.**
- § 107-24. **Conditions to secure objectives.**

[HISTORY: Adopted by the Board of Trustees of the Village of Asharoken 12-2-1968. Sections 107-5A(2) and F, 107-6A(2) and E(1), 107-7F and G and 107-8F amended at time of adoption of Code; see Ch. 1, General Provisions, Art. I. Other amendments noted where applicable.]

GENERAL REFERENCES

Flood damage prevention — See Ch. 73.
Streets and sidewalks — See Ch. 104.
Zoning — See Ch. 125.
Schedule of fees — See Ch. A127.

ARTICLE I
Declaration of Policy

§ 107-1. Authority and policy of Planning Board; adoption.

- A. By the authority of the resolution of the Village Board of the Village of Asharoken, adopted on August 3, 1964, pursuant to the provisions of Article 7 of the Village Law of the State of New York, constituting Chapter 64 of the Consolidated Laws, the Planning Board of the Village of Asharoken was authorized and empowered to approve plats, with or without streets, for subdivisions within the Village of Asharoken.
- B. It is declared to be the policy of the Asharoken Planning Board to consider land subdivision plats as part of a plan for the orderly, efficient and economical development of the Village. This means, among other things, that:
- (1) Land to be subdivided shall be of such character that it can be used safely for building purposes without danger to health or peril from fire, flood or other menace;
 - (2) Proper provision shall be made for drainage, water supply, sewerage and other needed improvements;
 - (3) All proposed lots shall be so laid out and of such size as to be in harmony with the development pattern of the neighboring properties;
 - (4) The proposed streets shall compose a convenient highway system and shall be properly related to the proposals shown on the Master Plan, if such exists, and shall be of such width, grade and location as to accommodate the prospective traffic, to afford adequate light and air, to facilitate fire protection and to provide access of fire-fighting equipment to buildings; and

- (5) Proper provision shall be made for open spaces for parks and playgrounds.
- C. In order that land subdivisions may be made in accordance with this policy, these regulations, which shall be known as and which may be cited as the "Village of Asharoken Land Subdivision Regulations," have been adopted by the Planning Board on April 21, 1966, and approved by the Village on December 2, 1968.
- D. The Planning Board may establish, subject to approval by the Village Board of Trustees, filing and processing fees to be charged to an applicant and collected by the Planning Board for services rendered in connection with the work of the Planning Board for which it is deemed necessary to charge and collect such fees. **[Added 10-4-1999 by L.L. No. 1-1999]**

ARTICLE II

Definitions

§ 107-2. Definitions.

For the purpose of these regulations, certain words and terms used herein are defined as follows:

COLLECTOR STREET — A street which serves or is designed to serve as a traffic way for a neighborhood or as a feeder to a major street.

CUL-DE-SAC — A street or a portion of a street with only one vehicular traffic outlet.

EASEMENT — Authorization by a property owner for the use by another, and for a specified purpose of any designated part of his property.

ENGINEER OR LICENSED PROFESSIONAL ENGINEER — A person licensed as a professional engineer by the State of New York.

MAJOR ARTERIAL STREET — A street which serves or is designed to serve heavy flows of traffic.

MAJOR SUBDIVISION — All subdivisions not classified as minor subdivisions, including but not limited to subdivisions of five or more lots, or any size subdivision requiring any new street or extension of municipal facilities.

MASTER OR COMPREHENSIVE PLAN — A comprehensive plan, prepared by the Asharoken Planning Board pursuant to § 7-722 of the Village Law, which indicates the general locations recommended for various functional classes of public works, places and structures and for general physical development of the Village and includes any unit or part of such plan separately adopted and any amendment to such plan or parts therein.

MINOR STREET — A street intended to serve primarily as an access to abutting properties.

MINOR SUBDIVISION — Any subdivision containing not more than four lots fronting on an existing street, not involving any new street or road or the extension of municipal facilities and not adversely affecting the development of the remainder of the parcel or adjoining property and not in conflict with any provision or portion of the Master Plan, if such exists, Zoning Ordinance¹ or this chapter.

OFFICIAL MAP — The map established by the Village Board pursuant to § 7-724 of the Village Law showing streets, highways, parks and drainage, both existing and proposed.

PLANNING BOARD OR BOARD — The Planning Board of the Village of Asharoken.

PRELIMINARY LAYOUT — The preliminary drawing or drawings indicating the proposed manner of layout of the subdivision to be submitted to the Planning Board for approval.

1. Editor's Note: See Ch. 125, Zoning.

SKETCH PLAN — A rough sketch of the preliminary layout to enable the subdivider to save time and expense in reaching general agreement with the Board as to the form of the layout and objectives of these regulations.

STREET — Includes streets, roads, avenues, lanes or other ways between right-of-way lines.

STREET PAVEMENT — The wearing or exposed surface of the roadway used by vehicular traffic.

STREET WIDTH — The distance between property lines or, if the street is not publicly owned, the distance between right-of-way lines, measured at right angles to the center line of the street.

SUBDIVIDER — Any person, firm, corporation or partnership or association who shall lay out for the purpose of sale or development any subdivision or part thereof as defined herein, either for himself or others.

SUBDIVISION — The division of any parcel of land, with or without streets, into two or more lots, blocks, sites or other divisions of land for the purpose, whether immediate or future, of transfer of ownership.

SUBDIVISION PLAT — The final map on which the applicant's subdivision plan is presented to the Planning Board for approval and which, if approved, shall be duly filed by the applicant with the County Clerk.

SURVEYOR — A person licensed as a professional land surveyor by the State of New York.

VILLAGE ENGINEER — The person duly designated as Engineer of the Village.

ARTICLE III
Applications; Procedures

§ 107-3. Approval required.

Whenever any subdivision of land is proposed to be made and before any contract for the sale of or any public offer to sell any lot or lots in such subdivision or any part thereof is made and before any permit for the erection of a structure in such proposed subdivision shall be granted, the subdivider or his duly authorized agent shall apply in writing for approval of such proposed subdivision in accordance with the following procedures.

§ 107-4. Sketch plan.

- A. Submission of sketch plan. Any owner of land shall, prior to subdividing or resubdividing land, submit to the Secretary of the Planning Board, at least two weeks prior to the regular meeting of the Board, two copies of a sketch plan of the proposed subdivision, which shall comply with the requirements of Article V, § 107-19, for the purpose of classification and preliminary discussion.
- B. Discussion of requirements and classification.
- (1) At its meeting with the subdivider, the Planning Board shall discuss the objectives of these regulations and the requirements for street improvements, drainage, sewerage, water supply, fire protection and similar aspects, as well as the availability of existing services and other pertinent information.
 - (2) Classification of the sketch plan is to be made at this time by the Planning Board as to whether it is a minor or major subdivision, as defined in these regulations. The Board may require, however, when it deems it necessary for protection of the public health, safety and welfare, that a minor subdivision

comply with all or some of the requirements specified for major subdivisions. If classified and approved as a minor subdivision, the subdivider shall then comply with the procedure outlined in Article III, § 107-5, of these regulations. If classified as a major subdivision, the subdivider shall then comply with the procedures outlined in Article III, §§ 107-6, 107-7 and 107-8.

- C. Study of sketch plan. The Planning Board shall determine whether the sketch plan meets the purposes of these regulations and shall, where it deems it necessary, make specific suggestions in writing to be incorporated by the applicant in the next submission to the Planning Board.

§ 107-5. Minor subdivision.

- A. Application and fee.

(1) Within six months after the approval of the sketch plan by the Planning Board, the subdivider shall submit an application for approval of a final subdivision plat. The plat shall contain all information from the sketch plan, as approved by the Board, plus any recommendations made by the Planning Board. Said application shall also conform to the requirements listed in Article V, § 107-21.

(2) All applications for plat approval for minor subdivisions shall be accompanied by a fee of \$500 plus \$100 per lot, plus all costs, including but not limited to professional consultants, stenographer and legal fees. **[Amended 6-4-1990 by L.L. No. 2-1990]**

- B. Number of copies. Three copies of the subdivision plat shall be presented to the Secretary of the Planning Board at least two weeks prior to a scheduled Board meeting.

- C. Subdivider to attend Planning Board meeting. The subdivider or his duly authorized representative shall

attend the meeting of the Planning Board to discuss the subdivision plat.

- D. When officially submitted. The subdivision plat shall be considered officially submitted only when all the surveys, plans and other data required in Article V, § 107-21, are submitted complete and in good form, together with the application and fee at a regular meeting of the Planning Board.
- E. Public hearing. Before the Planning Board shall act on the subdivision plat, it shall hold a public hearing in accordance with § 7-728 of the Village Law.
- F. Action on subdivision plat. The Planning Board shall, within 60 days from the official submission date, approve or approve with modification or disapprove the subdivision plat. **[Amended 6-4-1990 by L.L. No. 2-1990]**

§ 107-6. Preliminary layout for major subdivision.

- A. Application and fee.
 - (1) Prior to the filing of an application for the approval of a major subdivision plat, the subdivider shall file an application for the consideration of a preliminary layout of the proposed subdivision, in the form described in Article V, § 107-20, thereof. The preliminary layout shall, in all respects, comply with the requirements set forth in the provisions of §§ 7-728 and 7-730 of the Village Law, and Article V, § 107-20, of these regulations, except where a waiver may be specifically authorized by the Planning Board.
 - (2) The application shall be accompanied by a fee of five \$500 plus \$100 per lot, plus all costs, including but not limited to professional consultants, stenographer and legal fees. **[Amended 6-4-1990 by L.L. No. 2-1990]**

- B. Number of copies. Five copies of the preliminary layout shall be presented to the Secretary of the Planning Board at least two weeks prior to a scheduled Board meeting.
- C. Subdivider to attend Planning Board meeting. The subdivider or his duly authorized representative shall attend the meeting of the Planning Board to discuss the preliminary plat.
- D. Study of layout. The Planning Board shall study the practicability of the preliminary plat, taking into consideration the requirements of the community and the best use of the land being subdivided. Particular attention shall be given to the arrangement, location and width of streets, their relation to the topography of the land, water supply, sewage disposal, drainage, lot sizes and arrangement, the future development of adjoining lands as yet unsubdivided and the requirements of the Master Plan, if such exists, and zoning regulations.²
- E. Conditional approval of the preliminary plat.
- (1) Following review of the preliminary plat, the Planning Board shall, within 60 days of the time of submission, act thereon, as submitted or as modified. If approved, the Planning Board shall express its approval as conditional approval and state the conditions of such approval, if any, with respect to the specific changes which it will require in the preliminary plat and the character and extent of the required improvements for which waivers may have been requested and which, in its opinion, may be waived without jeopardy to the public health, safety, morals and general welfare. If the preliminary plat is disapproved, the Planning Board shall express its disapproval and its reasons thereof. **[Amended 6-4-1990 by L.L. No. 2-1990]**

2. Editor's Note: See Ch. 125, Zoning.

- (2) The action of the Planning Board shall be noted on two copies of the preliminary plat, referenced and attached to any conditions determined. One copy shall be returned to the subdivider and the other retained by the Planning Board. Conditional approval of a preliminary plat shall not constitute approval of the subdivision plat, but rather it shall be deemed an expression of approval of the design submitted on the preliminary plat as a guide to the preparation of the plat, which will be submitted for approval of the Planning Board and for recording upon fulfillment of the requirements of these regulations and the conditions of the conditional approval, if any. Prior to approval of the subdivision plat, the Planning Board may require additional changes as a result of further study of the subdivision in final form.

§ 107-7. Plat for major subdivision.

- A. Application for approval. The subdivider shall, within six months after the conditional approval of the overall preliminary plat, file with the Planning Board an application for approval of all or part of the proposed subdivision, using the approved application blank available from the Secretary of the Planning Board. [The subdivider may develop the subdivision in progressive stages instead of in its entirety; but no subdivision or portion thereof shall be considered unless it has frontage on a public street; abuts at least one street on the Official Map, if such exists, which street shall be improved to the satisfaction of the Planning Board; or abuts an approved street for which a bond has been filed under § 107-8A below.] Failure to submit a section of the plat within six months shall automatically cancel the conditional approval, unless extended by the Planning Board. Such extension shall be granted only if the proposed subdivision fully conforms to the zoning regulations in effect at the time such extension is applied for or any zoning

amendments pending at the time. Where plat approval is requested in sections, those sections subsequent to the first section shall be individually submitted for approval within a period of two years following the conditional approval of the preliminary plat. In the event that any section of the plat, other than the first one, has not been submitted for approval within the two-year period, then the conditional approval of the preliminary plat, as it pertains to such remaining sections, shall be automatically canceled unless extended by the Board.

- B. Number of copies. A subdivider intending to submit a proposed subdivision plat for the approval of the Planning Board shall provide the Secretary of the Board with a copy of the application and three copies of the plat, the original and one true copy of all offers of cession, covenants and agreements and two prints of all engineering drawings, at least two weeks in advance of the meeting at which it is to be submitted.
- C. When officially submitted. The subdivision plat shall be considered officially submitted only when all the surveys, plans and data required in Article V hereof are submitted complete and in good form together with the application and fee at a regular meeting of the Planning Board.
- D. Endorsement of state and County agencies. Water and sewer facility proposals contained in the subdivision plat shall be properly endorsed and approved by the Suffolk County Department of Health. Applications for approval of plans for sewer or water facilities will be filed by the subdivider with all necessary Village, County and state agencies.
- E. Public hearing. Before the Planning Board will act on any subdivision plat, it shall hold a public hearing thereon in accordance with § 7-728 of the Village Law. Notice of the hearing will be duly published and, in addition, will be mailed at least five days in advance of the hearing to all abutting property owners, to all owners directly across any streets, all owners adjoining the proposed subdivision and

to such other persons as the Board may deem particularly affected.

- F. Action on proposed subdivision plat. The Planning Board shall, within 60 days from the official submission date of the subdivision plat, approve or approve with modification or disapprove the subdivision plat. However, the subdivision plat shall not be signed by the authorized officers of the Board for recording until the subdivider has complied with the provisions of § 107-8 of this Article. **[Amended 6-4-1990 by L.L. No. 2-1990]**
- G. Issuance of building permits. Notwithstanding the requirements of the Zoning Ordinance³ and other applicable codes and ordinances, the Superintendent of Buildings may issue building permits for lots on the approved plat upon notification by the Planning Board that required improvements have been properly installed or that a bond to cover these improvements has been filed with the Village Clerk. However, no certification of occupancy shall be issued on subdivision plots until such plat is duly filed in the Suffolk County Clerk's office. **[Amended 6-4-1990 by L.L. No. 2-1990]**

§ 107-8. Improvements.

- A. Improvements and performance bond. Before the Board grants final approval of the subdivision plat, the subdivider shall follow the procedure below:
- (1) In an amount set by the Planning Board, the subdivider shall either file with the Village Clerk a certified check to cover the full cost of the required improvements or the subdivider shall file with the Village Clerk a performance bond to cover the full cost of the required improvements. Any such bond shall comply with the requirements of § 7-730 of the Village Law and shall be satisfactory to the Village

3. Editor's Note: See Ch. 125, Zoning.

Board and Village Planning Board as to form, sufficiency, manner of execution and surety. A period of one year, or such other period as the Planning Board may determine appropriate, not to exceed three years, shall be set forth in the bond within which required improvements must be completed. If the bond is not filed within 45 days of the approval granted in § 107-7F above, the plat shall be deemed disapproved.

- (2) The subdivider shall also file with the Village a certified check or surety bond in the amount determined by the Planning Board to be adequate to assure the satisfactory condition of the initial improvements for a period of one year following their completion. Any such bond shall be satisfactory to the Village Board as to form, sufficiency, manner of execution and surety.
- B. Waiver of required improvements. The Planning Board may waive, for such period as it may determine, the provision of any or all such improvements as, in its judgment, are not necessary in the interests of the public health, safety and general welfare. In the case of each waiver granted, the Planning Board shall enter upon its records the reason or reasons why the particular improvement is not necessary, and it shall attach appropriate conditions or require such guaranties as may be necessary to protect the public interest.
- C. Modification of design and improvements. If at any time before or during the construction of the required improvements it is demonstrated to the satisfaction of the Village Engineer that unforeseen conditions make it necessary or preferable to modify the location or design of such required improvements, the Village Engineer may, upon his own initiative or upon written request of the subdivider, authorize modifications, provided that these modifications are within the spirit and intent of the Planning Board's approval and do not extend to the waiver

or substantial alteration of the function of any improvements required by the Board. The Village Engineer shall issue any authorization under this section in writing and shall transmit a copy of such authorization to the Planning Board at its next regular meeting.

- D. Inspection of improvements. The Village Board shall cause inspection to be made to assure that all Village specifications and requirements shall be met during the construction of required improvements and to assure the satisfactory completion of improvements and utilities required by the Planning Board.
- (1) The applicant may elect to install such improvements in accordance with the approved plat after he notifies the Village Board in writing of his intentions to proceed. Upon receipt of a written request to proceed, the Village Board shall assign an inspector. The applicant shall pay to the Village, prior to the inspection, an amount equal to 4% of the cost of the proposed improvements as estimated by the Village Engineer.
 - (2) If a performance bond is to be given to assure completion of required improvements, the Village Board shall assign an inspector to assure such satisfactory completion. The developer shall pay the Village Board, prior to its approval of the bond, an amount equal to 4% of the amount of the bond to cover the cost of such inspection.
- E. Utilities required. The Planning Board may accept assurance from each public utility company whose facilities are proposed or are required to be installed, in a letter addressed to the Board, stating that such public utility company will make the installations necessary for the furnishing of its services within the time therein specified and satisfactory to the Board.
- F. Proper installation of improvements. If the Village Engineer shall find, upon inspection of the improvements

performed before the expiration date of the performance bond, that any of the required improvements have not been constructed in accordance with plans and specifications filed by the subdivider, he shall so report to the Village Board, Superintendent of Buildings and Planning Board. The Planning Board then shall notify the subdivider and, if necessary, the bonding company, and take all necessary steps to preserve the Village's rights under the bond. **[Amended 6-4-1990 by L.L. No. 2-1990]**

§ 107-9. Filing of approved subdivision.

- A. Final approval and filing (§ 7-728 of the Village Law). Upon completion of the requirements in § 107-8 above and notation to that effect upon the subdivision plat, it shall be deemed to have final approval and shall be properly signed by the appropriate officer of the Planning Board (Chairman or Acting Chairman) and shall be filed by the applicant in the office of the Suffolk County Clerk. Any subdivision plat not so filed or recorded within 90 days of the date upon which such plat is approved or considered approved by reason of failure of the Planning Board to act shall become null and void, unless the particular circumstances of said applicant warrant the Planning Board to grant an extension.
- B. Plat void if revised after approval. No changes, erasures, modifications or revisions shall be made in any subdivision plat after approval has been given by the Planning Board and endorsed in writing on the plat, unless said plat is first resubmitted to the Planning Board and such Board approves any modifications. In the event that any such subdivision plat is recorded without complying with this requirement, the same shall be considered null and void, and the Board shall institute proceedings to have the plat stricken from the records of the County Clerk.

§ 107-10. Public streets, recreation area.

- A. Public acceptance of streets. The approval by the Planning Board of a subdivision plat shall not be deemed to constitute or be evidence of any acceptance by the Village of any street, easement or other open space shown on such subdivision plat.
- B. Ownership and maintenance of recreation areas. When a park or other recreation area shall have been shown on a plat, the approval of said plat shall not constitute an acceptance by the Village of such area. The Planning Board shall require the plat to be endorsed with appropriate notes to this effect. The Planning Board may also require the filing of a written agreement between the applicant and the Village Board covering future deed and title, dedication and provision for the cost of grading, development, equipment and maintenance of any such recreation area.

ARTICLE IV**Streets; Lots; Open Areas****§ 107-11. Standards to be minimum requirements.**

In considering applications for subdivision of land, the Planning Board shall be guided by the standards set forth hereinafter. Said standards shall be considered to be minimum requirements and shall be waived by the Board only under circumstances set forth in Article VI herein.

§ 107-12. General standards.

- A. Character of land. Land to be subdivided for building purposes shall be of such a character that it can be used safely without danger to the residents from any menace.
- B. Conformity to Official Map and Master Plan. Subdivisions shall conform to the Official Map of the Village and shall

be in harmony with any such portions of the Master Plan, if such exists.

- C. Specifications for required improvements. Village specification shall conform to the construction specifications of the Town of Huntington, as amended, a copy of which is on file with the Village Clerk.

§ 107-13. Street layout.

- A. Width, location and construction. Streets shall be of sufficient width, suitably located and adequately constructed to conform to the Master Plan, if such exists, and to accommodate the prospective traffic and afford access for fire-fighting, snow removal and other road maintenance equipment. The arrangement of streets shall be such as to cause no undue hardship to adjoining properties and shall be coordinated so as to compose a convenient system.
- B. Arrangement. The arrangement of streets in the subdivision shall provide for the continuation of principal streets of adjoining subdivisions and for proper projection of principal streets into adjoining properties which are not yet subdivided in order to make possible necessary fire protection, movement of traffic and the construction or extension, presently or when later required, of needed utilities and public services such as sewers, water and drainage facilities. Where, in the opinion of the Planning Board, topographic or other conditions make such continuance undesirable or impracticable, the above conditions may be modified.
- C. Minor streets. Minor streets shall be so laid out that their use by through traffic will be discouraged.
- D. Special treatment along major arterial streets. Where a subdivision abuts or contains an existing or proposed major street, the Board may require marginal access streets, reverse frontage with screen planting contained in

a nonaccess reservation along the rear property line, deep lots with rear service alleys or such other treatment as may be necessary for adequate protection of residential properties and to afford separation of through and local traffic.

