

LOCAL LAW NO. ___ OF 2019

A LOCAL LAW amending §116-23B(27) of the Zoning Law to clarify the types of wireless facilities and antennas that are exempt from special exception review, including certain facilities located on municipal buildings and structures.”

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

Section 1. Legislative Intent. The Board of Trustees of the Village of Southampton hereby finds and declares it to be the public policy of the Village to minimize the visual and environmental impacts of wireless communications facilities in the process of allowing for adequate and nondiscriminatory wireless service throughout the Village in accordance with the Federal Telecommunications Act of 1996 and its regulations. To achieve these goals, the Village of Southampton, by way of special exception review, already permits wireless facilities that are compatible with surrounding land uses and that protect and retain the attractiveness, health, safety, general welfare and property values of the community through standards for the location, siting, design and vegetative screening of communication antennas, communication buildings, towers and alternative transmission support structures. Although the current special exception standards encourage the use of municipal lands and facilities, it is the intent of this amendment to promote a proactive and streamlined approach to providing wireless infrastructure throughout the Village of Southampton by facilitating opportunities for the installation of minor or small cell wireless communication facilities on properties owned by the Village and other municipal entities and within street rights-of-way to foster economic development, streamline emergency and municipal services and offset municipal costs.

Based on the intentions listed above, the goals of the proposed amendment is to encourage the use of existing structures, including, but not limited to, rooftops, utility poles, steeples, flagpoles or other unobtrusive alternative support structures for deploying wireless communications facilities; encourage the use of municipal lands, public and quasi-public spaces for wireless deployment, provided any such installation is visually compatible and expedite the review process for those applications choosing the least intrusive alternative for deploying wireless communications facilities. As noted above, with limited exceptions, all wireless facilities regardless if they are located on a municipal property or with the street right-of-way currently require a special exception from the ZBA, as well as site plan review by the Planning Board, architectural review by the ARB and a building permit. In recognition of the utilization and co-location of wireless facilities on municipal properties and in street rights-of-way, this amendment is intended to streamline the review process for the placement of minor or small cell wireless communication facilities on municipal properties by eliminating review by the ZBA, Planning Board and ARB. Review of such wireless facilities and consideration under the State Environmental Quality Review Act shall continue to be undertaken by the Board of Trustees and the Building Department.

Section 2. Amendment. Section 116-23B(27) is hereby amended by deleting strikethrough words and adding underlined words as follows:

(27) Wireless facilities in all zoning districts.

(a) Except as provided below, construction of any wireless facility requires issuance of a special exception. Exemption from special exception review does not exempt review by any other Village Board or agency, except that exempt wireless facilities on Village or municipal owned properties shall also be exempt from site plan review and review by the Board of Architectural Review and Historic Preservation, unless such

review is expressly requested by the Board of Trustees. Notwithstanding any provision in this Chapter to the contrary, all new wireless facilities or modifications to existing wireless facilities, including wireless facilities on a municipal property shall require a building permit to assure compliance with the provisions of this Chapter.

[1] Exemptions:

[a] Amateur radio stations.

[b] Preexisting towers or antennas, except that any modifications thereto shall require compliance with the provisions herein. Modifications that that are "in-kind" with no increase in the height or diameter of the transmission support structure and the number of antennas are exempt.

[c] "Eligible facilities," as defined by federal or state law, which includes collocation of new transmission equipment, removal of transmission equipment and/or replacement of transmission equipment.

[d] Routine maintenance and repair in like form and height of lawfully existing wireless facilities, which does not substantially change, extend or expand the facility.

[e] Any antenna which is treated as exempt under 47 CFR 1.4000(a)(1), as it may be amended from time to time.

