

WHEREAS, there has been presented to the Town Board of the Town of Southold, Suffolk County, New York, on the 9th day of October, 2007 a Local Law entitled **“A Local Law in relation to Amendments to Chapter 275”** now, therefore, be it

RESOLVED that the Town Board of the Town of Southold will hold a public hearing on the aforesaid Local Law at the Southold Town Hall, 53095 Main Road, Southold, New York, on the **20th of November, 2007 at 4:35 p.m.** at which time all interested persons will be given an opportunity to be heard.

The proposed Local Law entitled, **“A Local Law in relation to Amendments to Chapter 275”** reads as follows:

LOCAL LAW NO. 2007

A Local Law entitled, **“A Local Law in relation to Amendments to Chapter 275”**.

BE IT ENACTED by the Town Board of the Town of Southold as follows:

I. Purpose – In order to provide for the health, safety and welfare of the citizens of the Town of Southold, and to protect the natural protective areas existing within the Town, it is necessary to make certain amendments to Chapter 275. These amendments are intended to support the protection of environmental features within the Trustees’ jurisdiction, strengthen enforcement, simplify the permit process and clarify activities that may be conducted in protected areas.

II. Chapter 275 of the Code of the Town of Southold is hereby amended as follows:

§275-2. Definitions; word usage.

ACCESS PATH -- an area, cleared by hand or hand-held equipment, no more than 4 feet wide, left in its natural state and devoid of any manmade structure, to provide a walkway

to a body of water.

DOCK -- Any permanent or seasonal structure, except a building, located or proposed to be located on lands abutting or comprised of freshwater or tidal wetlands or connected to a bulkhead or the upland and extending over the water's surface, designed to secure vessels and provide access from the shore to a body of water. For the purpose of this chapter, this term shall also include the associated structures necessary to cross wetlands and adjacent natural areas. The term "dock" includes the terms "wharves," "piers," "fixed docks," "floating docks," or "floats". ~~or "eatwalks."~~

FUNCTIONAL – Any structure that, in its current state, primarily retains its purpose and use as determined by the Board of Trustees.

NONDISTURBANCE BUFFER – ~~An~~ A vegetated area, typically 50 feet wide a minimum of 30 feet wide as designated by the Board of Trustees, immediately landward of the wetland boundary, shoreline structure, or other line designated by the Trustees where no operations, maintenance, placement of signs or other activities ~~can~~ may take place, except that manmade debris may be removed from such area by hand without the permission of the Board of Trustees.

RESIDENTIAL DOCK -- Any ~~eatwalk~~, fixed dock and/or floating dock designed or constructed as a continuous unit to provide access to the surface waters from a lot that is zoned for residential use. The term "dock" shall include all associated structures such as ramps and mooring piles.

§275-4. Exceptions.

- A. The provisions of this chapter shall not ~~affect or prohibit~~ nor require a permit for the following:
- (4) The ordinary and usual operations relative to residential horticulture within Trustees' jurisdiction limited to the use of non-invasive native species of vegetation. Re-grading and removal of trees outside any designated buffer area are not included in this exception. landward of the wetland boundary.
 - (5) The ordinary and usual maintenance or repair (of the same dimensions) of a presently permitted by this chapter, existing and functioning building, dock, pier, wharf, jetty, groin, dike, dam or other water-control device or structure.

(10) Installation of new or replacement windows, roof shingles, doors, dormers and siding on existing structures only.

(11) Notwithstanding the above listed exceptions, activity within a designated non-disturbance buffer is prohibited.

B. Nothing contained in this section shall alter the jurisdiction of the Southold Town Board of Trustees. These listed exceptions do not provide an exemption from the requirements of other departments or agencies.

§275-5. Permit procedures.

B. Administrative permit.

(2) The following operations will be considered for administrative review:

(j) The reconstruction of a permitted bulkhead as per §275-11, which is to replace an existing functional bulkhead, subject to the following:

[3] Any such activities shall require the addition of a nonturf pervious buffer area. not to exceed 20 feet wide as defined in §275-2.

(l) Minor restoration or alterations of landscaping.

(m) Decks.

(n) Minor alterations to existing permitted shoreline structures including stairs, bulkheads and docks.

(o) Installation or burial of a residential propane/liquid gas tank 25 feet from wetlands in an existing, established yard area when more appropriate upland placement is not possible. Installation, burial or removal of a propane tank less than 25 feet from wetlands is generally prohibited.

(p) Dredging work caused by the accumulation of silt from run-off or other circumstances not the result of activity by or on behalf of the owner of the property and in event at the discretion of the Board of Trustees.

