

## LOCAL LAW #7 OF 2018

### **A LOCAL AMENDING CHAPTER 305 OF THE CODE OF THE VILLAGE OF WALDEN TO THE EXTENT OF REPEALING CODE SECTION 305-54(C) AND MODIFYING CODE SECTION 305-54(D).**

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

#### SECTION 1 - TITLE

This Local Law shall be referred to as “A Local Law Amending Chapter 305 of the Code of the Village of Walden to the extent of repealing Code Section 305(C) and modifying Code Section 305-54(D).”

#### SECTION 2 – PURPOSE & INTENT

##### *The Purpose and Intent for Repealing Code Section 305-54(C)*

Section 305-54(C) of the Code of the Village of Walden is entitled “General Standards.” It appears that this provision of the Village Code was adopted and/or amended in or around 1996 in an attempt to incorporate the comprehensive statutory scheme enacted at this time by the New York State Legislature wherein specific criteria were established for the evaluation and subsequent issuance or denial of both use and area variances.

The New York Court of Appeals has determined that in enacting this comprehensive statutory scheme, it was the state legislature’s intent to preempt local governments from legislating in any fashion that would be different or inconsistent with this comprehensive legislative scheme. While the provisions set forth in Village Code section 305-54(C) are not different or inconsistent with the state law – in fact it simply repeats verbatim the language set forth in New York State Village Law section 7-712-b – it is redundant and therefore unnecessary. Accordingly, the Village Board determines that is appropriate to repeal this provision of the Village Code.

##### *The Purpose of Intent for Amending Code Section 305-(D)*

Section 305-54 of the Code of the Village of Walden is entitled “Variances.” It appears that this provision of the Village Code was also adopted and/or amended in or around 1996 in an attempt to incorporate the comprehensive statutory scheme referenced above that was enacted at that time by the New York State Legislature and which established specific statutory criteria for the evaluation and subsequent issuance or denial of both use and area variances. This section of the Village Code was further amended in 2000, specifically by Local Law #7 of 2000 (the “2000 revision”). The 2000 revision sought to establish the criteria to be employed by the Village of Walden Zoning Board of Appeals

when confronted with a variance application pertaining to nonconforming uses, buildings and/or lots. However, over the years since the adoption of the 2000 revision, it has become clear that this local law, specifically code section 305-54(D)(2) has conflated the concepts of *nonconforming uses* being carried on within nonconforming buildings and/or lots and *conforming uses* carried in nonconforming buildings and/or lots. This is because code section 305-54(D)(2)(a) can be read to require that use variance criteria be utilized when evaluating an application for the expansion of a conforming use in a nonconforming building and/or lot. As a result, applicants who wish to expand a conforming use that is maintained within a nonconforming building and/or lot are compelled, by the existing terms of Section 305-54(D)(2)(a) to comply with use variance standards. This local law is being adopted to remedy this anomaly.

Further, the 2000 revision conditioned the grant of certain relief upon proof that proposed *enlargement(s) or extension(s) shall not exceed 50% of the replacement cost of the existing building on the effective date of this chapter or any subsequent amendments thereto, exclusive of foundations*. With the passage time, determinations of value “on the effective date of this chapter or any subsequent amendments thereto” have become, at best, problematic for both applicants and the zoning board. To avoid unneeded and unnecessary confusion, it is deemed to be appropriate to eliminate this requirement from the code.

### SECTION 3 – REPEAL OF VILLAGE CODE SECTION 305-54(C).

Existing Code section 305-54(C) is hereby repealed in its entirety. The remaining provisions of Code section 305-54 are re-numbered accordingly.

### SECTION 4 – AMENDMENT TO TEXT OF EXISTING CODE SECTION 305-54(D)(2).

Existing Code sections 305-54(D)(2)(a),(b) and (c) are hereby repealed, renumbered, and replaced with the following language which includes the addition of a new paragraph (d):

- (2) With respect to nonconforming uses, buildings and lots:
  - (a) To grant a variance pursuant to New York State Village Law Section 7-712-b(2) for the expansion in size or volume or intensity of use or the enlargement or extension of a nonconforming use as defined in Article VIII of this ordinance, provided that (1) such enlargement or extension shall be subject to Planning Board approval pursuant to Section 305-60 of this Chapter; (2) any such variance and site plan approval shall be made in compliance with all parking and truck loading requirements of Article VI is achieved.

- (b) To grant a variance pursuant to New York State Village Law Section 7-712-b(2) for the reconstruction, structural alteration, restoration or repair of the building or structure used for a nonconforming use provided that: (1) if such reconstruction, structural alteration, restoration or repair will change, alter, modify or otherwise extend the original building or structural footprint or location on the lot, any accessory building or structure thereon, then the grant of the variance shall be subject to Planning Board approval pursuant to Section 305-60 of this chapter.
- (c) To grant a variance pursuant to New York State Village Law Section 7-712-b(2) for a change of a nonconforming use to another nonconforming use, provided that such variance will be subject to Planning Board approval pursuant to Section 305-60 of this chapter, except where such change in use is to a single- or two-family residence.
- (d) To grant a variance pursuant to New York State Village Law Section 7-712-b(3) for the expansion, enlargement or extension of a conforming use utilizing the criteria set forth in New York State Village Law Section 7-712-b(3).

#### SECTION 5 - VALIDITY

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

#### SECTION 6 - EFFECTIVE DATE

This Local Law shall take effect immediately when it is filed in the Office of the New York State Secretary of State in accordance with Section 27 of the Municipal Home Rule Law.