[f] The addition of wireless facilities and/or antennas to utility poles (telephone poles, utility distribution poles, streetlights, traffic signal stanchions, etc.), transmission line towers, water towers, or similar structures that comply with the following standards:

(i) the wireless facilities must be located in an enclosure not exceeding three (3) cubic feet in volume and in a form and material compatible with nearby architecture as set forth in guidelines published by the Village; (ii) All ancillary equipment associated with the wireless facility shall not exceed twenty-eight (28) cubic feet in volume; (iii) No more than one such wireless facility shall be erected on a pole, tower or similar structure; (iv) No more than one wireless facility shall be erected within three-hundred (300) feet of another wireless facility; (v) All wireless facilities and associated ancillary equipment located within a street right-of-way shall not obstruct or otherwise interfere with the street or public facilities; (vi) All wireless facilities and associated ancillary equipment located within a street right-of-way shall require the written authorization of the owner of the street and written authorization from the applicable municipal entity or public utility maintaining the pole, tower, or structure; and (vii) All wireless facilities and associated ancillary equipment located within a street right-of-way shall require written authorization from the applicable Village, County or State highway department or agency having jurisdiction for the placement of the wireless facilities and associated ancillary equipment, and any work on or under the ground. Any wireless facility and/or antennas to be added to utility poles (telephone poles, utility distribution poles, streetlights, traffic signal stanchions, etc.), transmission line towers, water towers, or similar existing structures that does not comply with these standards shall require issuance of a special exception.

[g] The installation of stealth wireless facilities and/or antennas or within an existing or

proposed architectural feature on a municipal building or structure, such as a steeple, clock tower, cupola, bell tower, or similar structure, provided such installation and/or construction does not involve a material alteration or modification to the architectural style or the structural integrity of the exterior of the building or structure. The exchange of stealth material of the same color shall not be considered a material alteration or modification.

[h] Installation of new wireless facilities and antennas on or within a municipal building or structure, where such new wireless facilities and antennas do not increase the total height of the structure more than ten (10) feet; are mounted on a roof or within the interior portion of the building that is stepped back from the front facade in order to limit their impact on the building's silhouette and architectural design; and are concealed to the maximum extent practicable behind existing or proposed architectural features to limit its visibility from public streets.

(b) Wireless facilities shall be located in accordance with the following priorities:

[1] Location of wireless facilities on municipal or quasi-municipal properties.

[2] Location of wireless facilities on or within existing structures within business and industrial zoning districts.

[3] Location of wireless facilities requiring construction of a new tower or structure within business and industrial zoning districts.

[4] Such uses shall only be permitted to be located in residential districts (except on municipal or quasi-municipal properties) upon a demonstration that the applicant's system or service cannot properly function within or upon an existing wireless facility or within or upon a new tower or structure in a business or industrial district.

(c) Information required. Applications for special exception shall include all information, as outlined in the application submission package. The Zoning Board of Appeals has the authority to amend the application submission requirements as deemed necessary.

(d) Wireless facilities, inclusive of new structures and all supporting equipment, must comply with accessory structure setback requirements of the underlying zoning district in which the wireless facility is proposed to be located.

(e) The Zoning Board shall consider the following factors in determining whether to issue a special exception:

[1] The location of the proposed facility in accordance with the location standards noted above. An applicant shall demonstrate that no location of higher priority is available or suitable for the proposed wireless facility.

[2] Height of the proposed wireless facility.

[3] Proximity of the proposed wireless facility to residential structures and residential boundaries.

[4] Nature of the existing and/or proposed uses on adjacent and nearby properties.

[5] Site and/or surrounding topography.

[6] Surrounding tree coverage and foliage.

[7] Design of the proposed wireless facility, with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness.

[8] Proposed ingress and egress.

[9] Availability of suitable existing wireless facilities or other structures not requiring the use of new structures.

[10] That the wireless facility does not obstruct or tend to obstruct or render the Village's right-of-way, highway, street, road, sidewalk or other public way dangerous for vehicular or pedestrian passage.

Section 3. Authority. The proposed local law is enacted pursuant to Village Law §7-708, as well as Municipal Home Rule Law §§10(1)(i), 10(1)(ii)(a)(11), 10(1)(ii)(a)(12), and 10(2).

Section 4. Severability. If any section or subsection, paragraph, clause, phrase, or provision of this law shall be adjudged invalid or held unconstitutional by any court of competent jurisdiction, any judgment made thereby shall not affect the validity of this law as a whole, or any part thereof other than the part or provision so adjudged to be invalid or unconstitutional.

Section 5. Effective Date. This local law shall take effect upon filing with the Secretary of State pursuant to Municipal Home Rule Law.