- E. Provision for future resubdivision. Where a tract is subdivided into lots substantially larger than the minimum size required in the Zoning district in which a subdivision is located, the Board may require that streets and lots be laid out so as to permit future resubdivision in accordance with the requirements contained in these regulations.
- F. Cul-de-sac streets. The creation of cul-de-sac or loop residential streets will be encouraged wherever the Board finds that such type of development will not interfere with normal traffic circulation in the area, provided that interior parks are covered by appropriate covenants as to maintenance. In the case of cul-de-sac streets where needed or desirable, the Board may require the reservation of a twenty-foot-wide easement to provide for continuation of pedestrian traffic and utilities to the next street. Subdivisions containing 20 lots or more shall have at least two street connections with existing public streets or streets shown on the Official Map, if such exists, or streets on an approved subdivision plat for which a bond has been filed. The cul-de-sac shall have a minimum radius of 50 feet.
- G. Block size.
 - (1) Blocks shall not be excessively long. Blocks generally shall not be less than 400 feet in length. In general, no block shall be less than twice the normal lot depth in width nor more than 1,200 feet in length.
 - (2) In blocks exceeding 800 feet in length, the Planning Board may require the reservation of a twenty-foot-wide easement through the block to provide for the crossing of underground utilities and

pedestrian traffic where needed or desirable and may further specify, at its discretion, that a four-foot-wide paved footpath be included. The Planning Board shall make provisions for the proper maintenance of any such easement.

- H. Intersections with collector or major arterial streets. Minor or secondary street openings into a collector or major street shall, in general, be at least 500 feet apart.
- I. Street jogs. Street jogs with center-line offsets of less than 125 feet shall generally not be permitted.
- J. Angle of intersection. In general, all streets shall join each other so that for a distance of at least 100 feet, the street is approximately at right angles to the street it joins.
- K. Relation to topography. The street plan of a proposed subdivision shall bear a logical relationship to the topography of the property, and all streets shall be arranged so as to obtain as many of the building sites as possible at or above the grade of the streets. Grades of streets shall conform as closely as possible to the original topography.

§ 107-14. Street design.

- A. Widths of rights-of-way. Streets shall generally have the following widths. (When not indicated on the Master Plan or Official Map, if such exists, the classification of streets shall be determined by the Board.)

| | Right-of- Way (feet) | Pavement (feet) |
|--|-------------------------------------|----------------------------|
| Major arterial and collector streets | 60 | 30 to 40 |

| | Right-of- Way (feet) | Pavement (feet) |
|------------------------------|-------------------------------------|----------------------------|
| Minor and cul-de-sac streets | 50 | 14 to 30 |

- B. Improvements. Streets shall be graded and improved with pavements, curbs and gutters, drainage facilities, water mains, sewers, signs, street trees and fire hydrants, except where waivers may be requested, and the Planning Board may waive, subject to appropriate conditions, such improvements as it considers may be omitted without jeopardy to the public health, safety and general welfare. Pedestrian easements shall be improved as required by the Planning Board. Such grading and improvements shall be approved as to design and specifications by the Village Engineer in accordance with Town of Huntington specifications.

- C. Utilities in streets. The Planning Board may require that underground utilities be placed in the street right-of-way between the paved roadway and street line to simplify location and repair of lines when they require attention. The subdivider shall install underground service connections to the property line of each lot within the subdivision for such required utilities before the street is paved.

- D. Utility easements. Where topography is such as to make impractical the inclusion of utilities within the street rights-of-way, perpetual unobstructed easements at least 10 feet in width shall be otherwise provided with satisfactory access to the street. Wherever possible, easements shall be continuous from block to block and shall present a few irregularities as possible. Such easements shall be cleared and graded where required.

- E. Grades. Grades of all streets shall conform in general to the terrain and shall not be less than 1/2% nor more than

6% for collector streets or 10% for minor streets in residential zones, but in no case more than 3% within 100 feet of any intersection.

- F. Changes in grade. All changes in grade shall be connected by vertical curves of such length and radius as meet with the approval of the Planning Board so that clear visibility shall be provided for a safe distance.
- G. Curve radii at street intersections. All street right-of-way lines at intersections shall be rounded by curves of at least 20 feet radius, and curbs shall be adjusted accordingly.
- H. Curve radii. In general, street lines within a block, deflecting from each other, shall be connected with a curve, the radius of which for the inner street lines shall not be less than 350 feet on major streets, 250 feet on collector streets and 100 feet on minor streets. The outer street line in each case shall be parallel to such inner street line.

§ 107-15. Street names.

All streets shown on a preliminary layout or subdivision plat shall be named by the developer and be subject to approval of the Planning Board.

§ 107-16. Lots.

- A. Lots to be buildable. The lot arrangement shall be such that, in constructing a building in compliance with the Zoning Ordinance⁴ there will be no foreseeable difficulties for reasons of topography or other natural conditions. Lots shall not be of such depth as to encourage the later creation of a second building lot at the front or rear.
- B. Side lines. All side lines of lots shall be at right angles to straight street lines and radial to curved street lines,

4. Editor's Note: See Ch. 125, Zoning.

unless a variance from this rule will give a better street or lot plan.

- C. Corner lots. Corner lots shall be of sufficient dimensions so that any structure placed thereon shall conform to the building setback lines of each street.
- D. Driveway access. Where practicable, lots shall be so laid out that the driveways have access to that street on which they abut which carries or is intended to carry the lesser amount of traffic. Driveway grades between the street and the setback line shall not exceed 10%.
- E. Monuments and lot corner markers. Permanent monuments meeting specifications approved by the Village Engineer as to size, type and installation shall be set as such block corners, angle points, points of curves in streets and other points as the Planning Board may require and their location shall be shown on the subdivision plat.

§ 107-17. Drainage.

- A. Removal of surface water. The subdivider may be required by the Planning Board to carry away by pipe or open ditch any surface water that may exist either previous to or as a result of the subdivision. Such drainage facilities shall be located in the street right-of-way, where feasible, or in perpetual unobstructed easements of appropriate width.
- B. Drainage structure to accommodate potential development. A recharge basin, culvert or other drainage facility shall, in each case, be large enough to accommodate potential runoff from its entire upstream drainage area, whether inside or outside the subdivision. The Village Engineer shall approve the design and size of facility based on anticipated runoff from a ten-year storm under conditions of total potential development permitted by the Zoning Ordinance in the watershed.⁵

5. Editor's Note: See Ch. 125, Zoning.

- C. Drainage facilities. The subdivider shall be required to install the facilities for the drainage of streets and lots as required by the Village Engineer. Such drainage facilities, including recharge basins, to be installed within the plat area shall be constructed and completed prior to the installation of any other street improvement required on the plat. All such drainage structures shall be maintained in good operating condition until such time as the land is dedicated and released to the Village. All stormwater must be returned to the soil.
- D. Land subject to flooding. Land deemed by the Planning Board to be uninhabitable due to periodic flooding shall not be platted for residential occupancy nor for such other uses as may increase danger to health, life or property or aggravate the flood hazard, but such land within the plat shall be set aside for such uses as shall not be endangered by periodic or occasional inundation.
- E. All applications for subdivision or partitioning under this chapter must comply with the provisions of Chapter 44 of the Code, entitled Erosion and Sediment Control; Stormwater Management. **[Added 1-7-2008 by L.L. No. 4-2008]**

§ 107-18. Recreation areas; school sites.

- A. Recreation areas and school shown on Master Plan. Where a proposed park, open space or school site shown on the Master Plan is located in whole or in part in a subdivision, the Board shall require that such area or areas be shown on the plat in accordance with the requirements specified in Subsection B below. Such area or areas may be dedicated to the Village or County by the subdivider if the Village Board approves such dedication.
- B. Parks now shown on Master Plan.
- (1) The Planning Board may require that the plat show sites of character, extent and location suitable for

the development of a park, playground or other recreation purpose.

- (2) In residence C zoning, a maximum of 10% of the gross area of a subdivision may be designated as a park or recreational area by the Planning Board.
- C. School sites. Upon receipt from the School Board of a letter declaring its interest in a school site of a specific size and location within a proposed subdivision, the Planning Board may require a subdivider to set aside such area. Upon the failure of the proper authorities to purchase such school site within 36 months after the date of the approval of the plat, the subdivider, upon application, shall be relieved of the responsibility of showing such land for public purposes.
 - D. Reserve strips prohibited. Reserve strips of land which might be used to control access from the proposed subdivision to any neighboring property or to any land within the subdivision itself shall be prohibited.
 - E. Preservation of natural features. The Planning Board shall, wherever possible, establish the preservation of all natural features which add value to residential developments and to the community, such as large trees or groves, watercourses and falls, beaches, historic spots, vistas and similar irreplaceable assets.

ARTICLE V

Documents to be Submitted

§ 107-19. Sketch plan.

The sketch plan initially submitted to the Planning Board shall be based on an accurate base map at a scale preferably not less than 50 feet to the inch. The sketch plan shall be submitted, showing the following information:

- A. The location of that portion which is to be subdivided in relation to the entire tract and the approximate distance to the nearest existing street intersection.
- B. All existing structures, wooded areas, streams and other significant physical features within the portion to be subdivided and within 200 feet thereof. Topographic contours shall also be indicated at intervals of not more than two feet.
- C. The name of the owner and of all adjoining property owners as disclosed by the most recent municipal tax records, if available.
- D. All the utilities available and all streets which are either proposed, mapped or built.
- E. The proposed pattern of lots, including lot width and depth, street layout and systems of drainage within the subdivided area.
- F. All existing restrictions on the use of land, including easements, covenants or zoning lines.

§ 107-20. Major subdivision preliminary layout.

The following documents shall be submitted for conditional approval:

- A. Five copies of the preliminary layout of the subdivider's overall holdings prepared at a scale of no less than 50 feet to the inch, showing:
 - (1) The proposed subdivision name, the name of the Village, Town and County in which it is located, date, true North point, scale, name and address of record owner, subdivider and surveyor, including license number and seal.

- (2) The names of all subdivisions immediately adjacent and the name of the owners of record of all adjacent property.
- (3) The zoning district, including exact boundary lines of district, if more than one district, and any proposed changes in the zoning district lines and/or the Zoning Ordinance text applicable to the area to be subdivided.
- (4) All parcels of land proposed to be dedicated to public use and the conditions of such dedication.
- (5) The location of existing property lines, easements, buildings, watercourses, marshes, wooded areas and other significant existing features for the proposed subdivision and adjacent property.
- (6) The location of existing sewers, water mains, culverts and drains on the property with pipe sizes, grades and direction of flow.
- (7) Contours with intervals of two feet, including elevations on existing roads.
- (8) The width and location of any streets or public ways or places shown on the Official Map or the Master Plan, if such exists, within the area to be subdivided, and the width, locations, grades and street profiles of all streets or public ways proposed by the developer.
- (9) A storm drainage plan indicating the approximate location and size of proposed lines and their profiles; connection to existing lines or alternate means of disposal.
- (10) Plans and cross-sections showing the proposed location of curbs and storm drains and size and type thereof; the character, width and depth of pavements and subbase; the locations of manholes, basins and underground conduits.

- (11) A key map at a scale of one inch equals 1,000 feet showing clearly and accurately the location of the subdivision in relation to the neighboring streets. (Streets shall be shown as double lines.)
 - (12) The proposed lot lines with approximate dimension and suggested location of buildings.
 - (13) Where the topography is such as to make difficult the inclusion of any of the required facilities within the public area as laid out, the preliminary layout shall show the boundaries of proposed permanent easements over or under private property, which permanent easements shall not be less than 10 feet in width and which shall provide satisfactory access to an existing public highway or other public highway or public open space shown on the subdivision or the Official Map.
 - (14) An actual field survey of the boundary lines of the tract, giving complete descriptive data by bearings and distances, made and certified to by a licensed professional land surveyor.
- B. A copy of such covenants or deed restrictions as are intended to cover all or any part of the tract.

§ 107-21. Final subdivision plat.

The following documents shall be submitted for plat approval:

- A. The plat to be filed with the County Clerk shall be printed upon linen or be clearly drawn in India ink upon tracing cloth. The size of the sheets shall be 18 inches by 20 inches or 20 inches by 36 inches. The plat shall be drawn at a scale of no more than 100 feet to the inch and oriented with the North point at the top of the map. When more than one sheet is required, an additional index sheet of the same size shall be filed showing to scale the entire subdivision with lot numbers clearly legible.

B. The plat shall show:

- (1) The proposed subdivision name or identifying title and the name of the Village, Town and County in which the subdivision is located, the name and address of record owner and subdivider and the name and license number and seal of the licensed professional land surveyor.
- (2) Street lines, pedestrianways, lots, reservations, easements and areas to be dedicated to public use.
- (3) Sufficient survey data to determine readily the location, bearing the length of every street line, lot line and boundary line and to reproduce such lines upon the ground.
- (4) The length of all straight lines, radii, length of curves and central angles of all curves, tangent distances and tangent bearings given for each street. All dimensions and angles of the lines of each lot shall also be given. All dimensions shall be shown in feet and decimals of a foot. The plat shall show the boundaries of the property, location, graphic scale and North point.
- (5) By proper designation thereon, all public open spaces for which deeds are included and those spaces title to which is reserved by the developer. For any of the latter, there shall be submitted with the subdivision plat copies of agreements or other documents showing the manner in which such areas are to be maintained and the provisions made therefor.
- (6) All offers of cession and covenants governing the maintenance of unceded open space which shall bear the certificate of approval of the Village Attorney as to their legal sufficiency.
- (7) The lots within a subdivision numbered in accordance with the prevailing Village practice.

- (8) Monuments set at all corners and angle points of the boundaries of the original tract to be subdivided and at all street intersections, angle points in street lines, points of curve and such intermediate points as shall be required by the Planning Board.
- (9) Existing and proposed water, sewer (or cesspools) and gas mains.
- (10) Approval of the Suffolk County Department of Health (where applicable).
- (11) A key map at a scale of one inch equals 600 feet showing clearly the location of the subdivision in relation to the surrounding streets.
- (12) A tie to the nearest monumented street intersection.
- (13) The computed square-foot area of each plot.
- (14) Letters of availability from the fire, water and public utility company.
- (15) Approval of the subdivision map name by the Suffolk County Clerk.
- (16) The following statements:
 - (a) "All lots in this development comply fully with the zoning requirements of Zone_____ District in respect to area and width except as modified above, namely_____ (signed), _____ (License No.)"
 - (b) "I/we hereby certify that this plat is made from an actual survey completed by me/us_____and concrete monuments have been set as shown. _____ (signed)"
 - (c) "This is to certify that this subdivision plat has been approved by the Asharoken Village

Planning Board on _____,
_____(signed)"

- (d) "No plot may be subdivided or changed in any manner at any future date unless by special action of the Planning Board of the Incorporated Village of Asharoken.

Owner: _____
 Title: _____"

- (e) "No offer of dedication of the streets or highways or roads or any of them as they appear on this plat is made to the Village of Asharoken, nor is said Village in any way responsible for their maintenance.

The owners of all lots abutting on each private road shown on the plat shall be jointly and severally responsible to the Village for the maintenance of the surface and drainage facilities of such private road, and a provision to this effect will be inserted in the respective deeds to such owners or, if not inserted, the undersigned shall have personal responsibility therefor.

Each such street or highway or road shall be deemed a private road open to public motor vehicle traffic for the purpose of enforcing the Vehicle and Traffic Law of the State of New York, and the Traffic Ordinance and other ordinances and local laws of said Village.

Owner: _____
 Title: _____"

ARTICLE VI
Variances; Waivers

§ 107-22. Hardship.

Where the Planning Board finds that extraordinary and unnecessary hardships may result from strict compliance with these regulations, it may vary the regulations so that substantial justice may be done and the public interest secure, provided that such variations will not have the effect of nullifying the intent and purpose of the Official Map, the Master Plan, if such exists, or the Zoning Ordinance.⁶

§ 107-23. Waiver of improvements.

Where the Planning Board finds that, due to the special circumstances of a particular plat, the provision of certain required improvements is not requisite in the interest of the public health, safety and general welfare or is inappropriate because of inadequacy or lack of connecting facilities adjacent or in proximity to the proposed subdivision, it may waive such requirements, subject to appropriate conditions.

§ 107-24. Conditions to secure objectives.

In granting variances and modifications, the Planning Board shall require such conditions as will, in its judgment, secure substantially the objectives of the standards or requirements so varied or modified.

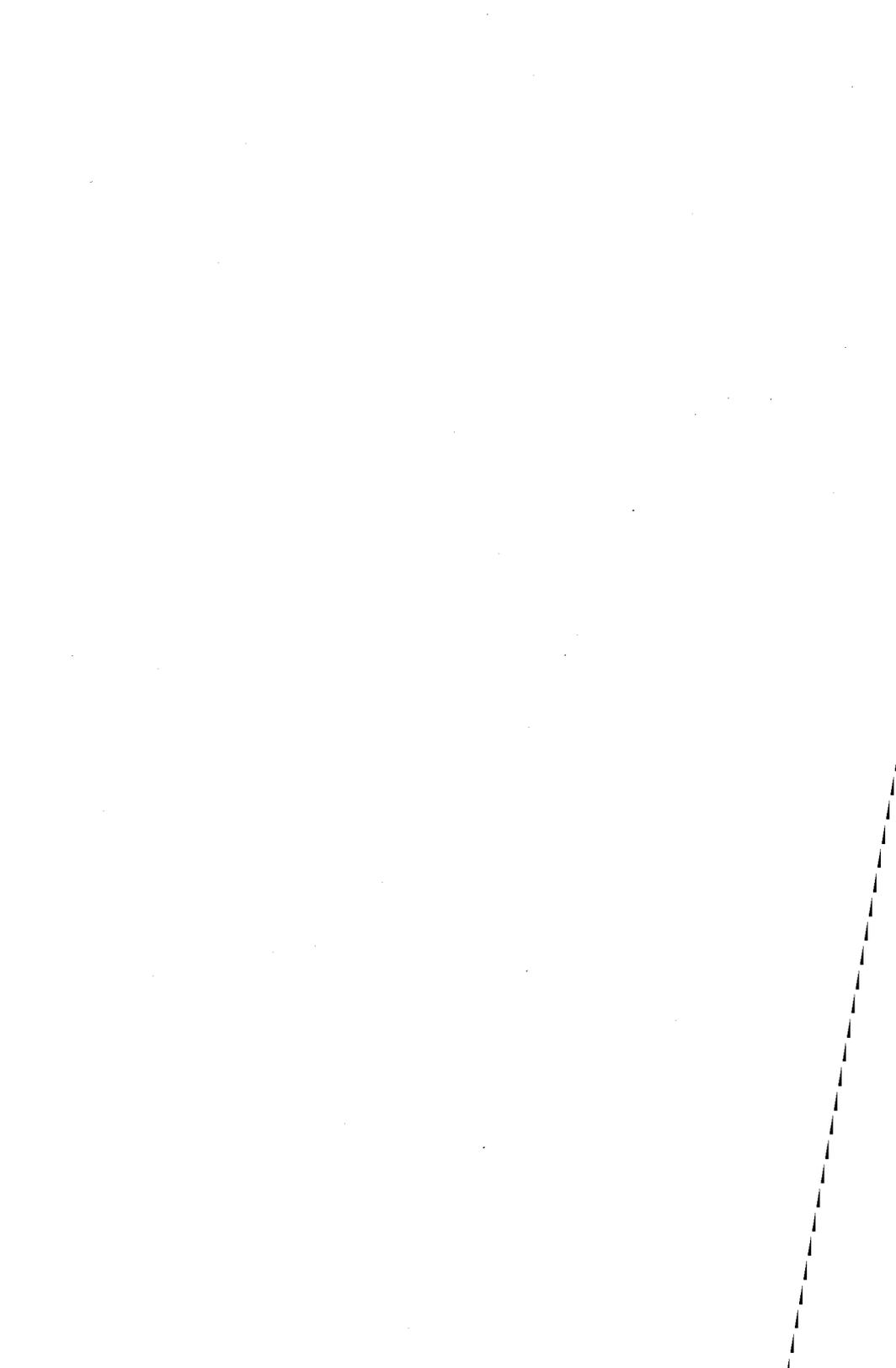
6. Editor's Note: See Ch. 125, Zoning.

§ 110-2. Definitions.

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

GROSS INCOME — Includes receipts received in or by reason of any sale, conditional or otherwise (except sales hereinafter referred to with respect to which it is provided that profits from the sale shall be included in gross income) made, or service rendered for ultimate consumption or use by the purchaser in the Village of Asharoken, including cash, credits and property of any kind or nature (whether or not such sale is made or such service rendered for profit) without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or services or other costs, interest or discount paid or any other expense whatsoever; also, profits from the sale of securities; also, profits from the sale of real property growing out of the ownership or use of or interest in such property; also, profit from the sale of personal property (other than property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the period for which a return is made); also, profits from any transaction (except sales for resale and rentals) within the Village of Asharoken whatsoever; provided, however, that the words "gross income" shall include, in the

(Cont'd on page 11003)



TAXATION

Chapter 110

TAXATION

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Utility Tax**

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Redemption of Tax Liens

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§ 110-19. Redemption of property subject to more than one tax lien.

[HISTORY: Adopted by the Board of Trustees of the Village of Asharoken as indicated in article histories. Amendments noted where applicable.]

ARTICLE I

Utility Tax

[Adopted 12-7-1970 by L.L. No. 1-1970]

§ 110-1. Imposition.

A tax equal to 1% of its gross income from and after January 1, 1971, is hereby imposed upon every utility, as hereinafter defined, doing business in the Village of Asharoken which is subject to the supervision of the New York State Department of Public Services which has a gross income for the 12 months ending December 31 of the current calendar year in excess of \$500, which tax shall have application only within the territorial limits of the Village of Asharoken and shall be in addition to any and all other taxes.

case of a utility engaged in selling telephony or telephone service, only receipts from local exchange service wholly consummated within the Village of Asharoken.

PERSON — Persons, corporations, companies, associations, joint-stock associations, copartnerships or any other entity and persons, their assignees, lessees, trustees or receivers, appointed by any court whatsoever or by any other means, except the state, municipalities, political and civil subdivisions of the state.

UTILITY — Includes every person who manufactures, conveys, transports, sells or distributes gas (natural or manufactured or a mixture of both) or electricity for light, heat or power or owns, leases or operates gas plants or electric plants; owns, leases or operates any telephone line within the Village of Asharoken; or sells gas, electricity or telephony delivered through mains, pipes or wires or furnishes gas, electric or telephone service by means of mains, pipes or wires, regardless of whether such activities are the main business of such person or are only incidental thereto or whether use is made of the public streets within the village.

