

# MEMORANDUM

**TO:** Village of Scarsdale Board of Trustees  
**FROM:** Nicholas M. Ward-Willis  
**RE:** Revised Draft Moratorium Local Law  
**DATE:** December 29, 2023

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At your December 19, 2023 Board of Trustees Meeting, you reviewed comments received on the draft moratorium local law and discussed certain edits to the proposed local law. As a result of such discussions, I was requested to revise the local law, which I provided to you before your December 26, 2023 meeting. I have attached the latest draft of the local law.

The material edits were:

- 1) The commencement date of the term of the moratorium was changed from November 14, 2023 to December 19, 2023.
- 2) Language was added to Section 7(A) clarifying that if an application was received before December 19, 2023, if approval is subsequently granted and there are other approvals required from different boards, the application can be processed by the other boards even though an application was not submitted to the other board before December 19<sup>th</sup>.
- 3) Language was added to Section 7(J) clarifying that work being performed to redress a casualty loss could not increase the footprint or bulk of the building previously existing.
- 4) A new Section 7(L) was added, as detailed therein, to allow construction to proceed in certain circumstances notwithstanding the moratorium. Please read new Section 7(L) for a further explanation.
- 5) A new Section 7(M) was added clarifying installation of a fence is exempt. The ZBA would still be able to hear applications for fence variances.
- 6) A new Section 7(N) was added clarifying subdivision can proceed subject to demonstrating compliance with Section 7(L).

**LOCAL LAW NO. \_\_\_\_ OF 2024**

**VILLAGE OF SCARSDALE  
BOARD OF TRUSTEES**

**A LOCAL LAW TO ESTABLISH A TEMPORARY MORATORIUM ON  
CERTAIN LAND USE APPLICATIONS WITHIN THE  
VILLAGE OF SCARSDALE**

A LOCAL LAW to establish a temporary moratorium on certain land use applications within the Village of Scarsdale.

**BE IT ENACTED** by the Village Board of Trustees of the Village of Scarsdale as follows:

**Section 1.** Purpose; Intent; Findings.

In recent years, the improvements, subdivisions and redevelopments occurring on single-family residential properties have led to resident's expressing concern about a number of pervasive adverse impacts, including but not limited to the loss of the architectural and historic qualities and scale that helps define the fabric of our residential neighborhoods as well as concerns about negative environmental impacts such as increased flooding, and the destruction of mature trees and natural habitats. These concerns arise from, among other things, the rapid pace of demolitions and replacement of older homes, additions being built on single-family properties, the construction of accessory structures, and the subdivision and redevelopment of residential lots. Such development activities create new impervious surfaces thereby diminishing the natural drainage and flood mitigation provided by mature trees and open space. Our natural resources are finite and fragile, and the Village's infrastructure and other public resources are increasingly being tested by more frequent and severe storm events and the realized and potential impacts require study.

Moreover, new single-family developments are increasingly being built at the limits of our community's minimum dimensional requirements for setbacks, while maximizing and, at times seeking variances to exceed the limits of floor area ratios, lot coverages, and other bulk requirements. This development trend also places greater challenges upon the Board of Architectural Review and Committee for Historic Preservation which are responsible for maintaining and preserving aesthetic and architectural resources.

The Board of Trustees therefore finds it is in the best interest of the Village to enact a temporary moratorium within the zoning districts designated herein so as to temporarily pause the acceptance, consideration, and approval of certain land use applications, such as

applications for subdivisions, demolitions, building permits, site plan approval, and special permits.

This moratorium will allow adequate time for the Board of Trustees to identify and implement such amendments to the Village's Zoning Code as may be necessary to mitigate or avoid the deleterious impacts of the aforementioned development activities. The Board of Trustees finds that a moratorium will be protective of the public interest and welfare, and ensure consistency with any newly-adopted zoning requirements. This moratorium will promote community planning values by regulating land development based on a carefully considered plan and will prevent potential applicants from seeking approvals before new conditions and requirements are established.

**Section 2. Statutory and Constitutional Authority.**

The Scarsdale Board of Trustees is authorized and empowered to adopt this local law pursuant to Article IX of the New York State Constitution, the New York State Municipal Home Rule, the applicable and relevant sections of the New York State Village Law, and the general police power vested with the Village of Scarsdale to promote the health, safety and welfare of all residents and property owners in the Village of Scarsdale.

**Section 3. Definitions.**

For the purposes of this local law, unless specified otherwise, all terms herein shall be as defined in the Chapter 310 of the Village Code (Zoning Code), Chapter 251 of the Village Code (Site Plan Review), and Chapter A319 of the Village Code (Subdivision of Land; Planning Board Regulations).

**Section 4. Applicable Zoning Districts.**

This local law shall only be applicable to Residence A and C Zoning Districts.

