

VILLAGE OF MONROE
LOCAL LAW 11 OF 2023

BE IT ENACTED by the Village Board of the Village of Monroe, Orange County, New York, as follows:

Section 1. Title.

This Local Law shall be known and may be cited as the Village of Monroe Building Height and FAR Clarification Local Law of 2023.

Section 2. Legislative Purpose.

The Village finds that the height definition and requirements contain adequate flexibility to accommodate both flat and sloping sites and reflect the existing built environment. However, the unintended application of the existing definition, where changes to the natural grade surrounding existing homes can be used to circumvent maximum building height regulations, has resulted in the construction of out of character dwellings, including three-story buildings with habitable basements or attics where such homes are not consistent with the building height and massing predominantly found in existing residential neighborhoods. Dwellings have been constructed that also circumvent and exceed the intended maximum floor areas established by the Floor Area Ratio limits set forth in the Village Zoning Local Law. . Exceedances of the Floor Area Ratio limitations, without seeking proper relief through the Zoning Board of Appeals, has resulted in grading activities that are also out of character with existing residential building patterns. The Village therefore also seeks to prohibit excessive site grading where this activity results in the construction of dwellings that are taller or larger than would normally be permitted in the applicable residential zoning district. Lastly, this local law aligns many of the definitions with the definitions set forth in the New York State Building Code. This local law implements the recommendations of the Village's Comprehensive Plan of 2023.

Section 3. Enabling Authority.

The adoption of this Local Law is in accordance with Section 10 of the New York Municipal Home Rule Law.

Section 4. Amending Zoning Local Law to Require Site Plan Review where Significant Site Grading is Proposed.

§200-68 Building Permits, paragraph D (Earthwork or earthmoving activities), which currently reads as follows:

D. Earthwork or earthmoving activities. When application is made for a building permit to allow earthwork or earthmoving activities, such as excavation, clearing, stripping, filling, grading or removal, in preparation for any use of the land different than its current use and the Building Inspector determines that the forgoing activities will result in significant impact on surrounding lots or change to the existing lot(s), including increased drainage runoff, soil erosion and grade change in excess of 10% overall, the Building Inspector shall, at his discretion:

- (1) Deny approval for the same;*
- (2) Condition approval on prescribed drainage, runoff and erosion control measures; or*

(3) Refer the application to the Planning Board for site plan review and approval in accordance with Article XV of this chapter.

Is hereby deleted and replaced with the following:

- D. Earthwork or earthmoving activities. When application is made for any building permit that involves earthwork or earthmoving activities, such as excavation, clearing, stripping, filling, grading or removal such that one or more of the following thresholds are met, site plan review and approval shall be required in accordance with Article XV of this zoning chapter before any building permit is issued:*
- (1) A change in proposed grade that involves the use of any tracked construction equipment or equipment in excess of 1,000 pounds.*
 - (2) A change in the finished grade by more than three vertical feet at any single point on the lot.*
 - (3) A change in the average finished grade by more than one vertical foot of any horizontal area exceeding 100 square feet.*
 - (4) A change in the average finished grade adjoining the foundation of a principal structure by more than one vertical foot.*
 - (5) A change in the grade plane as defined in § 200-5 of a principal building or use by more than one vertical foot.*

Section 5. Changes to §200-5 (Definitions) of the Zoning Local Law.

The definition of “Basement” contained in §200-5 of the Zoning Local Law, which currently reads as follows:

BASEMENT

That space of a building that is 50% or greater below grade, and which floor-to-ceiling height can be no greater than 10 feet. Only one basement shall be allowed per building. Basements located in commercial buildings shall be restricted to storage, mechanical or incidental use only; no public access shall be permitted.

Is hereby deleted and replaced with the following:

BASEMENT

That portion of a building included between the surface of any floor and the surface of the floor next above, where the following thresholds are not exceeded:

- 1. The distance between the finished floor and the finished floor above is no more than 12 feet.*
- 2. The midpoint between the finished floor and the surface of the finished floor next above is less than one foot above the grade plane, and less than one foot above the average pre-construction grade adjoining the building.*
- 3. The finished surface of the floor next above is no more than six feet above grade plane, nor more than six feet above the average pre-construction grade adjoining the building.*
- 4. The finished surface of the floor next above is no more than 12 feet above the finished grade at any point nor more than 12 feet above the pre-construction grade adjoining the building at any point.*
- 5. The floor next above is not a basement floor (only one basement shall be allowed per building.)*

A new definition of “Grade Plane” is added to §200-5 of the Zoning Local Law at the appropriate point of alphabetical order:

GRADE PLANE

A reference plane representing the average of finished ground level adjoining the building at exterior walls. Where the finished ground level slopes away from the exterior walls, the reference plane shall be established by the average of the lowest points within the area between the building and the lot line.