§ 110-3. Record retention.

Every utility subject to tax under this Article shall keep such records of its business and in such form as the Village Treasurer may require and such records shall be preserved for a period of three (3) years, except that the Village Treasurer may consent to their destruction within that period or may require that they be kept longer.

§ 110-4. Returns.

Every utility subject to tax hereunder shall file annually on or before the 25th day of April a return for the twelve (12) calendar months preceding such return date or any portion thereof for which the tax imposed hereby is effective, each of which returns shall state the gross income for the period covered by each such return. Returns shall be filed with the Village Treasurer on a form to be furnished by

him for such purpose and shall contain such other data, information or matter as the Village Treasurer may require to be included therein. The Village Treasurer may require any utility to file such a return, which shall contain any data specified by him, whether or not the utility is subject to tax under this Article. Every return shall have annexed thereto a certification by the head of the utility making the same or of the owner or of a copartner thereof or a principal officer of the corporation if such business be conducted by a corporation, to the effect that the statements contained therein are true.

§ 110-5. Payment.

At the time of filing the return as required by this Article, each utility shall pay to the Village Treasurer the tax imposed by this Article for the period covered by such return. Such tax shall be due and payable at the time of filing the return or, if a return is not filed when due, on the last day on which the return is required to be filed.

§ 110-6. Insufficient return; determination.

In case any return filed pursuant to this Article shall be insufficient or unsatisfactory to the Village Treasurer and if a correct or sufficient return is not filed within twenty (20) days after the same is required by notice from the Village Treasurer or if no return is made for any period, the Village Treasurer shall determine the amount of tax due from such information as he is able to obtain and, if necessary, may estimate the tax on the basis of external indices or otherwise. The Village Treasurer shall give notice of such determination to the person liable for such tax. Such determination shall finally and irrevocably fix such tax unless the person against whom it is assessed shall, within one (1) year of given notice of such determination, apply to the Village Treasurer for a hearing or unless the Village Treasurer of his own motion shall reduce the same. After such hearing the Village Treasurer shall give notice of such decision to the person liable for the tax. The decision of the Village Treasurer may be reviewed in the manner provided in the Civil Practice Law and Rules if application therefor is made within thirty (30) days after the giving of notice of such decision. The proceeding may not be commenced unless the amount of any tax sought to be reviewed, with penalties thereon, if

any, shall be first deposited with the Village Treasurer and an undertaking filed with him in such amount and with such sureties as a Justice of the Supreme Court shall approve to the effect that if the proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of the proceeding or at the option of the petitioner such undertaking may be in a sum sufficient to cover the tax, penalties, costs and charges aforesaid, in which event the petitioner shall not be required to pay such tax and penalties as a condition precedent to the commencement of the proceeding.

§ 110-7. Notices.

Any notice authorized or required under the provisions of this Article may be given by mailing the same to the person for whom it is intended in a postpaid envelope addressed to such person at the last address given by him in the last return filed by him under this Article or, if no return has been filed, then to such address as may be obtainable. The mailing of such notice shall be presumptive evidence of the receipt of the same by the person to whom addressed. Any period of time which is determined according to the provisions of this Article by the giving of notice shall commence to run from the date of mailing of such notice.

§ 110-8. Penalties for offenses.

Any person failing to file a return or corrected return or to pay any tax or any portion thereof within the time required by this Article shall be subject to a penalty of five per centum (5%) of the amount of tax due plus one per centum (1%) of such tax for each month of delay or fraction thereof, excepting the first month after such return was required to be filed or such tax became due; but the Village Treasurer, for cause shown, may extend the time for filing of any return and, if satisfied that the delay was excusable, may remit all or any portion of such penalty.

§ 110-9. Refunds.

If, within one (1) year from the giving of notice of any determination or assessment of any tax or penalty, the person liable for the tax shall make application for a refund thereof and the Village Treasurer or the court shall determine that such tax or penalty or any portion thereof was erroneously or illegally collected, the Village Treasurer shall refund the amount so determined. For like cause and within the same period, a refund may be so made on the initiative of the Village Treasurer. However, no refund shall be made of a tax or penalty paid pursuant to a determination of the Village Treasurer as hereinbefore provided unless the Village Treasurer, after a hearing as hereinbefore provided, or of his own motion shall have reduced the tax or penalty or it shall have been established in a proceeding in the manner provided in the Civil Practice Law and Rules that such determination was erroneous or illegal. All refunds shall be made out of moneys collected under this Article. An application for a refund shall be deemed an application for the revision of any tax or penalty complained of and the Village Treasurer may receive additional evidence with respect thereto. After making his determination, the Village Treasurer shall give notice thereof to the person interested, and such person shall be entitled to commence a proceeding to review such determination subject to the provisions hereinbefore contained relating to the commencement of such a proceeding.

§ 110-10. Tax part of operating costs.

The tax imposed by this Article shall be charged against and be paid by the utility and shall not be added as a separate item to bills rendered by the utility to customers or others but shall constitute a part of the operating costs of such utility.

§ 110-11. Enforcement.

Whenever any person shall fail to pay any tax or penalty imposed by this Article, the Village Attorney shall, upon request of the Village Treasurer, bring an action to enforce payment of the same. The proceeds of any judgment obtained in any such action shall be available for the recovery of any tax or penalty imposed by this

article as are available for the recovery of taxes and penalties imposed by Article 7 of the New York Tax Law.

§ 110-12. Administration.

In the administration of this article, the Village Treasurer shall have power to make such reasonable rules and regulations as may be necessary for the exercise of his powers and the performance of his duties and to prescribe the form of blanks, reports and other records relating to the administration and enforcement of the tax, to take testimony and proofs under oath with reference to any matter within the line of his official duty under this article and to subpoena and require the attendance of witnesses and the production of books, papers and documents.

§ 110-13. Exchange of information.

The Village Treasurer may exchange with the chief fiscal officer of any city, town or other Village in the State of New York information contained in returns filed under this article, provided that such city, town or other Village grants similar privileges to the Village of Asharoken, and provided that such information is to be used for tax purposes only, and the Village Treasurer shall, upon request, furnish the State Tax Commission with any information contained in such returns.

§ 110-14. Disposition.

All taxes and penalties received by the Village Treasurer under this article shall be paid into the treasury of the Village and shall be credited to and deposited in the general funds of the Village.

ARTICLE II
Veterans Tax Exemption
[Adopted 9-10-2007 by L.L. No. 1-2007¹]

§ 110-15. Amount of exemption; Gold Star Parents.

A. Maximum exemption.

- (1) The maximum exemption allowable to qualifying residential real property exempt from taxation under § 458-a of the New York State Real Property Tax Law to the extent of 15% of the assessed value shall be \$54,000.
- (2) The maximum exemption allowable to veterans who served in a combat theater or combat zone of operations, as documented by the award of the United States campaign ribbon or service medal, under § 458-a of the New York Real Property Tax Law, shall be \$36,000.
- (3) The maximum exemption allowable, as an additional exemption available to a veteran who has received compensation from a New York veterans organization or the United States Department of Defense because of a service-connected disability, calculated as the product of the assessed value multiplied by 50% of the veteran's disability rating under § 458-a of the New York Real Property Tax Law, shall be \$180,000.

B. Gold Star Parent. Pursuant to the Real Property Tax Law § 458-a, a "Gold Star Parent," defined as a parent of a child who died in the line of duty while serving in the United States Armed Forces during a period of war, is hereby eligible for the alternative veterans exemption set forth herein to the maximum extent permitted by state law.

¹ Editor's Note: This local law also repealed former Article II, Veterans Tax Exemption, adopted 10-1-1984 by L.L. No. 6-1984.

- C. Eligible funds veterans exemption. Pursuant to Real Property Tax Law § 458-a, a veterans exemption that has been applied to an Asharoken home sold by a veteran shall be prorated and automatically applied to a home then purchased by said veteran within the Village of Asharoken.

ARTICLE III

Collection of Delinquent Real Property Taxes [Adopted 8-15-1994 by L.L. No. 3-1994]

§ 110-16. Continuation of collection procedures.

Pursuant to § 6 of Chapter 602 of the Laws of 1993, as amended by Chapter 532 of the Laws of 1994, which was signed by the Governor on July 26, 1994, the Village of Asharoken hereby acts, by local law not subject to referendum, to provide that the collection of property taxes shall continue to be enforced pursuant to Title 3 of Article 14 of the Real Property Tax Law, as is in effect on December 31, 1994.

§ 110-17. Filing with Board of Equalization and Assessment.

Upon adoption, and no later than October 1, 1994, a copy of this article shall be filed with the New York State Board of Equalization and Assessment.

ARTICLE IV

Redemption of Tax Liens [Adopted 6-12-2000 by L.L. No. 1-2000]

§ 110-18. Intent.

The Village of Asharoken continues to collect property taxes pursuant to Title 3 of Article 14 of the Real Property Tax Law and to conduct tax lien sales on an annual basis. The Village

wishes to place certain restrictions on the redemption of those tax liens.

§ 110-19. Redemption of property subject to more than one tax lien.

Where there is more than one tax lien on a parcel, the liens need not be redeemed simultaneously. However, the liens must be redeemed in reverse chronological order, so that the lien with the most recent lien date is redeemed first and the lien with the earliest lien date is redeemed last.

Chapter 111**TRESPASSING**

§ 111-1. Definitions.

§ 111-2. Entering private premises without authority.

§ 111-3. Intrusion on Village-owned lands.

§ 111-4. Trespass; determination of guilt.

§ 111-5. Penalties for offenses.

[HISTORY: Adopted by the Board of Trustees of the Village of Asharoken 10-1-2001 by L.L. No. 4-2001. Amendments noted where applicable.]

§ 111-1. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

BUILDING — In addition to its ordinary meaning, includes any structure, vehicle or watercraft used for overnight lodging of persons, or an inclosed motor truck, or an inclosed motor truck trailer. Where a building consists of two or more units separately secured or occupied, each unit shall be deemed both a separate building in itself and a part of the main building.

DWELLING — A building which is usually occupied by a person lodging therein at night.

ENTER OR REMAIN UNLAWFULLY — A person enters and/or remains unlawfully in or upon premises when he is not licensed or privileged to do so. A person who, regardless of his intent, enters or remains in or upon premises which are at the time open to the public does so with license and privilege unless he defies a lawful order

not to enter or remain, personally communicated to him by the owner of such premises or other authorized person. A license or privilege to enter or remain in a building which is only partly open to the public is not a license or privilege to enter or remain in that part of the building which is not open to the public. A person who enters or remains upon unimproved and apparently unused land, which is neither fenced nor otherwise enclosed in a manner designed to exclude intruders, does so with license and privilege unless notice against trespass is personally communicated to him by the owner of such land or other authorized person, or unless such notice is given by posting in a conspicuous manner.

NIGHT — The period between 30 minutes after sunset and 30 minutes before sunrise.

PREMISES — Includes the term “building,” as defined herein, and any real property.

§ 111-2. Entering private premises without authority.

No person shall by foot, vehicle or otherwise enter or trespass upon any private property within the Village without authority from the owner thereof.

§ 111-3. Intrusion on Village-owned lands.

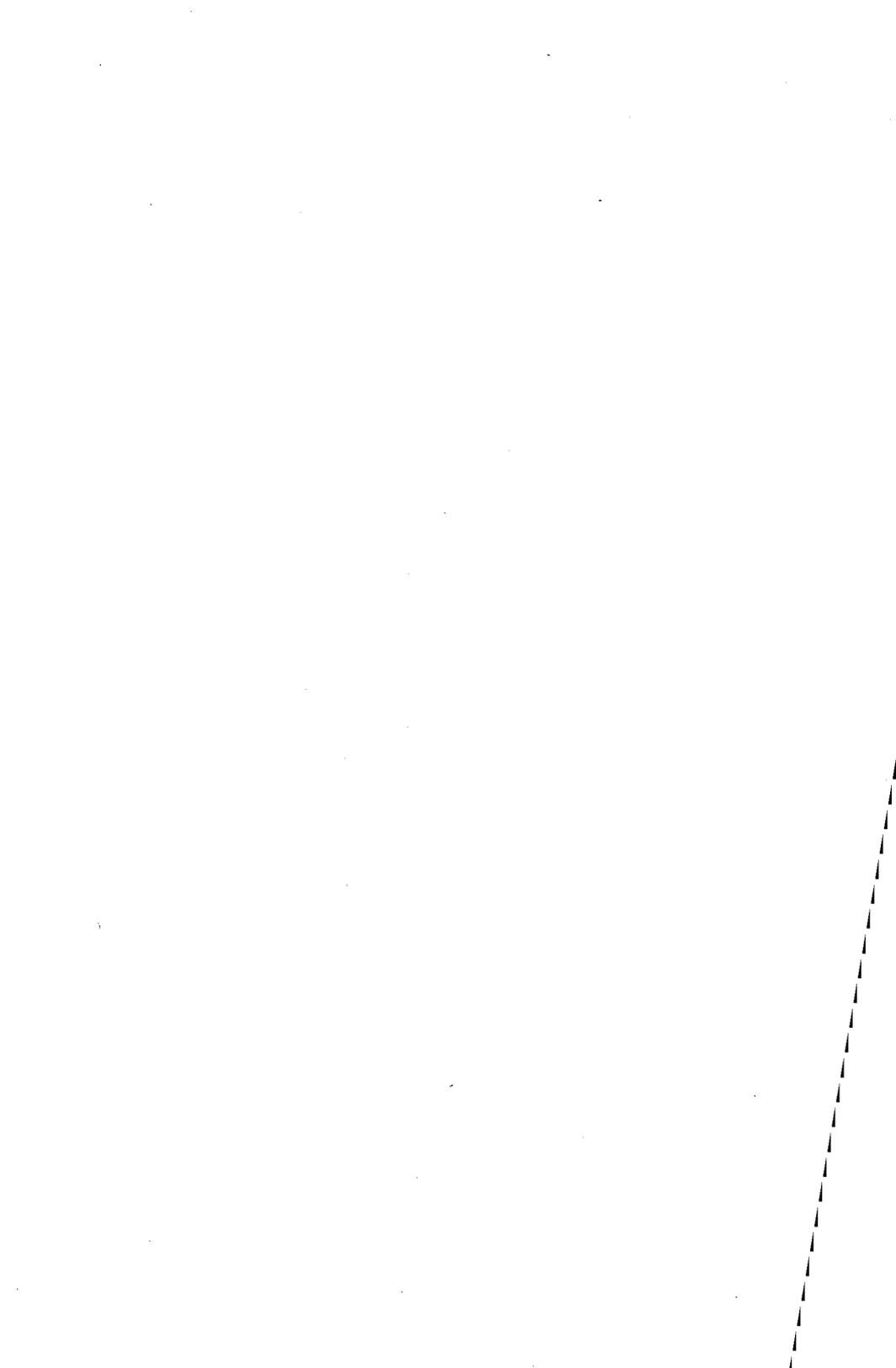
No person shall enter, intrude or trespass upon any lot or premises owned by or under the control of the Village Board, whether upland or underwater, for the purpose of occupying the same or of erecting any building or structure thereon or of removing any flowers, plants, shrubs, trees, sand, stone, gravel, topsoil, signs or other materials therefrom, without written authority from the Board of Trustees of the Village of Asharoken, but nothing herein shall be deemed to prevent any resident of the Village from using any village property for public recreational purposes.

§ 111-4. Trespass; determination of guilt.

A person is guilty of trespass when he knowingly enters or remains unlawfully in or upon such premises as defined above.

§ 111-5. Penalties for offenses.

- A. Any person violating this chapter shall be deemed guilty of a violation and shall be punished by a fine not exceeding \$1,000 or by imprisonment not exceeding 15 days, or by both.
- B. The imposition of a penalty herein shall not affect the right of the owner to take any further legal proceeding as may be appropriate.



Chapter 112**TREES**

- § 112-1. Findings and purpose.**
- § 112-2. Definitions.**
- § 112-3. Regulated activities; permit required.**
- § 112-4. Exceptions.**
- § 112-5. Issuance of permits.**
- § 112-6. Plan required.**
- § 112-7. Replacement of trees in special circumstances.**
- § 112-8. Site inspection.**
- § 112-9. Penalties for offenses.**
- § 112-10. Appeals process.**

[HISTORY: Adopted by the Board of Trustees of the Village of Asharoken 3-6-2006 by L.L. No. 2-2006. Amendments noted where applicable.]

GENERAL REFERENCES

Poles and wires — See Ch. 94.
Streets and sidewalks — See Ch. 104.
Subdivision of land — See Ch. 107.
Zoning — See Ch. 125.

§ 112-1. Findings and purpose.

Among the unique natural features that make Asharoken a special to live is the significant stand of trees in proximity to the surrounding water. The sandy tombolo is heavily populated with native cedar trees, while the upland has large stands of sizable deciduous and evergreen trees. It has been established that trees stabilize the soil and control water pollution by

preventing soil erosion and flooding, absorb air pollution, provide oxygen, yield advantageous microclimatic effects, have an intrinsic aesthetic quality, provide a natural barrier to noise and provide a natural habitat for the wildlife in our area. The removal of trees deprives us of these benefits and disrupts fundamental ecological systems in which they are integrally involved. It is, therefore, the purpose of this chapter to control the indiscriminate destruction of trees, with due consideration of the reasonable private property rights of each owner, such as the cutting or pruning necessary to preserve the health of the tree and/or to maintain its ornamental quality, or as set forth in § 112-4 below, by regulating the removal of trees within the boundaries of the Village of Asharoken.

§ 112-2. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

REMOVAL — Includes but is not limited to: cutting or knocking or dragging down; physically removing; poisoning; ringing the tree; excessive peeling of bark; damaging, compacting or overburdening the roots; using herbicides or fire or cutting in a manner so as to bring about the ultimate death of a tree.

SUBSTANTIALLY ALTER — Any cutting or pruning in excess of the normal cutting or pruning necessary to preserve the health of the tree and/or to maintain its ornamental quality.

STEEP SLOPE — Any slope of 15% or greater.

TREE — A living woody perennial plant that is either deciduous or evergreen.

§ 112-3. Regulated activities; permit required.

No person shall remove or substantially alter: (a) any deciduous tree that exceeds 45 inches in circumference, or any

evergreen that exceeds 24 inches in circumference, as measured three feet from the ground; (b) any tree that exceeds 15 inches in circumference on a steep slope (greater than 15%) or bluff; any tree in a Village-owned park or nature preserve; any tree within a public right-of-way; any rare or endangered species as listed by any governmental agency of New York State or of the United States; or any historic tree or tree on the New York State "Big Tree Registry;" (c) more than a 10% of the trees between 20 inches and 45 inches in circumference for deciduous trees and between 15 inches and 24 inches in circumference for evergreens, or any combination thereof, on any single parcel of property within the Village within any thirty-month period; without first filing an application with the Village Clerk and thereafter procuring a permit from the appropriate Village reviewing authority as outlined in § 112-5, below. No fee shall be charged for any such application or permit. All trees to be removed at one time may be combined on one such application.

§ 112-4. Exceptions.

Notwithstanding § 112-3, above, no such permit shall be required for:

- A. Normal trimming and cutting of trees by a utility company to maintain utility lines or cables.
- B. Removing a tree which presents an imminent peril to life or property. In such instance, the owner and/or his agent must provide evidence that an imminent danger exists in the form of either photographs evidencing the potential damage or a police report.
- C. Removing a tree that presents a danger to a public street, a public place or a public utility or to public property. Such removal may be authorized by the Mayor, the Deputy Mayor or by any police officer employed by the Village of Asharoken.
- D. Establishment of a tree-free area immediately adjacent to a structure, which area shall include all points within 15 feet of the perimeter of said structure.

E. Maintaining the usefulness of a cesspool.

§ 112-5. Issuance of permits.

- A. Applications for a permit shall be on forms supplied by the Village and signed by the property owner. The forms are to be submitted to the Village Clerk and are to be accompanied by a plan, if applicable, as specified in § 112-6 below.
- B. The Conservation Board shall be responsible for making a recommendation to the Village Board with regard to the issuance of tree permits for individual undeveloped and developed parcels of property, when such permits are being issued in the absence of any construction activity at the site. The Planning Board shall be responsible for issuing permits for parcels under subdivision review as part of the subdivision process. The Building Inspector shall be responsible for issuing permits when the permit shall be applied for as part of a construction project on the property and such permit shall be issued concurrently with the applicable building permit. A copy of each approved permit shall be filed with the Village Clerk by the applicable issuing authority.
- C. Since the intent of this chapter is to prevent the indiscriminate removal of trees, the reviewing authority shall use reasonable judgment when examining an application. Factors to be considered during the review process shall include but not be limited to the following criteria:
- (1) Minimizing the impact on trees of the siting of roadways, drainage structures, houses, accessory buildings, driveways, patios, tennis courts, etc.
 - (2) The use of reasonable horticultural and wood lot practices, including but not limited to the thinning of trees that interfere with or choke off the normal

growth of other trees and the pruning of trees to encourage their natural growth.

- (3) The effect of removal on ecological systems, including but not limited to drainage, stormwater runoff, trees on adjacent properties, and steep slope stability.
 - (4) The character of the surrounding community.
 - (5) The need to remove or alter the trees in question for reasons of safety, to preserve a preferred species and/or to avoid congestive overgrowth.
 - (6) The maintenance or establishment of a vista.
 - (7) To preserve trees native to Asharoken, including but not limited to the cedar, the hickory, the oak and the beach plum.
- D. The Conservation Board shall make a recommendation to the Village Board within 10 days after it receives an application for a permit for an individual undeveloped and developed parcel from the Village Clerk, unless the Conservation Board shall advise the Village Board of Trustees that the total number of trees to be removed makes it impracticable for it to act within the prescribed time frame. In such cases, the Board shall be given 30 days to make a recommendation to the Village Board. The Conservation Board shall file all papers with the Village Clerk not later than two weeks prior to the regular monthly meeting of the Board of Trustees in order that the application may be discussed at such meeting. Once issued, such permit shall be effective for a period of one year from the date the permit is issued.
- E. Permits for parcels under subdivision review shall be issued by the Planning Board when the subdivision plat is approved and the map is signed by the Chairman of the Planning Board. This permit shall be effective for one year from the date of issuance.