**Section 5. Term.**

This local law shall only apply to applications received by the Village after December 19, 2023, and shall be in effect for a period of six (6) months from the effective date hereof unless repealed, modified, extended or supplemented by further local law of the Village of Scarsdale.

**Section 6. Moratorium.**

A. Subdivision, Site Plan, and Special Use Permit. No board, committee, agency, department, officer, employee, consultant, or agent of the Village of Scarsdale shall accept for review, continue review, hold a hearing, or make any decision upon any application for approval of a subdivision; site plan; a special use permit pursuant to Village Code § 310-88.A (2) or (4); or a special use permit pursuant to Village Code Chapter 254 concerning Stormwater Management and Erosion and Sediment Control permits (SWEC). All time periods set forth under state law or the Village Code for the processing and making decisions and all

aspects of subdivision approval (including but not limited to preliminary, and final subdivision plats), site plan approval and special use permit approval for swimming pools and courts are hereby suspended and stayed while this local law is in effect.

- B. Building Permits and Demolitions. No board, committee, agency, department, officer, employee, consultant, or agent of the Village of Scarsdale shall accept for review, continue review, hold a hearing on, continue a hearing, or make any decision upon any application for approval for a building permit or demolition permit to enlarge, construct, or demolish a one-family residential dwelling, accessory building or structure. All time periods set forth under state law or the Village Code for the processing and making decisions and all aspects of applications for building permit or demolition approval as indicated herein are hereby suspended and stayed while this local law is in effect.

### **Section 7. Exceptions.**

This local law shall not apply to:

- A. Applications for residential subdivision, residential special permit, and/or residential site plan approval or request for a Certificate of Appropriateness received and pending before any Village permitting board. Granting of approval on a pending application from one board will permit other boards to continue processing the project and issue an approval, even if such application to a different board was submitted after December 19, 2023.
- B. Applications to legalize a pre-existing nonconforming condition.
- C. Applications to obtain a Certificate of Occupancy in which there is no new exterior construction or land disturbances.
- D. Lot line adjustments and resubdivisions where no new lots are being created and no additional dwelling unit(s), accessory buildings, or structures are being constructed.
- E. An existing valid building permit that has been issued, including any renewal thereof.
- F. Applications to renew or amend a Special Use permit that has not expired.
- G. Applications concerning non-residential uses.
- H. Applications concerning generators.
- I. The issuance of a building permit required in connection with the repair, maintenance, and/or interior renovations, and exterior alterations which do not increase lot coverage or stormwater runoff.
- J. The issuance of a building permit or demolition permit to redress a casualty loss or catastrophic damage which does not increase the footprint or bulk of what existed previously.

- K. The issuance of a certificate of occupancy in connection with the completion of a project that had submitted a complete application before December 19, 2023.
- L. Any application for new construction or an addition that increases the bulk or footprint of a building that demonstrates to the satisfaction of the Village Planner, Village Engineer and Building Inspector all of the following:
- a. The proposed FAR, Building Coverage and Lot Coverage are less than 95%, 95% and 90%, respectively, of that permitted under the existing Zoning Code;
  - b. The proposed side yard setback shall be no less than the following for each Zoning District, (with any FAR Bonus permitted pursuant to Section 310-104 being measured from the revised set back listed below):
    - i. AA1 Zoning District: 33 feet;
    - ii. A1 Zoning District: 22 feet;
    - iii. A2/A2a Zoning District: 16.5 feet;
    - iv. A3 Zoning District: 12 feet;
    - v. A4 Zoning District 11.5 feet; and
    - vi. A5 Zoning District: 11 feet.
  - c. A sworn statement by the Applicant's Design Professional, or if none, the Applicant, that there will be no new connection to the Village's stormwater system; and
  - d. In addition to satisfying the criteria set forth above, for any demolition permit for less than a substantial part of a building (as defined in Section 182-3(E)(1) of the Village Code) or for a building permit, an applicant shall demonstrate to the satisfaction of the Interim Review Committee (three members with architectural or historic building experience, to be appointed by the Mayor) that any proposed exterior alteration will not impact the special character or special historical, cultural or aesthetic interest of the building proposed to be altered. Upon such a finding, an applicant shall be permitted to process such application with the Building Department and village boards. Any application denied permission to proceed may file a hardship application with the Board of Trustees as set forth in Section 8 of this Local Law.
- M. Installation of a fence.
- N. An application for a subdivision may proceed provided that the Applicant acknowledges the proposed subdivision submitted to and approved by the Planning Board and any Building Permit issued during the term of this moratorium must establish compliance with Section 7(L).