The definition of “Floor Area Ratio” contained in §200-5 of the Zoning Local Law, which currently reads as follows:

FLOOR AREA RATIO (FAR)

The gross floor area of a dwelling to be regulated herein, divided by the gross lot area. For purposes of this bulk requirement, “gross floor area” shall be the sum of the gross horizontal areas of the stories of a dwelling unit, including livable floor area within any attic and enclosed porches, whether finished or unfinished, measured to the exterior of the outside faces or walls of a building, except that accessory detached garages and accessory detached storage buildings shall be excluded.

Is hereby deleted and replaced with the following:

FLOOR AREA RATIO (FAR)

The gross floor area of a dwelling to be regulated herein, divided by the gross lot area. For purposes of this bulk requirement, “gross floor area” shall be the sum of the gross horizontal areas of the stories of a dwelling unit measured to the exterior of the outside faces or walls of buildings, including any livable floor area within any attic, basement or enclosed porches. Accessory detached garages of less than 480 square feet and other accessory detached buildings of less than 144 square feet shall not be included.

The definition of “Height” and the illustrations that accompany the definition contained in §200-5 of the Zoning Local Law, which currently reads as follows:

HEIGHT, BUILDING

The vertical distance measured from the average elevation of the finished or proposed finished grade on the perimeter of the foundation to the highest point of the structure, but not including chimneys, spires, towers, tanks and similar projections. (See illustration hereinafter).

Are hereby deleted and replaced with the following:

HEIGHT, BUILDING

The vertical distance measured from the grade plane to the highest point of the structure, but not including chimneys, spires, towers, tanks and similar projections.

The definition of “Livable floor area” contained in §200-5 of the Zoning Local Law, which currently reads as follows:

LIVABLE FLOOR AREA

All spaces within the exterior walls of a dwelling unit exclusive of garages, breezeways, unenclosed porches, heating and mechanical equipment rooms and basements, as defined herein. Livable floor area shall include all spaces not otherwise excluded above, such as: principal rooms; utility rooms; bathrooms; all closets and hallways opening directly into any room within the dwelling unit; stairways; and all attic area having a clear height of 7 1/2 feet or more from finished floor level to roof rafter. For the purpose of this chapter, "livable floor area" shall also mean "habitable floor area."

Is hereby deleted and replaced with the following:

LIVABLE FLOOR AREA

All spaces within the exterior walls of a dwelling unit exclusive of unheated garages, unenclosed breezeways, unenclosed porches, and non-habitable space (as defined by the NYS Building Code) contained within basements as defined herein. Livable floor area shall include all spaces not otherwise excluded above, such as: principal rooms; utility rooms; bathrooms; all closets and hallways opening directly into any room within the dwelling unit; stairways; and all attic area having a clear height of 7 1/2 feet or more from finished floor level to roof rafter. For the purpose of this chapter, "livable floor area" shall also mean "habitable floor area."

The definition of "Story" contained in §200-5 of the Zoning Local Law, which currently reads as follows:

STORY

That portion of a building included between the surface of any floor and the surface of the floor next above. A basement 51% or more above grade shall be considered a story. Any attic space that can be potentially converted to livable floor area shall be deemed a story.

Is hereby deleted and replaced with the following:

STORY

That portion of a building included between the surface of any floor and the surface of the floor next above. A story is measured as the vertical distance from top to top of two successive tiers of beams or finished floor surfaces and, for the topmost story, from the top of the floor finish to the top of the ceiling joists or, where there is not a ceiling, to the top of the roof rafters. A basement as defined herein shall not be considered a story. Any attic space that can be potentially converted to habitable space as defined by the building code shall be deemed a story.

Section 6. Addition to §200-13 (Prohibited Uses)

The following is hereby added to §200-13 (Prohibited Uses) as paragraph “R,” redesignating the current paragraph “R,” to paragraph “S.”

- R. *No basements located in a commercial building shall be use for any use other than storage, mechanical or incidental use and no public access shall be permitted.*

Section 7. Changes to §200-22 (Supplementary Regulations Applicable to Building Height) of the Zoning Local Law.