- F. Permits for individual developed or undeveloped parcels, where the tree removal is part of construction to be performed at the site, shall be issued concurrently with the applicable building permit. This permit shall be effective for a period of one year from the date of issuance.

§ 112-6. Plan required.

- A. In the case of an individual developed or undeveloped parcel, not part of a construction project on said parcel, the applicant shall submit either a photograph if only one tree, or a sketch if more than one tree, to the Village Clerk with the required application, depicting the property and the tree or trees to be removed or altered. The tree or trees to be removed shall also be appropriately marked at the site.
- B. For subdivisions under review by the Planning Board, the applicant must develop and submit to the Planning Board a tree removal plan for the entire parcel showing all "regulated" trees on the site, as defined in § 112-3 above, and identifying which trees are to be removed as part of the subdivision plan, the circumference of all such trees, and the species of each tree to be removed. This tree removal plan shall be considered to be part of the subdivision process, and its approval will be necessary prior to final approval of any subdivision.
- C. In the case of individual developed or undeveloped parcels, where tree removal is part of a construction project on the property, a tree removal plan showing all regulated trees on the site, as defined in § 112-3, above, and identifying which trees are to be removed as part of the construction on the site, the circumference of all such trees, and the species of each tree to be removed, shall be submitted to the Building Inspector either before or with the building permit application. The plan shall be reviewed as part of the building permit application process.

§ 112-7. Replacement of trees in special circumstances.

The reviewing authority may require the planting of the same or agreed-upon alternate species of trees, encouraging species native to Asharoken, when the individual character of the tree(s) or the ecological setting requires special consideration as a condition for the issuance of a permit for tree removal. The location for the planting of the replacement trees shall be agreed upon prior to the issuance of the permit for removal and shall be made a condition of the approval of said permit.

§ 112-8. Site inspection.

After a tree removal plan and the accompanying application have been submitted, the reviewing authority may request photographs of the site or a site inspection led by the owner or his or her designee. The reviewing authority may also request that the trees to be removed shall be designated by suitable marking.

§ 112-9. Penalties for offenses.

- A. Each tree removed in violation of this chapter shall be a separate violation. The monetary fines shall be assessed against the person who orders the work and the person and/or corporation who removes the tree(s).
- B. Any person violating this chapter shall be deemed guilty of a violation and shall be punished by a fine not to exceed \$1,000 for each tree that was removed.
- C. In addition to, or in lieu of, the above, the court may require the planting of replacement trees or flora. The type, size, number and location of planting replacement trees or flora shall be determined by the Conservation Board in the case of an individual developed or undeveloped lot; the Planning Board in the case of a subdivision and the Village Building Inspector in the

case of tree removal that occurred as part of a construction project.

- D. The Building Inspector shall stop all work and construction activity on any premises where a violation of this chapter has occurred and shall not permit any work to resume unless and until the provisions of this chapter shall have been satisfied.

§ 112-10. Appeals process.

Any person aggrieved by a decision of the Building Inspector or the Planning Board, with respect to a decision on a tree permit, pursuant to § 112-5B, E or F above, has the right to appeal the decision to the Village Board of Trustees within 30 days of the date that the decision is filed with the Village Clerk. Such appeal shall be in compliance with the appeal procedure adopted by the Board of Trustees. Any person aggrieved by a decision of the Board of Trustees with regard to a decision made as per § 112-5D above shall have the right to appeal that decision to the Village Zoning Board of Appeals.

Chapter 115**VEHICLES AND TRAFFIC**

§ 115-1. Parking.

§ 115-2. Overtaking and passing zones.

§ 115-3. Speed regulations.

§ 115-4. Speed limits.

[HISTORY: Adopted by the Board of Trustees of the Village of Asharoken 2-6-2006 by L.L. No. 1-2006. Amendments noted where applicable.]

GENERAL REFERENCES

Streets and sidewalks — See Ch. 104.

Motor-driven vehicles — See Ch. 118.

§ 115-1. Parking.

No person shall park any automobile or other vehicle on any road or street in the Village or within six feet of either side of the pavement of any Village street, except that automobiles or vehicles may be parked for a period not exceeding 20 minutes and only when the driver or occupant of said automobile or vehicle has business with the occupant or owner of the premises before which said automobile or vehicle is parked and provided that there is no place within the premises of said occupant or owner to park same. Such automobile or vehicle, when parked, shall not obstruct the highways. Where special circumstances exist, permission to park may be granted by the Board of Trustees. Any person violating the above provision of § 115-1 of the Village Code shall be liable for a penalty of not exceeding \$50 for each offense.

§ 115-2. Overtaking and passing zones.

The head of the Police Department, by official order, rule or regulation, may determine those highways or portions of highways within the Village which shall be marked to indicate where overtaking and passing or driving to the left of the roadway would be especially hazardous, in accordance with the standards, minimum warrants, and sign or marking specifications established by the New York State Department of Transportation.

§ 115-3. Speed regulations.

The maximum speed at which vehicles may proceed on or along any street within the Village is hereby established at 30 miles per hour, except that the maximum speed at which vehicles may proceed on or along those streets or parts of streets described in § 115-4 shall be as indicated.

§ 115-4. Speed limits.

In accordance with the provisions of § 115-3 above, the speed limit for Bevin Road, for its entire length, between its intersection with Bevin Road South and its intersection with Asharoken Avenue, shall be 25 miles per hour.

Chapter 118**VEHICLES, MOTOR-DRIVEN****§ 118-1. Muffler required.**

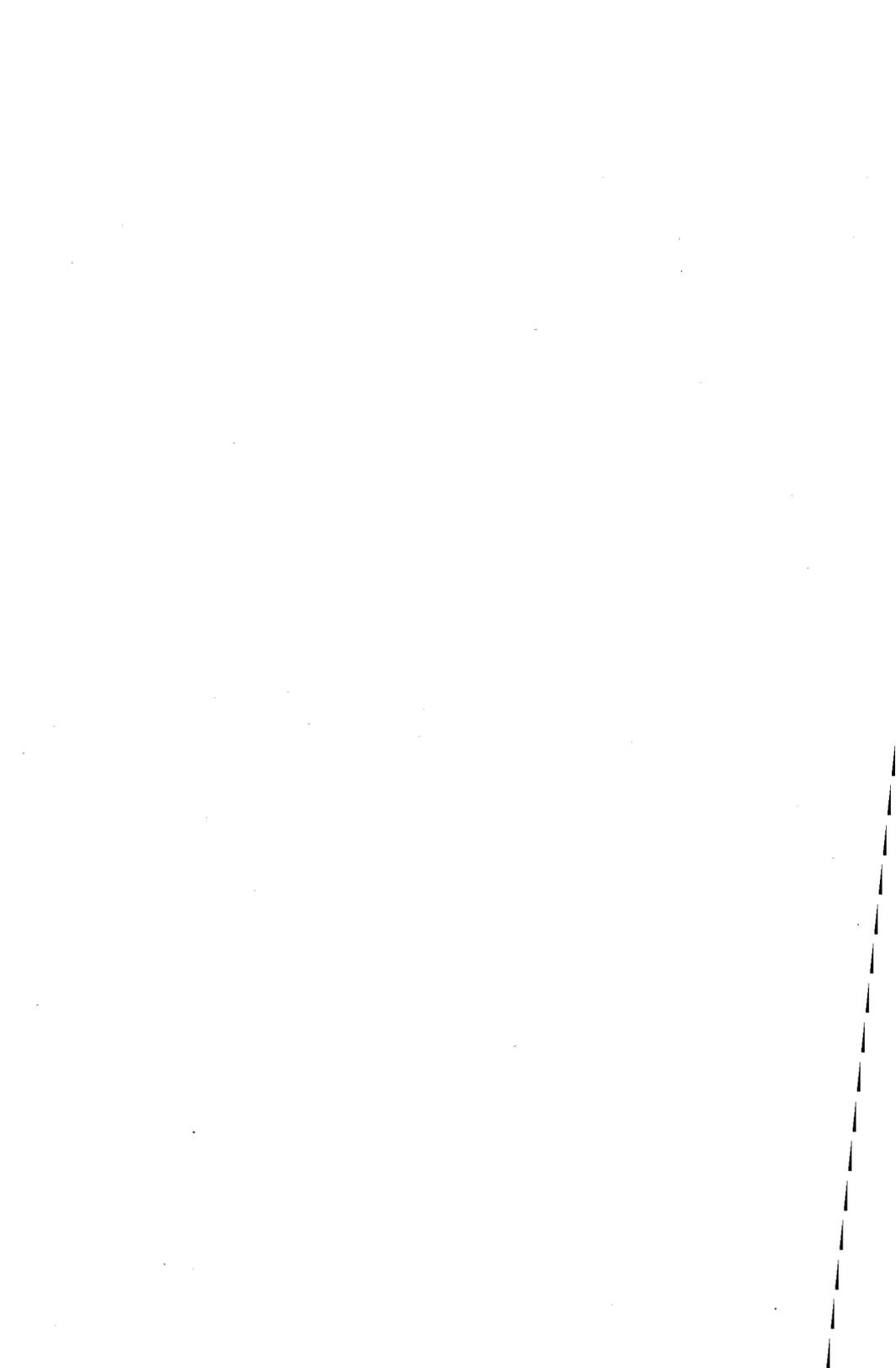
[HISTORY: Adopted by the Board of Trustees of the Village of Asharoken 6-12-26 as Ord. No. 2, Section 8. Amendments noted where applicable.]

GENERAL REFERENCES

Noise — See Ch. 86.

§ 118-1. Muffler required.

Every motor vehicle propelled by an internal combustion engine shall, where being operated in any road or street of the village, be equipped with a muffler or silencer. No operator or driver of any such motor vehicle shall use any cutout or other device which will allow the exhaust gases to escape into the atmosphere without passing through such muffler or silencer.



WATERWAYS

Chapter 122

WATERWAYS

**ARTICLE I
General Provisions**

- § 122-1. Intent.**
- § 122-2. Applicability.**
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**ARTICLE II
Waterskiing Licenses**

- § 122-13. Issuance of license; restrictions.**

**ARTICLE III
Personal Watercraft and Specialty Prop-Craft**

- § 122-14. Limitations on use.**

[HISTORY: Adopted by the Board of Trustees of the Village of Asharoken as indicated in article histories. Amendments noted where applicable.]

GENERAL REFERENCES

Health and sanitation — See Ch. 79.

Schedule of fees — See Ch. A127.

ARTICLE I
General Provisions
[Adopted 5-23-1965]

§ 122-1. Intent.

Pursuant to Article 4 of the Village Law and in order to avoid water pollution and to protect and secure navigation, bathing, fishing and other recreational uses and the healthful, safe and proper enjoyment of the waters bounding the village by the inhabitants of the village and the community and the property thereof, the Board of Trustees of the Village of Asharoken does hereby enact the following.

§ 122-2. Applicability. [Amended 12-6-1971 by resolution; 8-1-1983 by L.L. No. 3-1983; 5-7-1984 by L.L. No. 3-1984]

Except when prohibited by reason of laws of the United States or where otherwise expressly provided herein, the following provisions of this article shall apply to all waters within the village and to all waters bounding the village to a distance of 1,500 feet from the shore of the village, except that the provisions of this article shall not apply to the waters within Carter's Bight in Northport Bay.

§ 122-3. Definitions. [Amended 2-7-1983 by L.L. No. 1-1983; 5-7-1984 by L.L. No. 3-1984]

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

ADJACENT UPLAND OWNER — Includes the family, employees and guests of the owner or persons lawfully occupying his premises.

ANCHOR or ANCHORING — The attachment of or to attach a vessel to the ground by means of tackle so designed that when such attachment is terminated, the tackle in its entirety is removed from the ground and taken under the control of the vessel.

DEPUTY HARBOR MASTER — Includes the person or persons designated as such by the Village Board. Deputy Harbor Masters shall serve as assistants to and of the Harbor Master and during the pleasure of the Village Board.

HARBOR MASTER — The person designated as such by the Village Board. The Harbor Master shall serve during the pleasure of the Village Board.

MOOR or MOORING (when used as a verb) — The attachment of or to attach a vessel to a pier or dock or other structure; or the attachment of or to attach a vessel to the ground by means of tackle so designed that when such attachment is terminated, some portion of the tackle remains attached to the ground and is not taken under the control of the vessel.

OWNER (referring to owner of a vessel) — Includes the person under whose name the vessel was last registered or documented in accordance with the provisions of the Federal Boating Act of 1958 or the laws of the State of New York or the laws of the United States, if requiring registration or documentation, and in any other case the last known owner or the person who claims lawful possession of such vessel by virtue of legal title or

equitable interest therein which entitles him to such possession.

PUBLIC VESSEL — Includes every vessel which is propelled in whole or in part by mechanical power and is used or operated for commercial purposes on the navigable waters of the state; that is either carrying passengers, carrying freight, towing or for any other use; for which a compensation is received, either directly or where provided as an accommodation, advantage, facility or privilege at any place of public accommodation, resort or amusement. For purposes of this chapter, “public vessel” shall also mean any vessel operated by any subdivision of the United States government, the government of the State of New York or any local government of the State of New York. [Added 4-7-1997 by L.L. No. 1-1997]

PERSONAL WATERCRAFT — A vessel which uses an inboard motor powering a water jet pump as its primary source of motive power and which is designed to be operated by a person sitting, standing or kneeling on or being towed behind the vessel rather than in the conventional manner of sitting or standing inside the vessel. [Added 4-7-1997 by L.L. No. 1-1997]

SEWAGE TREATMENT UNIT — A sealed container and device through or into which sewage from a marine toilet passes:

- A. Capable of macerating and chemically treating the residue by the addition of Chlorox or some other effective solution so that no inadequately treated sewage is discharged into the water; acceptable units of this type, including the unit manufactured by the Raritan Engineering Company of Millville, New Jersey.
- B. Consisting of an immovable holding tank so constructed as not to be dischargeable into the water, but only ashore.

- C. Being of such other type of equal effectiveness as the Harbor Master shall designate by order filed in the office of the Village Clerk.

SPECIALTY PROP-CRAFT — A vessel which is powered by an outboard motor or a propeller driven motor and which is designed to be operated by a person sitting, standing or kneeling on or being towed behind the vessel rather than in the conventional manner of sitting or standing inside the vessel. [Added 4-7-1997 by L.L. No. 1-1997]

VESSEL — Includes every description of craft on the water and includes, but is not limited to, a seaplane when operated on the water, boat, motorboat, sailboat, rowboat, powerboat, jet boat, fishing boat, cruiser, motor vessel, ship, barge, scow, tug, floating cabana, party boat, charter boat, ferry boat, canoe, raft, personal watercraft, specialty prop-craft, hovercraft or other buoyant device permitting free flotation. [Amended 4-7-1997 by L.L. No. 1-1997; 8-4-2003 by L.L. No. 1-2003]

VESSEL REGULATION ZONE — The area within 1,500 feet from the shoreline at the low water mark of the Long Island Sound and/or Northport Bay, but shall not include Duck Island Harbor. [Added 5-17-2001 by L.L. No. 1-2001]

§ 122-4. Anchoring and mooring of vessels. [Amended 5-7-1984 by L.L. No. 3-1984]

- A. No person shall anchor any vessel nearer to the shore than 150 feet below the mean low-water line (the aforesaid distance limitation shall not, however, apply within what is commonly referred to as “Coast Guard Cove at Eatons Neck Point”) unless:

- (1) Such vessel is compelled to anchor owing to temporary disability and then only during the period of its temporary disability;
- (2) Such vessel is compelled to anchor temporarily owing to an emergency arising out of the perils of the sea and then only during such period of emergency; or
- (3) Such vessel is a cabinless boat not equipped with toilet facilities and is temporarily anchored during the hours between sunrise and sunset for fishing or shellfishing purposes only and not with 150 feet of

(Cont'd on page 12205)

any beach used for bathing or swimming and marked as such; provided, however, that this subsection shall not be deemed to permit shellfishing from tidal or underwater land owned by the adjacent upland owner, and shellfishing thereon without permission of such owner is prohibited.

- B. No person shall moor any vessel at a mooring detached from the shore and nearer to the shore than within one hundred (100) feet below the mean low-water line unless:
- (1) Such vessel is compelled to moor owing to temporary disability and then only during the period of its temporary disability; or
 - (2) Such vessel is compelled so to moor temporarily owing to an emergency arising out of the perils of the sea and then only during such period of emergency.
- C. All floats shall be anchored or moored in such a way as to be secure at all times and under all conditions, and such anchoring and mooring shall be subject to supervision by the Harbor Master and the Deputy Harbor Masters.
- D. No person shall moor or anchor any vessel in any channel affording entrance to a harbor and in no case shall any vessel be moored to or anchored so as to encroach at any time into any channel affording entrance to a harbor.
- E. No person shall at any time anchor any vessel within three (3) boat lengths, such lengths to be measured by the length of the larger vessel and from its nearest point to the nearest point of the other vessel, of another vessel previously moored or anchored or within one hundred fifty (150) feet of any unoccupied mooring marked by a buoy.
- F. No person shall at any time tie, attach, raft or secure in any manner one vessel to another vessel or vessels, any one of which is moored or anchored, unless any such vessel:
- (1) Is compelled so to secure owing to temporary disability and then only during the period of its temporary disability;

- (2) Is compelled so to secure temporarily owing to an emergency arising out of the perils of the sea and then only during such period of emergency; or
- (3) Is in the process of embarking or disembarking passengers, off-loading supplies or of rendering necessary services or assistance to another vessel, and then only during such process.

G. The location and type of moorings permitted shall be subject to the supervision and/or approval of the Harbor Master or his deputy. [Added 4-2-1990 by L.L. No. 1-1990]

H. Mooring standards. [Added 4-2-1990 by L.L. No. 1-1990]

- (1) Mooring tackle shall conform, at a minimum, to the standards set forth in the following schedule:

| Length of Boat at Waterline (feet) | Weight of Mushroom Anchor (pounds) | Diameter of Links of Top Half of Chain (inches) | Diameter of Links to Bottom Half of Chain (inches) |
|------------------------------------|------------------------------------|---|--|
| 15 | 100 | 5/16 | 3/8 |
| 20 | 200 | 5/16 | 3/8 |
| 25 | 250 | 3/8 | 3/8 |
| 30 | 300 | 3/8 | 1/2 |
| 35 | 350 | 3/8 | 1/2 |
| 40 | 400 | 1/2 | 5/8 |
| 45 | 500 | 1/2 | 5/8 |
| 50 | 550 | 5/8 | 3/4 |
| 55 | 700 | 5/8 | 3/4 |

| Length of Boat at Waterline (feet) | Buoy Diameter (inches) | Diameter of Nylon Pennant(s) (inches) |
|------------------------------------|------------------------|---------------------------------------|
| 15 | 15 | 1/2 |
| 20 | 15 | 1/2 |
| 25 | 15 | 3/4 |
| 30 | 15 | 3/4 |

| Length of Boat at Waterline (feet) | Buoy Diameter (inches) | Diameter of Nylon Pennant(s) (inches) |
|------------------------------------|------------------------|---------------------------------------|
| 35 | 15 | 3/4 |
| 40 | 18 | 3/4 |
| 45 | 18 | 1 |
| 50 | 24 | 1 |
| 55 | 24 | 1 |

- (2) For boat lengths between figures shown, the specifications for the next longer boat should be used.
- (3) Shackles, swivels, etc., should be the next size larger than the chain size.
- (4) Buoy must protrude at least twelve (12) inches above water.
- (5) All moorings shall have swivels halfway down the rope.
- (6) Mooring must be removed or inspected annually.
- (7) All shackles must be safety wired.
- (8) All vessels shall have chaffing gear on pennant lines.
- (9) No person(s) or corporation shall tamper with or move any mooring not owned or under the control of that person or corporation unless under the direction of Harbors and Waterways.
- (10) Moorings utilizing engine blocks or anchors made of concrete are hereby prohibited.

I. Mooring use permits. [Added 4-2-1990 by L.L. No. 1-1990]

- (1) These regulations are adopted to enable the village to better control certain increasingly congested and physically exposed mooring area(s) adjacent to the village shoreline not only by mandating certain minimum standards for mooring tackle and confirming the authority of the Harbor Master to oversee the type and placement of moorings as elsewhere provided in this

chapter but also by requiring the registration of moorings through a permit system which will provide a means of identifying the owner(s) of moored vessels so that responsibility therefor may be more readily established so as to lessen the likelihood of damage to persons and property caused by improperly moored and/or abandoned vessels.

- (2) It shall be unlawful to place a mooring and/or moor a vessel thereto within those waters bounding the village to a distance of one thousand five hundred (1,500) feet from the shore of said village between the village/town boundary at the southerly end of the Village Hall property and premises, known and designated by street address 25 Asharoken Avenue, without having first obtained a valid mooring use permit issued pursuant to Subsection I(3) hereinbelow nor without properly displaying the decal and/or other identifying device(s) issued in connection therewith on both vessel and mooring.
- (3) The Harbor Master and his deputies are hereby authorized and empowered to issue mooring use permits and decals and/or other identifying markings to be affixed to the permitted mooring and vessel upon receipt of written application therefor and such fee as may be prescribed by the Board of Trustees and subject to the following:
 - (a) Such application shall set forth such information as may be deemed appropriate by the Harbor Master, including the length, breadth, draft, type, manufacturer, color, year of construction, name, registration and, if applicable, documentation number of the vessel; the name, address and telephone number(s) of the owner; and a description of any identifying features of the mooring.
 - (b) Such application shall be required to be executed by the owner or charterer of, or other person responsible for the vessel, or his, her or its duly authorized representative who shall affirm the truth of the contents thereof under the penalties of perjury and

shall further attest that the mooring meets or exceeds the minimum standards set forth in Subsection H of this section.