§275-7. Fees.

F. Dredging Fee. Every application for a permit for dredging within Town-owned underwater lands shall include a fee as set by the Town Board based on the amount of

cubic yard of dredge spoil to be removed.

§275-10. Contents of permit.

L. A statement that “The permittee is required to conspicuously post the permit and have the supporting plans available for immediate inspection at the worksite at the commencement of work until which time the project is completed.”

§275-11. Construction and operation standards.

A. General. The following standards are required for all operations within the jurisdiction of the Trustees:

(4) Fences. In general, fences are prohibited from beaches and wetland areas. Any fence, barricade or impediment to pedestrian traffic on the beach or wetland area in violation of the provisions of this chapter shall be removed upon written notice to the owner of the premises upon which such fence, barricade or impediment is located sent by certified or registered mail. Such fence, barricade or impediment shall be removed by the owner within 30 days of the date of the notice. Upon failure to comply with such notice, the Building Inspector, Code Enforcement Officer or Bay Constable may remove or cause the removal of the illegal structure. If any fence, barricade or impediment is determined by the Building Inspector, Code Enforcement Officer or Bay Constable to create a hazard to the health, safety or welfare of the public, such structure may be removed and disposed of by the Town without prior notice to the owner. Upon removal by the Town, all costs and expenses incurred by the Town for the removal of such fence, barricade or impediment shall be the responsibility of the owner. The Town may pursue any and all remedies available at law to recover any unpaid costs associated with removal, including filing a statement with the Town Assessors, identifying the property in connection with which such expenses were incurred and the owner thereof as shown on the latest assessment roll of the Town. The Assessors, in preparation of the next assessment roll, shall assess such amount upon such property. Such amount shall be included in the levy against such

property, shall constitute a lien and shall be collected and enforced in the same manner, by the same proceedings, at the same time and under the same penalty as is provided by law for the collection and enforcement of real property taxes in the Town of Southold. A fence may be permitted if the applicant has demonstrated a special need. Upon such a finding by the Trustees the fence must be split-rail, perpendicular to the waterline and not closer than 10 feet to MHW. Only one posted sign per 100 linear feet of fence is allowed, no larger than 12 inches by 12 inches square.

(9) Pumping of Town-owned freshwater wetlands for irrigation purposes shall be prohibited.

(10) Access paths. A permit for only one path shall be granted per lot for the purposes of shoreline access unless otherwise determined by the Board of Trustees.

B. Shoreline structures. The following standards are required for all operations relating to shoreline structures on residential properties. Operations conducted on properties zoned M1 or M2 may be given greater flexibility in these requirements given the water-dependent nature of their use.

(1) Bulkheads, retaining walls, revetments and gabions.

(f) In order to prevent the release of metals and other contaminants into the wetlands and waters of Southold, the use of lumber pre-treated with any preservative, including but not limited to chromated copper arsenate (also known as "CCA"), creosote, penta products, Alkaline Copper Quat (ACQ), or homemade wood preservatives is prohibited for use in sheathing and decking on structures in the wetlands as well as on any part of a structure in low tidal flow wetland areas as determined by the Trustees. Any use of creosote is prohibited. Preservatives of any type, including but not limited to those listed above cannot be applied to any bulkheads, retaining walls or revetments after installation. Encapsulated pilings or native nonchemically treated (untreated) lumber only should be used in sensitive areas.

(l) Lighting: Any and all lights associated with bulkheads, retaining walls,

stairs or poles in Trustee jurisdiction must be directed on the subject structure and not out into the adjacent wetland, waterway or property. Lights shall not be on unless the waterfront is in active use.

C. In water. The following standards are required for all in-water operations adjacent to residential properties. Operations conducted on properties zoned M1 or M2 may be given greater flexibility in these requirements given the water-dependent nature of their use.

(2) Docks.

(a) [3] In order to prevent the release of metals and other contaminants into the wetlands and waters of Southold, the use of lumber pre-treated with any preservative, including but not limited to chromated copper arsenate (also known as "CCA"), commercial copper quat (CCQ), ~~creosote~~, penta products, Alkaline Copper Quat (ACQ), or homemade wood preservatives is prohibited for use in sheathing and decking on structures in the wetlands as well as on any part of a structure in low tidal flow wetland areas as determined by the Trustees. The use of creosote is prohibited. ~~Similarly, the~~ The use of tropical hardwoods is prohibited unless it is certified by the Forest Stewardship Council or similar organization. Materials used for structural components shall be determined at the discretion of the Trustees.

(b) Dock locations and lengths.