§ 200-22 (Supplementary Regulations Applicable to Building Height) of the Zoning Local Law, which currently reads:

The height limitations of this chapter shall not apply to:

- A. *Roof projections, including bell towers, spires, belfries or steeples; flagpoles; radio or television towers; chimneys or smokestacks; radio or television aerials; skylights; water towers; elevator penthouses; cooling towers; solar energy collection equipment, reflectors or tanks; rooftop bulkheads, fire towers, hose towers, cooling towers or air-conditioning or heating equipment, provided that such features shall not occupy, in the aggregate, more than 10% of the total roof area to which they are a part, and provided that the same do not exceed the building height limitations by more than 15 feet and are set back from the edge of the roof at least one foot for each one foot by which such features exceed the maximum height otherwise specified for the district in which they are located. All mechanical equipment located on the tops of buildings shall be visually screened, subject to Planning Board approval.*
- B. *Wall extensions. Parapet walls or cornices which do not exceed the maximum height requirement for the district in which they are located by more than four feet.*
- C. *Solar energy systems. Solar energy systems, provided that such systems shall be erected only to the height necessary to accomplish the purposes they are intended to serve.*

Is hereby deleted and replaced with the following:

- A. *The height limitations of this chapter shall not apply to:*
 - (1) *Roof projections, including bell towers, spires, belfries or steeples; flagpoles; radio or television towers; chimneys or smokestacks; radio or television aerials; skylights; water towers; elevator penthouses; cooling towers; solar energy collection equipment, reflectors or tanks; rooftop bulkheads, fire towers, hose towers, cooling towers or air-conditioning or heating equipment, provided that such features shall not occupy, in the aggregate, more than 10% of the total roof area to which they are a part, and provided that the same do not exceed the building height limitations by more than 15 feet and are set back from the edge of the roof at least one foot for each one foot by which such features exceed the maximum height otherwise specified for the district in which they are located. All mechanical equipment located on the tops of buildings shall be visually screened, subject to Planning Board approval.*
 - (2) *Wall extensions. Parapet walls or cornices which do not exceed the maximum height requirement for the district in which they are located by more than four feet.*

- (3) *Solar energy systems. Solar energy systems, provided that such systems shall be erected only to the height necessary to accomplish the purposes they are intended to serve.*
- B. *No residential structure or addition to a residential structure shall be approved where the proposed grade plane is more than three feet above the existing pre-construction grade plane.*

Section 8. Changes to §200-72C (Site plan and special permit review and approval; regulations; applicability) of the Zoning Local Law.

§200-72(C)(1) (Site plan and special permit review and approval; regulations; applicability), which currently reads as follows:

- C. *Applicability.*
- (1) *In all districts, site plan approval by the Planning Board shall be required for:*
- (a) *The erection or enlargement of all buildings in all districts other than single-family residences in SR-10 and SR-20 Districts, except that single-family residences shall be subject to site plan approval in flood hazard areas as defined on the Flood Insurance Rate Map.*
 - (b) *All uses of vacant land.*
 - (c) *Any change in use from one principal permitted or accessory use to another principal permitted or accessory use, including changes in use within a permitted multiple use, e.g., a shopping center. Where no exterior alterations or additions are proposed, the Code Enforcement Officer shall determine if a formal application to the Planning Board is required based on a completed Land Use Determination Form, as well as any significant impact the change in use will have on the site including, but not limited to, traffic volume, access, parking, circulation, noise, the need for landscaping or screening, environmental uses, loading, access, drainage, utilities or other municipal services or character of the neighborhood.*
 - (d) *Any application for a special use permit.*

Is hereby amended to add the following:

- (e) *Earthwork or earthmoving activities, such as excavation, clearing, stripping, filling, grading or removal such that any of the following thresholds are met whether or not such activities are proposed individually or as part of an application involving building construction. Where building construction is involved, site plan approval will be required for the entire proposed construction and shall not be limited to the earthwork activities.*
 - (1) *A change in proposed grade that involves the use of any tracked construction equipment or equipment in excess of 1,000 pounds.*
 - (2) *A change in the finished grade by more than three vertical feet at any single point on the lot.*
 - (3) *A change in the average finished grade by more than one vertical foot of any horizontal area exceeding 100 square feet.*
 - (4) *A change in the average finished grade adjoining the foundation of a principal building or use by more than one vertical foot.*
 - (5) *A change in the grade plane as defined by the building code of a principal structure by more than one vertical foot.*

Section 9. Repeal, Amendment, and Supersession of Other Laws.

All other Resolutions, Ordinances or Local Laws of the Village of Monroe which conflict with the provisions of this Local Law are hereby superseded or repealed to the extent necessary to give this Local Law force and effect.

Section 10. Severability.

If any section, part or provision of this Local Law or the application thereof to any person, property or circumstance is adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the section, part, provision or application directly and expressly adjudged invalid and shall not affect or impair the validity of the remainder of this local law or the application thereof.

Section 11. Effective Date.

This Local Law shall take effect immediately upon filing in the office of the New York State Secretary of State in accordance with Section 27 of the New York Municipal Home Rule Law.