- (c) Such application shall also provide that the applicant agrees, during the term of the mooring use permit, to be responsible for the removal of the vessel in the event that it becomes a hazard to navigation, sinks or otherwise becomes disabled or breaks loose or comes ashore.
- (d) Mooring use permits shall be valid for the balance of the calendar year in which the permit is issued or until sooner terminated by virtue of the permittee's turning in or otherwise cancelling the decal and/or other identification device(s). Mooring use permits shall not be transferable.

§ 122-5. Water pollution prevention.

- A. No person shall, during the period between Memorial Day and Labor Day, anchor or moor any vessel equipped with either a marine toilet or with one (1) or more bunks or berths in any part of Duck Island Harbor or in Northport Bay in any portion thereof lying to the north of either of the following two (2) projected straight lines: a line having a course of two hundred ninety-four degrees (294°) true running northwest from the Village Hall of Asharoken Village to a marked point in the middle section of Duck Island; and a line having a course of seventy-five degrees (75°) true running northeast from the southernmost point of Winkle Point tangent to the southernmost point of Duck Island to a marked point on Asharoken Beach, unless such vessel:
 - (1) Is equipped with and uses a sewage treatment unit, as herein defined, in good operating condition;
 - (2) Is compelled to anchor or moor owing to temporary disability and then only during the period of its temporary disability; or

- (3) Is compelled to anchor or moor temporarily owing to an emergency arising out of the perils of the sea and then only during such period of emergency.
- B. Upon request of any enforcing officer described in § 122-11 hereof who has displayed evidence of his authority, the person in charge of or who owns, charters or is operating such a vessel shall furnish the enforcing officer with a certificate in the form prescribed by the Harbor Master that the vessel is equipped with a sewage treatment unit as herein defined. If

(Cont'd on page 12207)

such person fails to furnish such certificate he shall, upon order of the enforcing officer, forthwith remove his vessel beyond one thousand five hundred (1,500) feet from the village shore.

- C. No person shall cast, deposit, dump, discharge or place or cause or suffer to be cast, deposited, dumped, discharged or placed any oil, garbage or refuse matter of any kind, or any sewage, which has not first been treated by an acceptable sewage treatment device as above specified, into any waters or on any beach above or below the high-water mark.
- D. This section is declared necessary to prevent water pollution in the area and to preserve the health of the inhabitants of the village and the users of its neighboring waters.

§ 122-6. Navigation hazards to be removed.

- A. Any vessel or any other object which becomes a menace to navigation or unseaworthy or sinks, grounds or becomes otherwise disabled shall be removed by the owner or person in charge thereof on order of any enforcing officer described in § 122-11 hereof.
- B. If said vessel or other object is not removed after an order so to remove it, it may be removed by or at the discretion of such enforcing officer at the expense of the owner or person in charge of said vessel, to be enforced by civil suit, such expense to be in addition to such penalties as may be prescribed or imposed under this Article or other ordinances of the village or the laws of the State of New York.

§ 122-7. Speed and operation. [Amended 1-9-1989 by L.L. No. 1-1989; 4-7-1997 by L.L. No. 1-1997]

- A. Except as otherwise provided in § 122-10 hereof, no person shall operate or drive any vessel, except for a

public vessel as defined in this chapter, at a greater speed than five miles per hour within 500 feet of any shoreline within the village or in Duck Island Harbor, except while towing a person on waterskis, surfboard or similar device and subject to the provisions of § 122-10. **[Amended 4-7-1997 by L.L. No. 1-1997]**

- B. No person shall operate or drive any vessel propelled other than by hand within one hundred fifty (150) feet of any lifelines or bathing float or, if there be no lifelines or bathing float, then within one hundred fifty (150) feet of any beach used for bathing or swimming marked as such except at inlets or where a channel affording entrance to a harbor approaches the lifelines, bathing float or beach, as the case may be, closer than such applicable distances; provided, however, that nothing contained in this Article shall prevent a vessel of the adjacent upland owner or of any other person with the permission of such owner from departing from, returning to or beaching at the shore of such owner.
- C. No person shall operate or drive any public vessel at a speed in excess of 45 miles per hour within 1,500 feet of any shoreline within the village. **[Amended 4-7-1997 by L.L. No. 1-1997]**

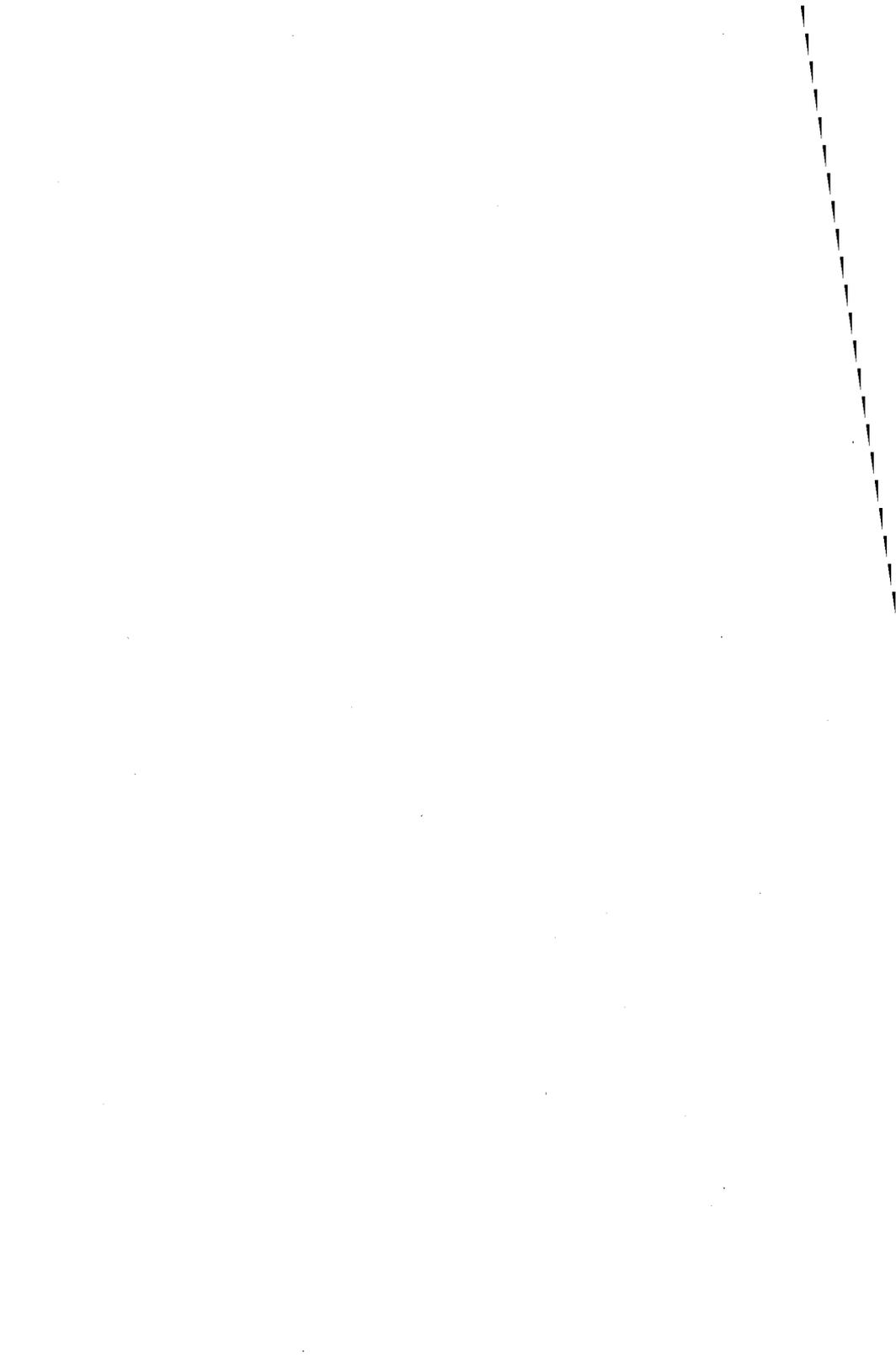
§ 122-8. Operation of vessels.

A. General.

- (1) Every person operating or driving a vessel and every person riding water skis, a surfboard or similar device shall at all times operate the same in a manner, including, without limitation, the throwing of its wake, so as not to endanger the property of another or the life or limb of any person or so as to interfere with the free and proper use of the waters of any channel affording entrance to a harbor.
- (2) No person shall use a boat propelled in whole or in part by gas, gasoline or naphtha or similar explosive

medium unless the same is provided with an underwater exhaust or muffler so constructed and used as to muffle the noise of the explosion. Any muffler which operates by watercooling the exhaust must be so constructed as to vent through the stern transom. **[Amended 8-6-1973]**

(Cont'd on page 12209)



- B. No commercial operation. No vessel shall be moored or anchored by any person in connection with or in the pursuit of any business operated for profit, except as otherwise may be specifically permitted by the Village Zoning Ordinance,¹ and except those vessels anchored and persons engaged in the harvesting of shellfish, within the waters to which this Article is applicable.

§ 122-9. Aquatic event permits.

Anything herein contained to the contrary notwithstanding, the Village Board may, in its discretion, issue special permits for aquatic events, boat races or other similar events under proper supervision in limited areas for limited periods, after prior approval of the United States Coast Guard when required.

§ 122-10. Water skis and surfboard requirements; license and insurance required.

- A. No person shall operate a vessel for towing a person on water skis, surfboard or similar device, and no person shall ride such a device in Duck Island Harbor to the north of a straight line running from the easternmost point of Bevin (known also as "Walnut") Point to the northernmost point of Duck Island and in no event within one hundred fifty (150) feet of any shoreline within Duck Island Harbor; other than Duck Island Harbor, within five hundred (500) feet of any shoreline within the village; or within one hundred fifty (150) feet of any swimmer, bather, lifeline, bathing float or vessel; provided that, except from any place on Clam Shell Point or from any place on Duck Island in Duck Island Harbor, a vessel towing a person riding such a device may depart from a shoreline, but only if they depart and continue to travel beyond the five-hundred-foot limit (one-hundred-fifty-foot limit in Duck Island Harbor) perpendicular to the shore and if they are not within one hundred fifty (150) feet of any beach used for bathing and swimming and marked as such. In no event shall any person take off or depart from any place on Clam Shell Point or from

¹ Editor's Note: See Ch. 125, Zoning.

any place on Duck Island in Duck Island Harbor on water skis, surfboard or similar device.

- B. No person shall operate a vessel for towing a person on water skis, surfboard or similar device unless there is in such vessel a person other than the operator who is at least ten (10) years old in a position to observe the progress of the person being towed.
- C. No person shall ride on water skis, surfboard or similar device or use or operate a vessel to tow a person thereon between the period from one (1) hour after sunset to one (1) hour after sunrise.
- D. No person shall operate a vessel towing a person on water skis, surfboard or similar device in Duck Island Harbor to the north of a straight line running from the westernmost point of Duck Island to the easternmost point of Clam Shell Point (the harbor entry) unless such vessel is duly licensed by the Harbor Master. (Waterskiing in the inner harbor, defined in Subsection A above, remains totally prohibited.) [Added 6-8-81 by L.L. No. 4-1981²]
- E. Upon proof of ownership of the vessel to be used and upon proof of liability insurance in an amount set forth in the Harbor Master's regulations and upon payment of the licensing fee, the Harbor Master shall issue to the applicant a license and license plate which shall be valid for the calendar year in which it is issued. [Added 6-8-81 by L.L. No. 4-1981³]
- F. The Harbor Master shall from time to time promulgate regulations governing waterskiing activities in Duck Island Harbor which shall be supplementary to regulations already set forth in the general ordinances of the village. Such regulations shall be effective upon filing of the same with the Village Clerk. Copies of such regulations shall be furnished to each boat owner at the time of the issuance of a license to such boat owner. Violations of such regulations shall constitute violations of this section and shall be punishable by fine or suspension or revocation of the boat owner's license by the

² Editor's Note: Amended at time of adoption of Code; see Ch. 1, General Provisions, Art. I.

³ Editor's Note: Amended at time of adoption of Code; see Ch. 1, General Provisions, Art. I.

Village Justice in accord with the provisions of § 122-12 of the Code of the village. [Added 6-8-81 by L.L. No. 4-1981]

- G. The acts of any person operating a licensed boat with the permission of the boat owner shall be imputed to the boat owner and shall constitute grounds for suspension or revocation of the boat owner's license. [Added 6-8-81 by L.L. No. 4-1981]
- H. Boats towing water skiers in Duck Island Harbor shall follow a counterclockwise pattern and shall be guided by such marker buoys as may be installed to indicate channels for skiing. [Added 6-8-81 by L.L. No. 4-1981]⁴

§ 122-11. Authority and enforcement.

- A. Any member of the Village Board, the Harbor Master, any Deputy Harbor Master, any duly authorized officer or agent of the Village Board, any member of the Village Police Department and any member of the Marine Division of the Suffolk County Police Department, each of whom is hereinafter referred to as "such enforcing officer," is hereby empowered to enforce the provisions of this Article.
- B. Every person in charge of or who owns, charters or is operating a vessel shall at all times obey the lawful orders of any such enforcing officer after being informed of his authority.
- C. Any vessel or float anchored or moored or attached to another vessel in violation of any part of this Article shall be removed or detached, as the case may be, by the owner, charterer or person in charge thereof on order of any such enforcing officer. If any such vessel or float is not removed after an order so to remove it, the same may be removed by or at the direction of any such enforcing officer, at the expense of the owner, charterer or person in charge of said vessel or float to be enforced by civil suit, such expense to be in addition to such penalties as may be prescribed by or imposed under this or

⁴ Editor's Note: Original Section 2, which immediately followed this subsection, was amended 12-7-81 by L.L. No. 5-1981 to provide that L.L. No. 4-1981 take effect immediately.

other ordinances of the village or the laws of the State of New York.

- D. Any such enforcing officer shall have the right to stop any vessel for any of the following purposes:
- (1) To determine whether such vessel is subject to the provisions of this Article.
 - (2) To ensure compliance therewith.
 - (3) To enforce the same.
 - (4) To issue summons or other process for any violation thereof.
- E. Any such enforcing officer shall have the right to enter upon and inspect any vessel to determine whether such vessel is complying with the provisions of § 122-5 hereof.
- F. The Harbor Master shall be and he hereby is empowered to install buoys, appropriately worded signs and other markers at any point on land or water within the jurisdiction of the village when, in his opinion, the placing of any such buoys, signs or markers would give practical effect to the intent of this Article or any provision thereof.

§ 122-12. Penalties for offenses.

- A. Any violation of this Article or of any part thereof shall be punishable by a fine of not exceeding two hundred fifty dollars (\$250.) for each such violation. Each day that a violation under §§ 122-4, 122-5, 122-6 and 122-8B hereof continues shall be deemed a separate offense.⁵
- B. The Village Board may also maintain an action or proceeding in the name of the village in a court of competent jurisdiction to compel compliance with or to restrain by injunction any violation of this Article; and these remedies shall be in addition to the penalties prescribed in the preceding Subsection A of this section.

⁵ Editor's Note: Amended at time of adoption of Code; see Ch. 1, General Provisions, Art. I.

ARTICLE II
Waterskiing Licenses
[Adopted 5-9-1988 by resolution]

§ 122-13. Issuance of license; restrictions.

The Board hereby approves regulations regarding the issuance of water skiing licenses, provided that:

- A. No vessel shall be licensed which is more than 21 feet in length.
- B. The maximum horsepower of outboard motor(s) used in connection with towing water skiers shall not exceed that recommended by the manufacturers of the vessel to be licensed.
- C. The license fee shall be \$50 per year. ~~Amended~~ **11-1-2004 by L.L. No. 2-2004]**

ARTICLE III
Personal Watercraft and Specialty Prop-Craft
[Adopted 5-17-2001 by L.L. No. 1-2001]

§ 122-14. Limitations on use.

- A. All personal watercraft and specialty prop-craft shall be prohibited from operating within the Vessel Regulation Zone; provided, however, that nothing contained in this article shall prevent a personal watercraft and/or specialty prop-craft of the adjacent upland owner, or of any other person with the permission of the upland owner, from departing from, returning to or beaching at the shore of such owner, but only if they depart and continue to travel perpendicular to the shore until they are beyond the 1,500-foot limit and if they are not within 150 feet of any beach used for bathing and swimming and marked as such, and further provided that they shall travel at a speed not to exceed five miles per hour.

- B. Personal watercraft and specialty prop-craft shall be permitted in Duck Island Harbor at a speed not to exceed five miles per hour.

Chapter 125

ZONING

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ASHAROKEN CODE

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ZONING

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§ 125-26. Obstructions to view.

§ 125-27. Completion of buildings.

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§ 125-29. Floodlights and loudspeakers.

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[HISTORY: Adopted by the Board of Trustees of the Village of Asharoken 1-3-1942. Sections 125-7J(2), 125-10B, 12514; 125-17; 125-43; 125-45 and 125-46 amended at time of adoption of Code; see Ch. 1, General Provisions, Art. I. Other amendments noted where applicable.]

GENERAL REFERENCES

Building construction administration — See Ch. 42.
Buildings, unsafe — See Ch. 46.
Flood damage prevention — See Ch. 73.
Subdivision of land — See Ch. 107.
Schedule of fees — See Ch. A127.

ARTICLE I
Purpose; Definitions

§ 125-1. Purpose and intent.

The purpose of this chapter shall be 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; and to divide the Village into districts of such number, shape and area as may be deemed best suited to carry out the purposes of Article 7 of the Village Law; and within such districts to regulate and restrict the erection, construction, reconstruction, alteration, repair or use of building structures or land throughout each district, all in accordance with a Comprehensive Plan and designed to lessen congestion in the street; to secure safety from fire, panic and other dangers; to promote health and the general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; and to facilitate the adequate provision of transportation, water, sewage, schools, parks and other public requirements; all to be made with reasonable consideration, among other things, as to the character of the district and its peculiar suitability for particular uses and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the Village.

§ 125-2. Word usage; definitions.

Certain words in this chapter are defined for the purpose thereof as follows:

- A. Words used in the present tense include the future; the singular number includes the plural and the plural the singular; the word "shall" is always mandatory.

- B. As used in this chapter, the following terms shall have the meanings indicated:

ACCESSORY BUILDING — A building subordinate to the main building on a lot and used for purposes customarily incidental to the main building or to the use of the lot. The term shall also include decks, platforms and similar structures, whether or not having a roof. **[Amended 2-6-1984 by L.L. No. 1-1984; 5-26-1994 by L.L. No. 1-1994; 9-6-1994 by L.L. No. 4-1994]**

BUILDING — A combination of any materials, whether portable or fixed, having a roof, to form a structure affording shelter for persons, animals or property. The word "building" shall be construed when used herein as though followed by the words "or part or parts thereof" unless the context clearly requires a different meaning. **[Amended 2-3-1964]**

COURT — An open, unoccupied space other than a yard on the same lot with a building. A "court" or offset shallower than the width of its open side shall be considered to be a part of the yard on which it abuts.

FAMILY — Any number of individuals related by blood, marriage or adoption or not more than four individuals who are not so related living and cooking together as a single nonprofit housekeeping unit. A "family" shall also be deemed to include employees of such individuals living and working on the premises. **[Amended 3-2-1970]**

FRONTAGE — That boundary of any front yard which is formed by the intersection of such front yard with any public highway or road.

FRONT YARD — An open, unoccupied space on the same lot with a building situated between the wall of a building or any porch thereof nearest a public highway or road and such highway or road extending the full width of the lot. If such highway or road shall intersect the lot, the "front

yard" shall be deemed to include the portion of the lot on the side of said highway or road opposite to said building.

HABITABLE FLOOR AREA — Includes all floor areas in any dwelling excepting and excluding therefrom the floor areas of any garage, outer porch, breezeway or utility room therein or attached thereto. **[Added 9-29-1951]**

HEIGHT OF A BUILDING — The vertical distance measured, from the grade plane to the highest point of the building, exclusive of those features which are excepted from height measurement by § 125-10, except that for the main residence, where the base flood elevation is higher than the grade plane, as defined herein, the base flood elevation shall be the reference point for measuring height, instead of the grade plane. **[Amended 1-7-2008 by L.L. No. 1-2008]**

GRADE PLANE — A reference plane representing the average of the ground adjoining the building at all exterior walls before filling or grading takes place. **[Added 1-7-2008 by L.L. No. 1-2008]**

LOT — A parcel of land occupied or capable of being occupied by the buildings and the accessory buildings or structures provided for in this chapter, including such open spaces as are required by this chapter. Where a lot is bounded on one side by either Long Island Sound, Northport Bay or Duck Island Harbor, the mean highwater line shall, for the purposes of this chapter be deemed to be the boundary line of such lot on that side. Where a lot is intersected by a highway or road, the land on both sides thereof shall be included in determining the area of the lot and the area within the lot which may be occupied by building and accessory buildings.

LOT LEVEL — The average level of the lot before grading.

NONCONFORMING BUILDING OR USE — One that does not conform to the regulations of the district in which it is situated.

PREMISES — Includes the land and all structures thereon.

REAR YARD — An open, unoccupied space on the same lot with a building situated between the wall of the building opposite the front wall and the rear line of the lot, extending the full width of the lot.

ROAD — Includes a street or highway, together with any public right-of-way therefor. **[Added 3-7-1966]**

SIDE YARD — An open, unoccupied space on the same lot with a building situated between the building and the side line of the lot and extending through from the front yard to the rear yard.

SINGLE-FAMILY DWELLING — A building designed for and to be occupied exclusively as a home or residence for not more than one family.