[3] [a] ~~Given the unique and sensitive natural environmental characteristics described in the Town of Southold Local Waterfront Revitalization Plan and the New York State Department of State Significant Habitat descriptions, No new docks will be permitted, over vegetated wetlands or such that it causes habitat fragmentation of vegetated wetlands in the following areas:~~ Downs Creek, Hallocks

Bay, Hashamomuck Creek and Pond, Long Creek (branch of Mattituck Creek, East of Grand Avenue bridge), Pipe's Cove Creek and West Creek.

- [3] [d] No floating docks, floats, dock components, duck blinds or boats shall be stored on tidal wetlands, other intertidal areas or freshwater wetlands, except that floats 20 feet in length or smaller and boats 16 feet in length or smaller may be stored above mean high tide, on blocks at a minimum of 12" above grade, during the period beginning November 1 through May 1.

(c) Regulations for the placement and configuration of docking facilities.

[1] Residential docks.

[a] Only one dock, catwalk may be permitted per residential lot. Only one mooring or dock may be mooring is permitted per residential lot. Upon a showing of special need due to low water level and hazard to property, the Trustees may permit both a mooring and a dock for the same residential property.

[b] If any part of a residential dock structure includes a float or floating dock, the float or floating dock portion shall be designed so that, with the exception of the pilings:

[i] It is no larger than six feet wide and 20 feet long except on Fishers Island if the need is demonstrated; or of equal square footage as determined by the Trustees;

(3) Dredging.

(a) Creeks.

[1] Only maintenance dredging (as defined in §275-2) ~~only~~ is permitted, unless the applicant owns underwater land or the applicant is requesting permission to dredge in connection with installation of low-sill bulkheads. All maintenance dredging

permits shall be valid for a period no greater than 10 years.

- (c) All dredging applications must demonstrate a specific location for the deposit of dredging material.

§275-16. Compliance requirements; penalties for offenses.

B. For each offense against any of the provisions of this chapter or any regulations made pursuant thereto, or failure to comply with a written notice or order of any Director of Code Enforcement or Bay Constable within the time fixed for compliance therewith, the owner, occupant, builder, architect, contractor or their agents or any other person who commits, takes part or assists in the commission of any such offense or who shall fail to comply with a written order or notice of the Director of Code Enforcement or Bay Constable shall be subject to the following fine schedule. Each day on which such violation occurs shall constitute a separate, additional offense.

- (2) Failure to comply with the terms of a permit.
- (a) Any person failing to comply with the terms of a permit shall be subject to a fine of not less than \$500 and not more than ~~\$1,000~~ \$4,000. For each subsequent offense, the violator shall be guilty of a misdemeanor punishable by a fine not less than \$1,000 nor more than ~~\$2,000~~ \$7,500 or a term of imprisonment of not less than 15 days nor more than six months, or both.
- (b) Any person failing to comply with posting the permit and/or the requirement for supporting plans to be available for immediate inspection pursuant to §275-10 shall be subject to a fine of not more than \$1,000.
- (4) Restoration. In lieu or in addition to these punishments, any offender may be punished by being ordered to restore the affected wetland to its condition prior to the offense. Any such order shall specify a reasonable time for the completion of such restoration, which shall be effected under the supervision of the approving authority. The Trustees reserve the right to require specific replanting and restoration methods including specific survivability and success criteria.
- (5) Failure to comply with a restoration plan. Any person failing to comply with the terms of a mandated restoration plan as detailed in subsection 4 of this section

within the proscribed period of time for completion shall be guilty of an offense and subject to a fine of not less than \$1,000 and not more than \$4,000.

(5)(6) Mitigation. When on-site wetlands restoration and creation may be unfeasible due to technical or other constraints, other mitigative measures, such as off-site wetland restoration or creation, may be required.

C. The Trustees may revoke a permit when a violation of this Chapter or Chapter 111 is found on the same property. No new permits will be issued to any carter, owner, occupant, builder, architect, contractor or their agents if they are a named as defendants in an outstanding or unresolved ~~wetland violation.~~ violation of Chapter 275 Wetlands and Shoreline or Chapter 111 Coastal Erosion Hazard Areas.

III. SEVERABILITY

If any clause, sentence, paragraph, section, or part of this Local Law shall be adjudged by any court of competent jurisdiction to be invalid, the judgment shall not affect the validity of this law as a whole or any part thereof other than the part so decided to be unconstitutional or invalid.

IV. APPLICABILITY AND EFFECTIVE DATE

This Local Law shall take effect immediately upon filing with the Secretary of State as provided by law