**Section 8.** Hardship appeal procedure.

- A. The Village Board of Trustees shall have the authority to vary or waive any provision of this local law upon a determination that such variance or waiver is required to avoid an unreasonable hardship upon an applicant. In addition to demonstrating an unreasonable hardship, the applicant must show that the granting of a variance or waiver will not materially undermine the purpose of this local law or adversely affect the interests of health, safety, or general welfare in the community. The Board of Trustees shall take into account the existing land use in the immediate vicinity of the property and the impact the variance or waiver will have on infrastructure, natural resources, government sources, stormwater runoff, and other environmental issues. Such application for a hardship variance or waiver shall comply with all other applicable provisions of the Village's Code and state law.
- B. Any application for a variance or waiver shall be filed with the Building Department and shall include the requisite fee or escrow amount for processing such application. An application for a variance or waiver shall contain the complete details of the proposed project and narrative setting forth the rationale of why such application qualifies as a hardship. To the extent that the Board of Trustees requires a consultant to assist it in the review of such application, it may also require the application to pay the reasonable costs of such consultant. Any consultant required herein shall be selected in the sole discretion of the Mayor with the consent of the Board of Trustees.
- C. The Board of Trustees may refer any application for a hardship variance or waiver of this local law to any official, department, and/or land use board for a report and recommendation. Upon receiving a complete application, the Board of Trustees shall conduct a public hearing and make a final determination on the application, with or without conditions within sixty (60) calendar days.
- D. The Board of Trustees shall notify the applicant of the Board's decision to approve, approve with conditions, or deny an application to vary or waive the application of any provision of this local law. In the event that the Board of Trustees approves such an application, the Board of Trustees shall then refer the applicant to the applicable officials and/or land use boards for further approval under the terms set forth within the Board of Trustee's decision.

**Section 9.** Conflict with inconsistent state and local laws and authority to supersede.

To the extent that any provisions of this local law are in conflict with or are construed to be inconsistent with the provisions of the New York State Village Law or any local ordinance, law, or regulation, this local law supersedes, amends, and take precedence over the Village Law and such local ordinance(s), law(s), and regulation(s), including but not limited to: receipt, consideration of, and action on appeals and variances (Village Law §§ 7-712-a and 7-712-b, and Chapter 12 and Article XII, Chapter 310 of the Scarsdale Village Code); special use permit applications and the timeframe for action thereof (Village Law § 7-725-b and Article XII of

Chapter 310 and Chapter 254 of the Scarsdale Village Code); site plan applications and the timeframe for action thereof (Village Law § 7-725-a and Chapters 77 and 251 of the Scarsdale Village Code); subdivision applications and the timeframe for action thereof (Village Law §§ 7-728, 7-730, 7-732, and 7-738 and Chapters 77 and A319 of the Scarsdale Village Code); and building permit and demolition permit applications (New York State Uniform Fire Prevention and Building Code and Chapter 132 of the Scarsdale Village Code), applications for a Certificate of Appropriateness and timeframe for action thereof (Chapter 182 of the Scarsdale Village Code), pursuant to the Village's municipal home rule powers set forth under New York State Municipal Home Rule Law §§ 10 and 22 to supersede any inconsistent authority. Pursuant to the same powers, and without limiting the generality of the foregoing, this local law supersedes the provisions contained in Article 8 of the Environmental Conservation Law (SEQRA) and the regulations thereunder to the extent that such provisions require an agency to determine the environmental significance of an application within certain specified timeframes.

**Section 10.** Ratification, Readoption and Confirmation.

Except as specifically modified by the amendments contained herein, the Village Code of the Village of Scarsdale is otherwise to remain in full force and effect and is otherwise ratified, readopted and confirmed.

**Section 11.** Numbering for Codification.

It is the intention of the Village of Scarsdale and it is hereby enacted that the provisions of this Local Law shall be included in the Code of the Village of Scarsdale; that the sections and subsections of this Local Law may be re-numbered or re-lettered by the Codifier to accomplish such intention; that the Codifier shall make no substantive changes to this Local Law; that the word "Local Law" shall be changed to "Chapter," "Section" or other appropriate word as required for codification; and that any such rearranging of the numbering and editing shall not affect the validity of this Local Law or the provisions of the Code affected thereby.

**Section 12.** Severability.

The provisions of this Local Law are separable and if any provision, clause, sentence, subsection, word or part thereof is held illegal, invalid or unconstitutional, or inapplicable to any person or circumstance, such illegality, invalidity or unconstitutionality, or inapplicability shall not affect or impair any of the remaining provisions, clauses, sentences, subsections, words or parts of this Local Law or their petition to other persons or circumstances. It is hereby declared to be the legislative intent that this Local law would have been adopted if such illegal, invalid or unconstitutional provision, clause, sentence, subsection, word or part had not been included therein, and if such person or circumstance to which the Local Law or part hereof is held inapplicable had been specifically exempt there from.

**Section 13.** Effective Date.

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

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