STRUCTURE — A walled and roofed building, including a gas or liquid storage tank that is principally above ground; all components of air conditioning or heating units, including but not limited to compressors, fans and heat pumps; and generators. The term "structure" shall include but not be limited to "building" and "accessory building," as defined herein. **[Added 5-17-2001 by L.L. No. 2-2001]**

ARTICLE II Districts; Map

§ 125-3. Enumeration of districts; agricultural activities prohibited. **[Amended 2-3-1964; 4-8-2005 by L.L. No. 2-2005]**

- A. Since no business or trade other than agriculture has ever been carried on within the Village or on lands immediately

adjacent to the Village, and the lands within the Village have been exclusively devoted to resident uses and there has been no agricultural use of land within the Village since 1939, and since other localities without the Village afford convenient opportunities for the carrying on of trade and business and since introduction of business, including agriculture, in the Village might seriously affect the health and would seriously affect the comfort of the residents of the Village and the values of property therein, the Incorporated Village of Asharoken is hereby divided into three classes of districts, each of which is a residence class, and for the purpose of regulating and limiting the height and bulk of buildings hereafter erected and for the purpose of regulating and determining the density of population, the area of yards, courts and other open spaces surrounding the buildings hereafter erected, such classes of districts are hereby divided into three residence districts:

- A Residence Districts
- B Residence Districts
- C Residence Districts

- B. All agricultural activities involving the growing or harvesting of agricultural products, including but not limited to grains, vegetables, fruits, berries, flowers, trees, and shrubs for commercial purposes, and the operation of nurseries and/or greenhouses for commercial purposes, shall be prohibited in all such residential districts. **[Amended 10-3-2006 by L.L. No. 4-2006]**

§ 125-4. Zoning Map. [Amended 2-3-1964; 3-15-1967]

The boundaries of said districts established by this chapter shall be the boundary line shown on the Zoning Map, as amended from time to time, which accompanies this chapter

and is hereby declared to be a part of this chapter.¹The districts designated on said Zoning Map are hereby established. The district designations which accompany said Zoning Map and all the legends on such map are hereby declared to be a part of this chapter. When the location of a district boundary line is not otherwise determined, it shall be determined by the scale of the map measured from a given line. Where a district boundary line divides a lot in a single ownership at the time of the passage of this chapter, the Board of Appeals, as hereinafter provided, may permit the less restricted use to extend to the whole or any part of such lot.

§ 125-5. Conformity required.

No building or premises shall be used and no building shall be erected or altered for any purpose other than a purpose permitted in the district wherein the same shall be located, except in conformity with the regulations herein prescribed for such district.

**ARTICLE III
Use, Building and Lot Regulations**

§ 125-6. Applicability. [Amended 2-3-1964]

In A, B and C Residence Districts, the following regulations shall apply.

§ 125-7. Specific uses.

No building or premises shall be used and no building shall be erected or altered which is arranged, intended or designed to be used except for one or more of the following specific uses:

- A. Single-family dwellings. **[Amended 8-6-1984 by L.L. No. 5-1984]**

1. Editor's Note: The Zoning Map is on file in the office of the Village Clerk.

- B. Subject to the issuance of a special use permit by the Zoning Board of Appeals, clubs composed of residents of the Village, except clubs the chief activity of which is a service customarily carried on as a business. **[Amended 12-14-1987 by L.L. No. 2-1987]**
- C. Subject to the issuance of a special use permit by the Zoning Board of Appeals, churches and places of worship. **[Amended 12-14-1987 by L.L. No. 2-1987]**
- D. Subject to the issuance of a special use permit by the Zoning Board of Appeals, public schools, public libraries, public buildings necessary for the use and occupancy by the Village for administration purposes, public utilities and fire and police stations. **[Amended 3-17-1960; 12-14-1987 by L.L. No. 2-1987]**
- E. Subject to the issuance of a special use permit by the Zoning Board of Appeals, private schools, colleges, universities and museums, but not including any summer camp or private school which is not primarily devoted to the teaching of subjects which are normally part of a regular academic curriculum. **[Amended 12-14-1987 by L.L. No. 2-1987]**
- F. An accessory use. An "accessory use" is a use clearly incidental to and customarily found in connection with and subordinate to a permitted or specially permitted use of the premises. The term "accessory use" shall include the use of accessory buildings as defined under Article I, § 125-2 of this chapter. **[Amended 8-6-1984 by L.L. No. 5-1984; 12-14-1987 by L.L. No. 2-1987; 4-8-2005 by L.L. No. 2-2005²]**
- G. Additional accessory uses as follows, subject to the issuance of a special use permit by the Zoning Board of Appeals: **[Added 8-6-1984 by L.L. No. 5-1984]**

2. **Editor's Note: This local law also repealed former Subsection F, regarding growing of crops, nurseries and greenhouses.**

- (1) Accessory building used as:
 - (a) A dwelling for servants and employees engaged in work upon the premises.
 - (b) A dwelling for members of the family of the resident occupant of the premises.
 - (c) A dwelling used as a guest cottage for guests of the resident occupant of the premises.
- (2) Part of main dwelling used for professional purposes.
 - (a) Professional offices, studio or occupational rooms that are part of the main dwelling, when such facilities are being used by the resident occupant of the premises in the practice of his or her profession.
 - (b) A professional is a physician, surgeon, dentist, lawyer, artist and other such professional as may be determined by the Zoning Board of Appeals to be within the general category of professional by reason of education, training and experience.
 - (c) In determining professions permitted under this subsection, the Zoning Board of Appeals shall find that the use of the premises by the professional shall be compatible with the spirit and intent of this chapter.

H. Additional accessory uses shall be subject to the following limitations: **[Added 8-6-1984 by L.L. No. 5-1984]**

- (1) An accessory building shall not exceed the size of the main dwelling.
- (2) Accessory buildings used for human habitation, whether on a permanent or temporary basis, shall have a floor area not less than 400 square feet on the ground floor.

- (3) Professional offices, studios or occupational rooms of a professional shall not exceed 50% of the ground floor area of the main dwelling.
 - (4) The adult resident occupant of the main dwelling shall apply to the Zoning Board of Appeals for a special use permit. If the resident occupant is not the record owner of the premises, then all of the record owners of the premises shall give written consent to the resident occupant's application for a special use permit. The special use permit, when granted, shall be issued in the name of and for the benefit of the resident occupant; a special use permit shall not run with the land.
 - (5) The occupancy, in whole or in part, temporary or permanent, of a permitted additional accessory use granted under a special use permit, is not permitted and shall not begin until the resident occupant applies for a building permit and a certificate of occupancy is issued under this Zoning Ordinance and under the Building Administrative Ordinance³ and under the decision of the Zoning Board of Appeals granting a special use permit.
 - (6) Unless otherwise specified, the procedure to be followed in obtaining a variance under this chapter, including fees to be paid, shall be the same for an application for a special use permit.
 - (7) To such other and further conditions as may be imposed by the Zoning Board of Appeals as a condition to the granting of such special permit.
- I. Additional accessory uses existing as of the date of adoption of this chapter. **[Added 8-6-1984 by L.L. No. 5-1984]**

3. Editor's Note: See Ch. 42, Building Construction Administration.

- (1) Any additional accessory use permitted and existing as of the date of adoption of this chapter may continue; subject, however, to the conditions hereinafter set forth.
- (2) The resident occupant of premises which includes a permitted additional accessory use under the existing chapter shall be granted a special use permit, provided that the resident occupant can demonstrate that the existing additional accessory use complies with the terms and conditions of the existing chapter. If the Superintendent of Buildings shall reject such application, the resident occupant may then apply for a special use permit with the Zoning Board of Appeals. **[Amended 6-4-1990 by L.L. No. 2-1990; 12-6-1993 by L.L. No. 1-1993]**

J. Prohibited uses. [Added 8-6-1984 by L.L. No. 5-1984]

- (1) The independent renting, leasing or hiring, including the offer to rent, lease or hire an accessory building, in whole or part, on a temporary or permanent basis, with or without compensation for use and occupancy by a person or persons not a member, guest or employee of the resident occupant family is prohibited.
- (2) The conversion of the main dwelling into separate living units, with or without kitchen and cooking facilities, on a temporary or a permanent basis, with or without compensation or payment and the independent renting or leasing or hiring, including the offer to rent, hire or lease the same, is prohibited.

§ 125-8. Building restrictions near shorelines. [Amended 2-3-1964; 9-6-1994 by L.L. No. 4-1994]

Except as otherwise required in B and C Residence Districts, on a lot bounded by the shore of either Long Island Sound,

Northport Bay or Duck Island Harbor and bounded or intersected by a road or highway, no new building of any kind shall be erected less than 10 feet from the line of an adjoining lot owned by another person or less than 15 feet from the high-water mark of Long Island Sound, Northport Bay or Duck Island Harbor or less than 50 feet from said road or highway, excluding, however, the construction of walkways or ramps when said walkway or ramp is part of the construction required to allow the recipient of a permit, issued by the Village Board of Trustees pursuant to Article IVA of this chapter, access to a permitted dock.

§ 125-9. Lot reduction.

No lot area shall be so reduced that the dimensions of any of the open spaces shall be smaller than herein prescribed.

§ 125-10. Height restrictions.

- A. In the residence districts, no main buildings shall be constructed, altered, enlarged, extended, reconstructed or raised so as to contain more than three stories or as to exceed in any part a height of 40 feet. In said A Residence Districts, no accessory building shall be constructed, altered, enlarged, extended, reconstructed or raised so as to contain more than one story or so as to exceed in any point a height of 24 feet, and in said B or C Residence Districts, more than two stories or so as to exceed in any part a height of 30 feet. [Amended 2-3-1964; 1-7-2008 by L.L. No. 1-2008]
- B. The limitation as to height shall not apply to chimneys or to flag poles. [Amended 6-4-1990 by L.L. No. 2-1990; 12-6-1993 by L.L. No. 1-1993]

ARTICLE IV

Building Area; Density of Population**§ 125-11. A Residence Districts: lot restrictions.
[Amended 8-4-1975 by L.L. No. 3-1975]**

No lot in the A Residence Districts shall be used for building purposes unless it shall contain not less than 10,000 square feet, exclusive of any public road, and have a width of not less than 50 feet on the principal highway or road on which it abuts or on both sides of such highway or road by which it is intersected. No property which, at the time of the enactment of this chapter, is bounded on one side by Long Island Sound, Northport Bay or Duck Island Harbor and on another side by a highway or road then existing, shall hereafter be lain out or subdivided into lots or fractions of lots which shall not abut both on said highway or road and on the waters to which said property is then adjacent, nor shall any such property be lain out, subdivided, sold or purchased in fractions of lots which are less than 20 feet in width the full length of the property.

§ 125-12. A Residence Districts: building area limitations.

No buildings on any one lot in the A Residence Districts or on any fraction of a lot on which a dwelling may be erected, including accessory buildings, shall be constructed, altered, enlarged, extended, reconstructed, raised or moved so as to occupy at any level and in the aggregate more than 50% of the area of the lot or such fraction thereof, and no such buildings, in the aggregate, shall have less courtyard or open space surrounding them on said lot or said fraction thereof on which they may be erected than 5,000 square feet, exclusive of the area of any road within the lot, and no such lot or such fraction thereof shall be reduced or diminished in area so that the percentage of said lot or said fraction thereof as occupied by all the buildings thereon taken together shall exceed the percentage fixed by this section or so that the area of the courtyard or open space surrounding them on said lot or said fraction thereof shall be less than the area herein specified.

§ 125-13. A Residence Districts: dwelling restrictions; exceptions.

- A. No lot in the A Residence Districts shall have more than one single-family dwelling, in addition to accessory buildings permitted by this chapter, on such lot or on each fraction of such lot having a width of not less than 50 feet on a public highway or abutting with a width of not less than 50 feet on each side of a public highway or road by which it is intersected and extending for at least the same width to the opposite boundary of the lot.
- B. Exception. On any lot in separate ownership or under contract of purchase at the time of the passage of this chapter which has on it existing buildings not in conformity with the foregoing provisions, the use of such buildings shall be permitted, provided that such use shall in other respects conform to this chapter.
- C. Subject to the above provision, no dwellings in the A Residence Districts in the aggregate shall hereafter be erected or allowed to accommodate or make provision for more than four families on any acre of land or more than a proportional number of families on a fractional part of any acre of land, and the maximum of families which may hereafter be housed on any plot of ground shall not exceed the integral number obtained by multiplying the acreage of such plot, exclusive of the land within any highway or road lines, by four, less than fraction resulting therefrom.

§ 125-14. B Residence Districts: lot restrictions. [Amended 6-4-1990 by L.L. No. 2-1990; 12-6-1993 by L.L. No. 1-1993]

In B Residence Districts no property shall hereafter be laid out, subdivided or partitioned into lots or fractions of lots or parcels containing less than one acre nor containing a width of less than 100 feet of frontage on any road on which it fronts, nor have more than one residence on it, and no building on any one lot or on any fraction of a lot on which a building may be

erected, including accessory buildings, shall be constructed, altered, enlarged, extended, reconstructed, raised or moved so as to occupy at any level and in the aggregate more than 25% of the area of the lot, and no such lot or such fraction thereof, as occupied by all the buildings thereon taken together, shall be reduced or diminished so that the percentage of the lot, as occupied by all of the buildings thereon taken together, shall exceed the percentage fixed by this section or so that the area of the yard or courts on said lot or said fraction thereof shall be less than 32,670 square feet.

§ 125-15. B Residence Districts: dwelling restrictions.

In B Residence Districts, no buildings in the aggregate shall hereafter be erected or allowed to accommodate or make provision for more than one family on any acre of land. The maximum number of families which may hereafter be housed on any plot of ground shall not exceed the integral number obtained by multiplying the acreage of said plot, exclusive of the land within highway or road lines, by one less any fraction resulting therefrom.

§ 125-16. B Residence Districts: yard restrictions.

- A. Along all frontage in the B Residence Districts, there shall be a front yard of the minimum depth of 50 feet.
- B. A side yard in the B Residence Districts shall be 25 feet and the rear yard shall be 50 feet. **[Added 2-3-1964]**

§ 125-17. C Residence Districts: lot restrictions. [Added 2-3-1964; amended 6-4-1990 by L.L. No. 2-1990; 12-6-1993 by L.L. No. 1-1993]

In C Residence Districts, no property shall hereafter be laid out, subdivided or partitioned into lots or fractions of lots or parcels containing less than two acres nor containing a width of less than 150 feet of frontage on any road placed upon the

Official Village Map on which it fronts, nor have more than one residence on it.

§ 125-18. C Residence Districts: dwelling restrictions. [Added 2-3-1964]

In C Residence Districts, no buildings in the aggregate shall hereafter be erected or allowed to accommodate or make provision for more than one family on any two acres of land. The maximum number of families which may hereafter be housed on any plot of ground shall not exceed the integral number obtained by multiplying the acreage of said plot, exclusive of the land within highway or road lines, by 1/2 less any fraction resulting therefrom.

§ 125-19. C Residence Districts: yard restrictions. [Added 2-3-1964]

Along all frontage in the C Residence Districts, there shall be a front yard of the minimum depth of 75 feet. A side yard in C Residence Districts shall be 50 feet and the rear yard shall be 75 feet.

§ 125-20. Accessory buildings.

No accessory building shall be erected on any lot until either the residence thereon shall have been erected and a certificate of occupancy issued or plans for the residence thereon shall have been filed with the Village Clerk, a building permit therefor issued and the construction thereof actually commenced. If the construction of the residence is not completed within 12 months after its commencement and certificate of occupancy issued within said 12 months, any accessory building shall be removed.

§ 125-21. Habitable floor area restrictions. [Added 9-29-1951; amended 3-17-1960; 2-3-1964; 9-26-1966]

No building shall hereafter be used as a dwelling if it shall contain less than 1,200 square feet of habitable floor area on the ground floor if such building be located in an A Residence District or less than 1,500 square feet if located in a B Residence District or less than 2,000 square feet if located in a C Residence District. No dwelling shall hereafter be erected to contain less than 1,200, 1,500 or 2,000 square feet of habitable floor area on the ground floor in such respective districts. No dwelling shall hereafter be altered to decrease its area so that it shall contain less than 1,200, 1,500 or 2,000 square feet of habitable floor area on the ground floor in such respective districts.⁴

§ 125-22. Issuance of permit. [Added 2-3-1964]

No permit for the erection of any building shall be issued unless the street or highway giving access to such proposed building, which street or highway must either abut or terminate at the frontage boundary of the lot on which such building is located, has been duly placed on the Official Map of the Village. Before such permit shall be issued, such street or highway, if the same be not presently in existence as a traveled road, either public or private, shall be suitably improved to the satisfaction of the appropriate Village officials in accordance with such standards and specifications as may be required or a performance bond furnished to the Village by the owner as specified in the Village Law.⁵

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4. Editor's Note: Original Section 313, as renumbered to Section 316 and which immediately followed this section, was deleted 6-4-1990 by L.L. No. 2-1990. See now § 125-2B, Habitable floor area.
 5. Editor's Note: Original Section 318, added 11-2-1964 and which immediately followed this section, was deleted 6-4-1990 by L.L. No. 2-1990. See now §§ 125-14 and 125-17.

ARTICLE IVA

Docks**[Added 5-26-1994 by L.L. No. 1-1994⁶]****§ 125-22.1. Findings; areas affected.**

The Village Board of Trustees hereby finds that for ecological, public enjoyment, public navigation, aesthetic, public health, safety and welfare reasons, certain coastal areas within the Village of Asharoken must be protected. Both Northport Bay and Duck Island Harbor have been designated as Significant Coastal Fish and Wildlife Habitats by the State of New York. Furthermore, certain portions of Northport Bay are within the confines of the Village of Asharoken and therefore lie entirely within and are subject to the jurisdiction of the Village of Asharoken. This area is know as the "Ida Smith property" and encompasses an area beginning at the shoreline of Northport Bay in the Village of Asharoken at the eastern end of the Duck Island Corporation property (275 Asharoken Avenue) and runs in an easterly direction approximately 3/4 of one mile to approximately 105 Asharoken Avenue.

§ 125-22.2. Basis for regulation of docks.

- A. Environmental. Docks tend to impede the tidal and littoral flow of waters, thereby causing the collection of flotsam and decaying marine and plant life on and above shoreline, where insects breed. The mooring of boats on docks results in increased near-shore dumping and oil and gas spillage; erosion of sand occurs between docks and accretes along with seaweed in and around the docks all of which interferes with the environmental quality of the waterfront.
- B. Pollution. The air becomes polluted by increased engine operation from the storing, running, idling and testing of boats alongside of docks. Further air pollution results from

6. Editor's Note: This local law also provided for the repeal of former Article IVA, Docks, added 3-9-1992 by L.L. No. 1-1992.

rotting seaweed, grass and moss collected by docks, from pier and boat cleaning, from cooking on boats near the shore and from barnacles and mussels under docks and piers stored on the beach off-season. Noise occurs from people walking the pier and partying on boats and piers, and from rattling and banging of docks and floats. Water pollution occurs from gasoline spillage during fueling, from rotting seaweed and debris and from boat maintenance operations of soaping, applying detergents, cleaners, paint and oil.

- C. Swimming. The foregoing referred to proliferation of debris, gas, oil and stagnant water caused by dock interference with water flow is hazardous to the health of those attempting to swim in the area. The approach of boats to the docks can be a hazard to swimmers, as can dock anchors and moorings, including chains and cable tackle positioned just below waterline at various tides. Docks are obstacles to lateral swimming along the beach.
- D. Navigation. Sailboats tacking to and from the beach have their movement controlled by docks, floats anchors and mooring lines. In addition, docks limit the movement of rowboats, canoes and small boats along the shore.
- E. Aesthetics. Docks destroy the open beach vista, and dock sections piled up on the beach (and sometimes abandoned) during off-season are unsightly. Lights on docks shining shoreward at night disturb uplandowners.
- F. General. Unauthorized persons have access to and from waterfront homes by use of docks. Activity from those using docks and mooring boats thereon increases the need for police protection, causes neighbor's complaints and in general results in a higher cost to the Village. Hazards to children are created by the risk of their unattended walking on docks and falling into deep waters. High winds from storms can cause portions of docks to break loose and endanger vessels in the vicinity and structures on the neighboring shore. The potential for a multitude of additional docks in the Village, with many of the

properties being less than 60 feet in width at the shoreline, leads the Board of Trustees to find an appropriate balance must be achieved between property owners' desires to access the water and the public enjoyment of water and the foreshore in the Village.

§ 125-22.3. Alternative to private docks.

It is noted that various means already exist for property owners to access their boats, including private rowboats, membership in various nearby yacht clubs, public mooring facilities in Northport, Centerport and Huntington Harbors, commercial marine supply companies providing launch service and moorings and the Village of Northport dock.

§ 125-22.4. Environmental Review Board; permit required.

- A. Creation and organization of an Environmental Review Board. There is hereby created an Environmental Review Board (ERB) for the purpose of reviewing each application for construction or alteration of a dock and recommending approval or disapproval to the Board of Trustees of the issuance of said permit. All such applications shall be made to the Village Clerk and referred thereafter to the ERB. The ERB shall consist of the Chairman of the Planning Board, the Chairman of the Conservation Board, the Superintendents of Buildings, the Harbormaster and three additional members who shall be qualified by reason of experience or training in architecture, land development, City planning, real estate, landscape architecture, environmental analysis or other relevant business or professional experience, or by reason of civic interest and sound judgment, to review the effects of the proposed construction upon surrounding areas. The members of the ERB shall be appointed annually by the Village Board of Trustees. The Mayor shall appoint any member of the ERB as its Chairman.

B. Meetings; adoption of rules.

- (1) All meetings of the ERB shall be considered to be public meetings. The ERB shall meet on a regular basis at least one time per month, on the same day and week of each month, provided that there are applications for it to consider. Said date and time shall be set by the ERB on an annual basis. An applicant must file all papers with the Village Clerk not later than two weeks prior to the regular monthly meeting of the ERB in order that his application may be discussed at such meeting.
- (2) A majority of the ERB shall constitute a quorum for the transaction of business. The ERB shall keep minutes of its proceedings, showing the vote of each member upon each question or, if absent or failing to vote, indicating such fact. The ERB shall have the power to adopt, amend and repeal rules and regulation, not inconsistent with other laws or these provisions, governing its procedure and other transactions of its business and to recommend to the Board of Trustees approval or disapproval of applications for dock permits therefor in accordance with the provisions of this Article.
- (3) Every rule or regulation, every amendment or repeal thereof and every order, requirement, decision or determination of the ERB shall be in writing and filed in the office of the Village Clerk and shall be a public record.

C. Referral of applications for permits. Every completed application for a building permit for the construction, reconstruction or alteration of a dock shall be referred to the ERB by the Village Clerk. The referral shall be made upon receipt by the Village Clerk of a completed application, provided that such application conforms in all respects to all other applicable laws and ordinances.

- D. Notice. Notice of every application referred to the ERB pursuant to this Article in connection with a dock permit shall be mailed to each property owner in the area known as the "Ida Smith property," as delineated in § 125-22.5 hereunder, and to each owner whose property borders on Northport Bay and is located within 500 linear feet of such property. The applicant shall be responsible for payment of the cost of such mailing and said cost shall be submitted to Village Clerk with the application. Failure to comply with this subsection shall result in the application being deemed incomplete.
- E. Requirement of permit.
- (1) Issuance of permit. No dock shall be maintained or erected in the Village without the issuance of a permit by the Board of Trustees after recommendation by the ERB and issuance of a building permit by the Superintendent of Buildings.
 - (2) Preexisting docks. Every owner of a dock for which no permit has been issued by the Village Board of Trustees prior to the enactment of this Article shall, within one year from the effective date hereof, apply to the Board of Trustees for permission to continue use of such dock.

§ 125-22.5. Description of area to be regulated; regulations applicable.

- A. Property description. The area to be regulated by this Article encompasses an area beginning at the shoreline of Northport Bay in the Village of Asharoken at the eastern end of the Duck Island Corporation property (275 Asharoken Avenue) and runs along the underwater border of the Village in an easterly direction approximately 3/4 of one mile to approximately 105 Asharoken Avenue. Approximately 73 individually owned beachfront lots, bounded on the north by Asharoken Avenue, Carter's Bight, Beach Plum Drive or vicinity and extending out into

Northport Bay, on underwater land between 275 and 105 Asharoken Avenue, known as the "Ida Smith property," are located in this area.

B. Regulations applicable in the "Ida Smith" area.

- (1) For the reasons specified in §§ 125-22.2 and 125-22.3 above, the ERB shall recommend the issuance of dock permits only when it is determined that such structures will not provide any of the adverse effects enumerated in § 125-22.2 herein, and any such dock shall meet all of the following conditions:
 - (a) In order to minimize visual impact, the dock shall be of the floating variety only and shall only be permitted in those locations where the rising and lowering of such floating dock will not have a significant adverse impact upon vegetation, wildlife or wildlife habitat.
 - (b) The dock shall be designed and constructed of such materials and in such a manner as to minimize any adverse environmental effect on the waters of the area and to allow for adequate flow-through of waters while the dock is resting in the water, and to prevent a major part thereof from contacting the beach when tidal waters recede.
 - (c) The dock shall be of a length, size and height and of sufficient distance from any other docks such that there be no significant adverse impact upon the environment from a visual perspective or otherwise, shall be of a length which does not impeded the navigation of vessels and shall be of a total length which in no case extends more than 50 linear feet seaward from the mean low water mark, and in no case shall the seaward end of the dock extend beyond the point where the mean low water depth at such point exceeds three feet.

- (d) The width of the dock excluding vertical supports shall not exceed four feet. The center line of the dock shall follow the center line of the property.
 - (e) All docks shall be removed from the water during the months of November through March, including any anchors and moorings therefor.
- (2) No expansion or substantial alteration shall be made to any existing dock unless the owner thereof, upon application, receives approval from the Board of Trustees, after review by the ERB and the issuance of a building permit by the Superintendent of Buildings, under the same conditions provided in Subsection B(1) above. The term "substantial alteration" shall include but not be limited to any new installation or addition to the originally permitted configuration of the dock, but shall not be construed to mean the replacement and securing of existing deck boards or sections, or the painting and ordinary maintenance for any such docks.
 - (3) No portion of any dock or its anchors, mooring or ground tackle shall overlap the owner's upland property line, as extended into the water. Every attempt shall be made by the property owner to set such anchor, mooring or ground tackle so that it does not overlap the owners side yard setback line, as extended into the water.
 - (4) Any existing dock whose owner has not been issued all appropriate permits therefor shall be removed.
 - (5) The term "dock" shall include any pier, boat dock, boat ramp, wharf, jetty or any other structure built on floats, columns, open timber, piles or openwork supports, installed separately from any attachment to the uplandowner's beach, or extending from the uplandowner's beach into the waters adjoining the

Village, including any such structure located up to 15 feet landward of the uplandowner's beach into the waters adjoining the Village, including any such structure located up to 15 feet landward of the high water mark. [Amended 8-2-2004 by L.L. No. 1-2004]

§ 125-22.6. Permit application; fees; referral to ERB.

- A. Procedure. Before commencing work on any dock, the owner of the premises, or his or her authorized representative, shall apply for a permit from the Board of Trustees at the office of the Village Clerk. The application must contain the following information and be accompanied by such of the following or other data and in such form as may reasonably be required:
- (1) The application must be on a form prescribed by the Village Clerk and must be accompanied by valid permits issued by the United States Army Corps of Engineers and the New York State Department of Environmental Conservation.
 - (2) An appropriate completed environmental assessment form (long form) and information required under the New York State Environmental Quality Review Act⁷ must accompany each application.
 - (3) A complete description of the proposed work, including a set of detailed plans showing the structure and the materials to be used must be provided; all plans shall be stamped with the seal of a licensed architect or professional engineer to the extent required by the Education Law of the State of New York.

7. Editor's Note: See Article 8 of the Environmental Conservation Law.

- (4) The plans must be accompanied by a survey showing location of the dock and dimensions of the affected premises.
 - (5) The application must detail the method to be employed and the length of time required for the performance of the work.
- B. Fees. The fee established by the Board of Trustees shall be payable to the Village upon applying for a permit hereunder. This fee shall be in addition to the costs for the mailing of notices, which shall also be borne by the applicant pursuant to § 125-22.4D hereunder. The Board of Trustees may also impose a fee upon the applicant at the time of making the application or thereafter, commensurate with any expense reasonably incurred or expected to be incurred by the Board in the consideration of such application, including the cost of retaining environmental and other consultants, as deemed necessary by the Board of Trustees.
- C. Recommendation of the ERB. Upon completion of its review of the application, the ERB shall submit its recommendations thereon to the Board of Trustees at its next regularly scheduled meeting. If further information is needed for the ERB to make its recommendations, the Chairman shall request such information directly from the applicant. The application shall be processed by the ERB as promptly as possible.
- D. Determination by the Board of Trustees. The ERB shall make its recommendations to the Board of Trustees. The Village Board shall comply with all the provisions of the State Environmental Quality Review Act prior to the issuance of a permit pursuant to this Article.

§ 125-22.7. Use of docks; rules.

The following rules shall apply with respect to the use and operation of docks within the Village:

- A. No boat other than one belonging to the upland property owner and/or another resident of the Village may be moored at a dock, except that a guest of the owner may use such facility for a period of up to 48 hours. Dock space shall not be rented.
- B. No mooring shall be placed on underwater land such as to cause a hazard to adjacent properties.
- C. No gasoline or diesel fuel shall be stored on any dock.
- D. No floodlights shall be installed on any floating part of a dock.
- E. Docks shall not be stored during off-season on the beach of the uplandowner and, if stored on the upland property, must be stored at least 30 feet upland from the higher of mean high water line or the sea grass.

§ 125-22.8. Supervision by Harbor Masters.

Possession of a permit hereunder for the erection, expansion or substantial alteration of a dock, and the rules regarding use and operation of docks within the Village, shall be subject to supervision by the Harbor Master and the Deputy Harbor Masters, with any violation thereof to be reported to the Village Clerk.

§ 125-22.9. Penalties for offenses.

- A. Any violation of this Article or any part thereof shall be punishable by a fine of not exceeding \$250 for each offense. Each day that a violation continues shall be deemed to be a separate offense.
- B. Appropriate actions or proceedings may be taken at law or in equity to prevent any unlawful actions under this Article, or to restrain, correct or abate a violation thereof; and these remedies shall be in addition to the penalties prescribed in the preceding subsection.

ARTICLE V
Nonconforming Buildings

§ 125-23. Uses permitted.

Any lawful use, lawfully located and existing in any building, or part thereof or upon any private land or premises or part thereof, at the time this chapter takes effect, may be continued in the same building or in the same part thereof or upon the same land or premises or upon the same part thereof, if lawfully located, even though such use does not conform to the regulations of the district in which such use is located.⁸

ARTICLE VI
General Provisions

§ 125-24. Court and yard requirements.

- A. No lot area shall be reduced or diminished so that the area of the yards and courts shall be smaller than prescribed by this chapter. No existing buildings shall be altered, enlarged or rebuilt except in conformity with the regulations herein prescribed.
- B. The area required in a court or yard at any given level shall be open from such level to the sky unobstructed, except for the ordinary projections of parapet above the bottom of such court or yard and except for the ordinary projections of windowsills and belt courses, to the extent of not more than four inches, cantilevered window air conditioners to the extent of not more than one foot, and of cornices and roof overhangs to the extent of not more than three feet. No other structures, as defined herein, shall be permitted in the area required for a side yard or court.⁹
[Amended 3-17-1960; 5-17-2001 by L.L. No. 2-2001]

8. Editor's Note: Original Article V, Applications and permits, which immediately followed this section, was repealed 4-10-1954. See now Ch. 42, Building Construction Administration.

9. Editor's Note: Original Subsections 600(3) and (4), which immediately followed this subsection, were deleted 6-4-1990 by L.L. No. 2-1990.

§ 125-25. Public parking places.

Notwithstanding any provisions of this chapter, no public parking place shall be conducted in any district, except when owned or controlled by the municipality or its agents, unless approved by the Board of Zoning Appeals.

§ 125-26. Obstructions to view.

On any lot in any district, no wall, fence or other structure shall be erected or altered, and no hedge, tree, shrub or other growth shall be maintained which may cause danger to traffic on a street by obscuring the view.

§ 125-27. Completion of buildings.

Nothing herein contained shall require any change in the plans, construction or designated use of a building, the construction of which shall have been begun at the time this chapter takes effect and which entire building shall have been completed within one year from the date of the adoption of this chapter.

§ 125-28. Signs. [Amended 10-10-1965]

In any residence district, no billboard, signboard or advertising sign, including a sign appearing on any vehicle parked within the Village denoting the business of its owner or lessee, which is visible from any public highway or road or from the waters of Long Island Sound, Northport Bay or Duck Island Harbor, shall be permitted, except the following:

- A. One sign not exceeding one square foot of area displaying the street number or name of the premises or name of the occupant of the premises or all of the above. Such sign shall not be illuminated.
- B. One "for sale" or "for rent" sign not exceeding four square feet in area and advertising the property on which the

same is erected. Such signs shall in no case be located within 15 feet of any road or street line.

- C. Building contractors' and subcontractors' signs maintained on buildings while the same are actually under construction, provided that no such sign shall exceed four square feet in area or be located nearer than 15 feet to the road or street line.
- D. Temporary signs referring to the land on which the sign is erected, only when approved by the Clerk of the Village, provided that no permit for any such temporary sign shall be granted for more than one year. In granting a permit for the erection of such temporary sign, the Clerk of the Village shall fix the location and size thereof and shall limit the purpose for which such temporary sign shall be erected.
- E. A vehicle on which a business sign appears may be temporarily parked when the driver or occupant of such vehicle has business with the occupant or owner of the premises on which the vehicle is parked. **[Added 10-10-1965]**

§ 125-29. Floodlights and loudspeakers.

No flood or search lights or loudspeakers shall be erected or operated in any district.

§ 125-30. Trailers. [Added 3-17-1960]

No automobile trailer or vehicle designed to be used for human habitation shall be used, stored or parked in the Village, except that such trailer or vehicle may be stored or parked inside a private garage.

§ 125-31. Vehicles on vacant land. [Added 12-18-1960; amended 3-2-1970]

- A. The number of motor vehicles, including trucks and motorcycles, which may be placed at any one time on any vacant parcel of land in the Village in A Residence Districts, which is bounded by Long Island Sound or across Asharoken Avenue from a vacant parcel bounded by Long Island Sound and owned by the same person, shall be limited in accordance with the width of said parcel, measured along Asharoken Avenue, as follows:
- (1) As to all parcels in separate ownership of less than 20 feet in width as of July 1, 1960, no more than two motor vehicles may be placed thereon at one time.
 - (2) As to all parcels in separate ownership of 20 feet or more in width as of July 1, 1960, no more than three motor vehicles, plus one motor vehicle for every full 10 feet in excess of 20 feet in width, may be placed thereon at one time; that is, if said parcel is 30 feet in width, or up to 39 feet, no more than four motor vehicles are permitted; if said parcel is 40 feet in width, or up to 49 feet, no more than five motor vehicles are permitted, etc.
 - (3) As to all parcels which may be divided into smaller parcels in separate ownership after July 1, 1960, the limitations as to number of motor vehicles specified in Subsections A(1) and (2) hereof shall apply, except that no motor vehicle shall be placed at any time on any parcel which is thereafter subdivided into less than 20 feet in width.
- B. No more than three vehicles, including trucks and motorcycles, may be placed at any one time on any other vacant parcel of land in the Village. Adjoining vacant parcels of land, on the same side of the street, owned by the same person are to be considered one parcel for the purpose of this subsection.

- C. Each owner of a vacant parcel desiring to place or allow any other person to place a motor vehicle thereon shall, on or before May 1 of each year, apply to the Village Clerk for a permit card, and no vehicle shall be placed thereon by any person without such card. **[Amended 6-2-1975 by L.L. No. 2-1975]**
- D. Before placing a motor vehicle on any vacant parcel north (Long Island Sound side) of Asharoken Avenue from property now or formerly of Bergold (296 Asharoken Avenue) up to property now or formerly of Morgan (across from Bevin Road entrance), the owner of such parcel, in addition to complying with the foregoing regulations, shall apply for permission to the Board of Trustees. Permission by the Board shall be granted only if, in its judgment, the driving and placing of motor vehicles on such parcel will not endanger the Village highway or other property in the Village by reason of disturbance of sand dunes or natural growths which serve as protection in this narrow strip from the waters of Long Island Sound.
- E. Exceptions to the above limitations on the number of permit cards issued for each parcel may be granted by the Board of Trustees, in its discretion, if, since at least July 1, 1960, such parcel has been jointly owned or more than one person has had the right to the use thereof as established by deed, charter or other written instrument; but notwithstanding the issuance of such additional cards, no more motor vehicles than above specified shall be placed at any one time on such parcel.
- F. In case of some special event, the Board of Trustees, or the Mayor, under instructions from the Board, may grant to the owner the right to place on a parcel more than the above prescribed number of motor vehicles, upon such conditions as the Board may deem advisable to impose.
- G. A vacant parcel of land shall not be deemed to include unimproved land adjoining, on the same side of the street, land on which a house is located, where all of such land is owned by the same person.

§ 125-32. Swimming pools. [Added 9-10-1962]

- A. Swimming pools may be installed in A, B or C Residence Districts only as accessory structures to a dwelling for the private use of the owners or occupants of such dwelling and their families and guests. **[Amended 2-3-1964]**
- B. No swimming pool shall be installed, maintained or enlarged unless:
- (1) No portion of such pool shall exceed a height of 18 inches from ground level.
 - (2) There shall be erected and maintained a good-quality close-woven fence at least four feet in height, enclosing the entire portion of the premises upon which such pool shall be installed other than any portion where the side of the dwelling serves as part of the enclosure. **[Amended 9-5-1967]**
 - (3) Every gate or other opening in the fence enclosing such pool, except an opening through the dwelling or other main building of the premises, shall be kept securely closed and locked at all times when the owner or occupant of the premises is not present at such pool, and shall be equipped with self-closing devices.
 - (4) A maintenance area of at least four feet shall be maintained between the pool fencing and the sidewalks of the pool.
 - (5) Such pool area shall not occupy more than 40% of the open area of the rear yard.
 - (6) If the water for such pool is supplied from a private well, there shall be no cross connection with the public water supply system.
 - (7) If the water for each pool is supplied from the public water supply system, the inlet shall be above the overflow level of the pool.

- (8) Such pool shall be chemically treated in a manner sufficient to maintain the bacterial standards established by the provisions of the New York State Sanitary Code relating to public swimming pools.
 - (9) The walls and floors of such pool shall be constructed of impervious material which shall provide a tight tank of sufficient strength to contain the water therein.
 - (10) Such pool shall be so located that no current-carrying electrical conductors shall cross it, either overhead or underground.
- C. No permission shall be granted for the installation of any swimming pool unless the plans therefor meet the approval of the Village of Asharoken Building Department construction requirements, until the owner of the premises has filed with the Building Department a certification approved by a professional engineer licensed by the State of New York that the drainage of such pool is adequate and will not interfere with the public water supply system, with existing sanitary facilities, with adjoining property owners or with the public highways. A fee computed in the same manner as under § 42-4 of the Village Building Administrative Ordinance shall be paid to the Village Clerk at the time of application for a swimming pool permit.
- D. Swimming pools shall, for the purposes of this chapter, be construed to mean any tank, depression or excavation in any material, dike or berm constructed, erected, excavated or maintained which will cause the redraining of water to a greater depth than 18 inches and having a larger plane surface area of water greater than 100 square feet. The word "pool" shall include both indoor and outdoor water pools, but as to indoor pools Subsections B(1), (2), (3), (4) and (5) hereof shall not apply.
- E. Should the owner abandon the pool, he shall arrange to remove the depression and return the surface of the

ground to its original grade and approximately in the same condition as before the pool was constructed, and he shall further notify the Building Department of the Village of Asharoken of the abandonment so that an inspection of the site may be made and the records of the permit be marked accordingly.

§ 125-33. Platforms. [Added 10-10-1965; amended 6-3-1968; 8-6-1973; 5-26-1994 by L.L. No. 1-1994; 9-6-1994 by L.L. No. 4-1994]

No platform, lockers, ramps, tents, awnings or other structures of any kind (other than fences or walls, or the construction of walkways or ramps when said walkway or ramp is part of the construction required to allow the recipient of a permit, issued by the Village Board of Trustees pursuant to Article IVA of this chapter, access to a permitted dock) shall be erected or placed:

- A. On any vacant lot, land or beach at any part thereof.
- B. On any occupied lot at any place nearer to the highway or water than a building would be permitted to extend.
- C. On any vacant portion of a lot which is intersected by a highway or road, the occupied portion of which lot is on the opposite side of such highway or road.
- D. This section shall not apply to temporary tents erected for a specific period of time pursuant to a permit issued by the Village Board of Trustees. **[Added 10-1-2001 by L.L. No. 3-2001]**

§ 125-34. Planning Board. [Added 11-2-1964]

- A. For the purpose of these regulations, the term "subdivision" shall be defined as the division of any parcel of land, with or without streets, into two or more lots, blocks, sites or other divisions of land for the purpose, whether immediate or future, of building development.

- B. Whenever any subdivision of land is proposed and before any contract for the sale of or any offer to sell any lots in such subdivision or any part thereof is made and before any permit for the erection of a structure in such proposed subdivision shall be granted, the subdivider or his duly authorized agent shall apply in writing for approval of such proposed subdivision to the Planning Board.
- C. The Planning Board shall study the practicability of the proposed layout, giving special attention to the arrangement, location and width of streets, conformance of lots to the Zoning Ordinance, the arrangement of lots and their access to acceptable rights-of-way, the relationship of the lots to the topography of the land and to areas of known flooding and the need for road, drainage, water supply and other improvements.
- D. The Planning Board shall consider the proposed subdivision plan and shall hold hearings in accordance with all requirements and regulations of Article 7 of the Village Law and shall express its approval, approval with modifications or disapproval of said subdivision, expressing in such cases its reasons for disapproval.

§ 125-35. Excessively similar buildings. [Added 9-5-1967]

- A. No building permit shall be issued for the erection or exterior alteration of any dwelling in the Village if such dwelling be excessively similar in design to any neighboring dwelling existing or for which a permit has been issued or to any other dwelling included in the same permit application, in respect to one or more of the following features of exterior design and appearance:
 - (1) Apparently identical facade;
 - (2) Substantially identical size and arrangement of either doors, windows, porticoes or other openings or breaks in the facade facing the street, including a reverse arrangement; or

- (3) Other significant identical features, such as but not limited to construction material, roofline and height or other design elements.
- B. A dwelling shall be deemed to be a neighboring dwelling in relation to the premises for which the permit is sought if the lot upon which such neighboring dwelling or any part of it which has been or will be erected is one of the following lots:
- (1) Any lot on the same street upon which the dwelling to be erected or altered would front which is the first or second lot next along said street in any direction, without regard to intervening street lines.
 - (2) Any lot, any part of the street line frontage of which is across said street from the lot of such dwelling or from a lot referred to in Subsection B(1) of this subsection.
 - (3) Any lot, any part of which adjoins the lot of such dwelling at any point or adjoins a lot which adjoins the lot of such dwelling at any point.
- C. The Superintendent of Buildings may require the applicant for a building permit to submit drawings showing the exterior appearance of such dwelling.
- D. Any person aggrieved by the action of the Superintendent of Buildings in refusing a permit by reason of violation of this section may appeal therefrom to the duly constituted Board of Zoning Appeals of the Village in the same manner as is provided for zoning appeals.

ARTICLE VII
Board of Zoning Appeals

§ 125-36. Establishment; membership. [Amended 6-2-1986 by L.L. No. 1-1986; 9-9-1996 by L.L. No. 2-1996]

A Board of Zoning Appeals is hereby established. Said Board shall consist of five members to be appointed by the Mayor. In the event that conflicts of interest make it impossible to obtain the quorum necessary to conduct business, the Mayor may appoint such additional ad hoc member or members to the Board as may be necessary to provide a quorum. Said Board shall have appellate jurisdiction as provided in the Village Law.

§ 125-37. Determination of regulation.

The Board of Zoning Appeals may in a specific case, after public notice and hearing and subject to appropriate conditions and safeguards, determine and vary the application of the regulations herein established in harmony with their general purpose and intent, as follows:

- A. Approve the issuance of a permit wherever it is provided in this chapter that the approval of the Board of Zoning Appeals is required; vary or modify the application of any of the regulations of this chapter relating to the use, construction or alteration of buildings or the use of land, so that the spirit of this chapter shall be observed, public safety and welfare secured and substantial justice done when, in the opinion of the Board of Zoning Appeals, there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of this chapter.
- B. Where a district boundary that divides a lot held in single and separate ownership at the time of the adoption of this chapter, permit a use authorized on either portion of the lot to extend to the entire lot, but not more than 100 feet beyond the boundary line of the district in which such use is authorized.

- C. Permit the extension of nonconforming use or building upon the lot occupied by such use or building at the time of the adoption of this chapter.
- D. In B or C Residence Districts of the Village, approve the issuance of temporary and conditional permits for buildings and uses in contravention of the use regulations controlling residence districts, provided that such uses are not prejudicial to adjoining and neighboring sections already developed. **[Amended 2-3-1964]**
- E. Permit any public utility building in any district.
- F. Determine and establish the true location of district boundaries in any disputed case.

§ 125-38. Filing appeals.

The Board of Appeals shall make rules as to the manner of filing appeals or application for special exceptions or variance from the terms of this chapter, or any other matters requiring action by said Board.

§ 125-39. Fee; public hearing. [Amended 10-7-1968 by resolution; 3-7-1977 by L.L. No. 1-1977; 2-7-2005 by L.L. No. 1-2005]

- A. Upon the filing with the Board of Zoning Appeals of an appeal or an application for a special exception or variance from the terms of this chapter and upon deposit and payment of the cost of advertising and mailing notices as hereinafter required and upon payment of a fee, in an amount to be determined from time to time by resolution by the Village Board, to the Village Clerk, the Board of Zoning Appeals shall fix a time and place for a public hearing thereon, and shall give notice thereof as follows:
 - (1) By publishing a notice thereof once a week for two weeks in the official newspaper of the Village.

- (2) By mailing a notice thereof to the owners of all adjoining property.
 - (3) By mailing a notice thereof to every resident and association of residents in the Village who or which shall have registered its name and address for this purpose with the Board of Zoning Appeals.
- B. Upon the filing with the Board of Zoning Appeals of an application for an annual renewal of an accessory apartment permit issued pursuant to § 125-7 of the Village Code and upon the deposit and payment of the cost of advertising and mailing notices as hereinafter required and upon the payment of a fee, in an amount to be determined from time to time by resolution by the Village Board, to the Village Clerk, the Board of Zoning Appeals shall fix a time and place for a public hearing thereon, and shall give notice as required in Subsection A of this section, above.

§ 125-40. Content of notice.

The notice required by § 125-39 shall state the location of the building or lot and the general nature of the question involved.

§ 125-41. Special permits. [Added 8-6-1984 by L.L. No. 4-1984]

- A. No special permit or special exception authorized under the Zoning Ordinance shall be granted by the Board of Zoning Appeals unless it shall determine that the proposed use:
- (1) Will not prevent the reasonable use of permitted uses in the surrounding area or impair the value or character thereof.
 - (2) Will not adversely affect the safety, health, welfare, comfort, convenience and order of the Village.

- (3) Will be in harmony with and promote the general intent of the Zoning Ordinance.
- (4) Will not adversely affect municipal services and traffic patterns and congestion on, onto or from streets, roads, highways and waterways.

B. In making such determination, the Board of Zoning Appeals may consider, among other things, the following:

- (1) The character of existing and probable development of uses in the area.
- (2) The conservation of property values and encouragement of the most appropriate uses of land.
- (3) The effect of the proposed uses on municipal services and traffic patterns and congestion on streets, roads, highways and waterways.
- (4) The availability of adequate utility service and waste disposal facilities.
- (5) The size and/or intensity of the proposed use and buildings or structures to be used in connection therewith compared to those existing and permitted in the area.
- (6) The number of persons intended to use or occupy the proposed use and the terms under which and times during which they will so use or occupy the same.
- (7) Whether the proposed use or buildings or structures to be used in connection therewith will cause overcrowding of land, undue concentration of population or deprive neighboring uses of light and air.
- (8) Whether the proposed use or buildings or structures to be used comply with all other applicable law.

C. In issuing any such special permits, the Board may impose any specific conditions or requirements which, in its opinion, are reasonably designed to further the intent and purpose of this chapter. Such conditions and/or restrictions shall be a continuing condition of the validity and existence of such a permit and may also include in the following enumerated uses those set forth as follows:

- (1) Use of accessory building for residential purposes by persons employed on the premises. The applicant may be required on a periodic basis (no less than once a year) to supply such records as the Board may require to establish that the caretaker is regularly employed on the premises by the owner thereof for at least 35 hours per week.

ARTICLE VIII Amendments

§ 125-42. Change of regulations; districts.

The Board of Trustees of the Village may from time to time on its own motion or on petition, after public notice and hearing, amend, supplement or change the regulations and boundary line of the districts herein established or authorize the Board of Appeals to act pursuant to Article 7 of the Village Law.

§ 125-43. Imposition of fee. [Added 3-25-1974 by resolution; amended 6-4-1990 by L.L. No. 2-1990; 12-6-1993 by L.L. No. 1-1993]

In connection with any application to it for amendment of the Village Zoning Ordinance or the changing of the boundary lines of any district within the Village, the Board of Trustees may impose a fee upon the applicant at the time of making such application or thereafter, commensurate with any expense reasonably incurred or expected to be incurred by the Board in the consideration of such application, including the cost of

retaining planning and other consultants as deemed necessary by the Board of Trustees.

ARTICLE IX
Certificate of Occupancy

§ 125-44. Issuance. [Added 2-6-1984 by L.L. No. 2-1984]

No land or building shall be used or occupied wholly or partially for any purpose until a certificate of occupancy/use has been issued by the Superintendent of Buildings. Such certificate of occupancy/use shall be required for all buildings and uses. No change in the nature of use of any building or land, nor extension or alteration of nonconforming use or building shall be effected nor premises used or occupied until the appropriate certificate of occupancy/use has been issued therefor attesting that the change, extension or alteration conforms in all respects to applicable laws and regulations, including, without limitation, the Building Administrative Ordinance of the Village of Asharoken.¹⁰ The Superintendent of Buildings may require the providing of such proof as he deems necessary for him to determine the legality of the proposed use, extension or alteration.

§ 125-45. Revocation. [Added 2-6-1984 by L.L. No. 2-1984; amended 6-4-1990 by L.L. No. 2-1990; 12-6-1993 by L.L. No. 1-1993]

- A. The Superintendent of Buildings may revoke any building permit or certificate of occupancy upon findings as follows:
- (1) A false statement or misrepresentation of facts in any application for a certificate of occupancy or building permit.
 - (2) Work performed under a building permit has not been prosecuted in accordance with the provisions of

10. Editor's Note: See Ch. 42, Building Construction Administration.

this chapter or under the special determinations and directions of the Village Board, Board of Appeals or Planning Board.

- (3) Any person to whom a permit or certificate of occupancy has been issued to comply with a stop order issued by the Superintendent of Buildings.
 - (4) Substantial violation of any provision of a grant given by the Village Board, Zoning Board of Appeals or Planning Board.
 - (5) When the owner or any other person occupying and/or using the property is served with a written notice of violation of this chapter or the Building Code or of any other direction that may be given by the Village fails to comply with the terms, conditions or directions contained in such notice of violation.
- B. If the Superintendent of Buildings shall revoke a building permit or a certificate of occupancy under this section, he shall serve written notice of such revocation on the property owner or to the resident occupant of the premises.

ARTICLE X

Enforcement and Interpretation

§ 125-46. Penalties for offenses. [Amended 3-3-1980 by L.L. No. 1-1980; 6-4-1990 by L.L. No. 2-1990; 12-6-1993 by L.L. No. 1-1993]

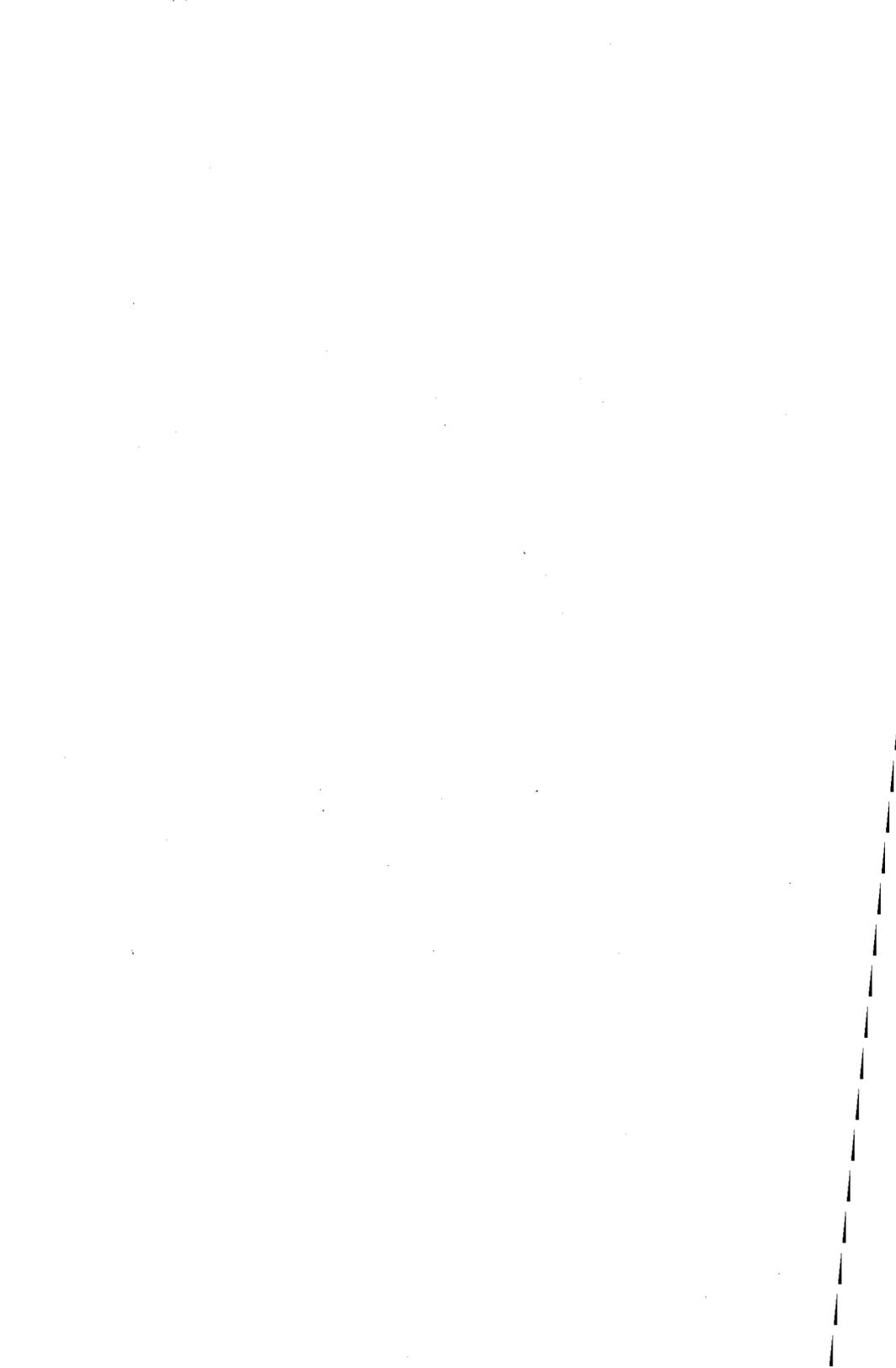
Any violation of this chapter or any part thereof shall be punishable by a fine of not exceeding \$1,000 or imprisonment for up to six months, or both, for third or subsequent offenses committed within a period of five years.

§ 125-47. Action or proceeding. [Amended 4-10-1954]

Wherever the Trustees of the Village are satisfied that any new building is being erected or used or any building is being

altered, enlarged, extended, reconstructed, raised, moved, used or changed in its use or any land or premises is being used or changed in its use in violation of the provisions of this chapter, they may, through the Village Attorney, institute any appropriate action or proceeding at law or in equity to restrain, correct, abate or remove such violations and to prevent the occupancy of any such buildings or land or to prevent any illegal act, conduct business or use on or about said premises.

APPENDIX



Chapter A127**SCHEDULE OF FEES****§ A127-1. Enumeration of fees.****GENERAL REFERENCES**

Authorization to adopt fee schedule — See Ch. 20.

§ A127-1. Enumeration of fees.

The following schedule of fees, deposits, bonds and charges is hereby established with respect to licenses, permits and activities required or regulated under the provisions of various chapters of the Code of the Village of Asharoken. Applications for and the issuance of such licenses and permits are subject to the provisions of the specific chapter of the Code which is indicated for each type of license or permit. The business, activity or operation for which the license or permit is required is subject to all regulations set forth in the chapter to which reference is made and to all other applicable laws and regulations. These fees may be adopted or revised by resolutions adopted by the Board of Trustees from time to time. The fees are subject to change, and the user may confirm the currently effective fee with the Village Clerk's office.

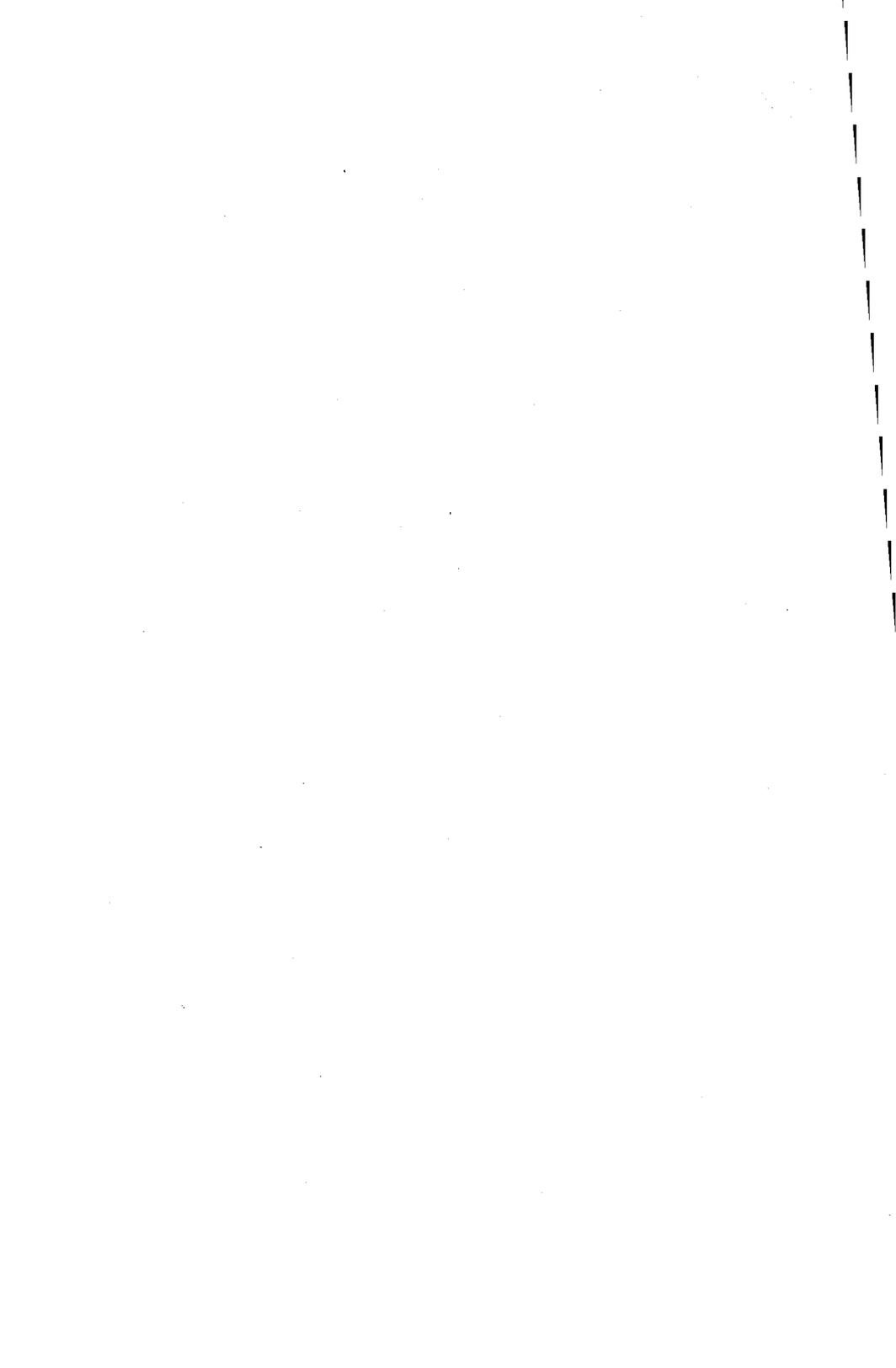
| Code Section | Type of Application, Permit or License | Fee |
|--------------------------------------|---|-----------|
| Building Construction Administration | | |
| § 42-4A(5) | Building permit fee based on the estimated value of the construction or alteration, where the total value of the work is: | |
| | Up to and including \$1,000 | \$100.00 |
| | For each additional \$1,000 or fraction exceeding \$1,000 | \$20.00 |
| Environmental Quality Review | | |
| § 61-5E | Application for determination | \$150.00 |
| § 61-6B | Draft environmental impact statement: | |
| | Total estimated cost | 3/8 of 1% |
| § 61-8A | Final environmental impact statement: | |
| | Total estimated cost | 1/8 of 1% |
| Records | | |
| § 97-1 | Written accident report | \$2.00 |
| § 97-3 | Public records: | |
| | Copies per page | \$0.25 |
| Streets and Sidewalks | | |
| § 104-4A(1)(e) | Excavation permit fee per excavation (public benefit corporations excluded) | \$25.00 |

| Code Section | Type of Application, Permit or License | Fee |
|---------------------|--|---|
| Subdivision of land | | |
| § 107-5A(2) | Applications for plat approval for minor subdivisions | \$500.00, plus \$100.00 per lot, plus all costs |
| § 107-6A(2) | Applications for plat approval for major subdivisions | \$500.00, plus \$100.00 per lot, plus all costs |
| § 107-8D(1) | Cost of proposed improvements | 4% |
| § 107-8D(2) | Cost of performance bond | 4% |
| Waterways | | |
| § 122-13C | Water skiing license, per year | \$ 70.00 |
| Zoning | | |
| § 125-32C | Swimming pool permit | See § 42-4 |
| § 125-39 | Fee for an appeal or application for special exception or variance | \$ see Below |
| | Ten + Permit | \$ 10.00 |
| | Mooring Permit | \$ 125.00 |

Other Fees:

1. Certificate of Occupancy- \$50.00
2. Letter in Lieu-\$75.00
3. Excavation permit fee-\$25.00
4. Copies per page-\$.25
5. Application to Zoning Board of Appeals- \$550.00
6. Application to Zoning Board of Appeals (Special Accessory Use Permit) \$250.00. (Must be renewed every year)
7. Annual Renewal for Special Use Accessory permit is \$100.00
8. Planning Department Application fee is \$500.00 plus \$100.00 per lot.

**DISPOSITION
LIST**



Chapter DL

DISPOSITION LIST

§ DL-1. Disposition of legislation

The following is a chronological listing of legislation of the Village of Asharoken adopted since January 1, 2005, indicating its inclusion in the Code or the reason for its exclusion. [Enabling legislation which is not general and permanent in nature is considered to be non-Code material (NCM).] Consult municipal records for disposition of prior legislation.

§ DL-1. Disposition of legislation

| Local Law No. | Adoption Date | Subject | Disposition |
|----------------------|----------------------|----------------------------------|--------------------|
| 1-2005 | 2-7-2005 | Zoning amendment | Ch. 125 |
| 2-2005 | 4-8-2005 | Zoning amendment | Ch. 125 |
| 1-2006 | 2-6-2006 | Vehicles and traffic | Ch. 115 |
| 2-2006 | 3-6-2006 | Trees | Ch. 112 |
| 3-2006 | 3-6-2006 | Streets and sidewalks amendment | Ch. 104 |
| 4-2006 | 10-3-2006 | Zoning amendment | Ch. 125 |
| 1-2007 | 9-10-2007 | Veterans tax exemption amendment | Ch. 110, Art. II |

| Local Law No. | Adoption Date | Subject | Disposition |
|----------------------|----------------------|---|--------------------|
| 2-2007 | 10-1-2007 | Building construction administration: Building Department; permits amendment | Ch. 42, Art. I |
| 1-2008 | 1-7-2008 | Zoning amendment | Ch. 125 |
| 2-2008 | 1-7-2008 | Erosion and sediment control; stormwater management | Ch. 44 |
| 3-2008 | 1-7-2008 | Storm sewers: illicit discharges and connections | Ch. 45, Art. I |
| 4-2008 | 1-7-2008 | Subdivision of land amendment | Ch. 107 |

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INDEX INSTRUCTIONS

The main **INDEX**, beginning on page 1, will guide you to the legislation contained within the Code at the time the main **INDEX** was originally prepared. As new legislation is adopted, or existing legislation is amended, the Code pages are replaced by supplementary pages which include the new material, thereby causing some **INDEX** entries to become obsolete. **INDEX** entries to the new material will be provided for in the **SUPPLEMENTAL INDEX**, beginning on page SI-1.

The **SUPPLEMENTAL INDEX** should, therefore, be consulted first, since it refers to the more recent legislation. Then reference should be made to the main **INDEX**.

When received, **SUPPLEMENTAL INDEX** pages should be placed directly following this page and in front of the main **INDEX**, according to the instructions accompanying the supplement.

Numbers in the indices refer to section numbers in the Code, e.g., 39-3 is a reference to Chapter 39, Section 3.

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