**PUBLIC NOTICE**

**VILLAGE OF NORTH HAVEN – PUBLIC HEARING**

**PLEASE TAKE NOTICE that the Board of Trustees of the Village of North Haven will continue the public hearing on the 15th day of March 2023, at 5:00 P.M., at Village Hall, 335 Ferry Road, North Haven and via zoom, to consider the adoption of a Local Law as follows:**

**LOCAL LAW NO. OF 2023**

**A LOCAL LAW AMENDING VILLAGE CODE CHAPTER 163 ZONING- ARTICLE I SECTION 163-5 – GENERAL PROVISIONS – DEFINITIONS AND WORD USAGE AND ARTICLE II SECTION 163-20 USE AND REGULATIONS AND REQUIREMENTS – CLEARING LIMITATIONS**

**BE IT ENACTED BY THE BOARD OF TRUSTEES OF THE VILLAGE OF NORTH HAVEN AS FOLLOWS:**

#### Section 1:

#### § 163-5 Definitions and word usage.

A. Words used in the present tense include the future; the singular number includes the plural, and the plural, the singular; the word "person" includes a corporation as well as an individual; the word "lot" includes the word "plot" The term "occupied" or "used" as applied to any building shall be construed as though followed by the words "or intended, arranged or designed to be occupied or used."

B. Unless otherwise expressly stated, the following terms shall, for the purpose of this chapter, have the meanings herein indicated:

**BUILDING ENVELOPE**

The width, depth and height dimensions within which a proposed structure is to be built on a lot in conformance with zoning regulations.

**CLEARING**

~~Any activity that removes the vegetative surface cover.~~ **~~[Added 11-3-2010 by L.L. No. 4-2010]~~**

1. As applied to the act of clearing: the act of removing trees, brush, or other vegetation and/or groundcover from land, whether by any means, including but not limited to digging, scraping, cutting, brushhogging, bulldozing, burning, chemical removal or by any form of mechanical action. As used herein, the term “ground cover” shall include naturally occurring understory vegetation (e.g., lowbush blueberry or indigenous grasses), as well as organic detritus. The removal and/or maintenance of dangerous dead wood and non-native invasive species shall not qualify as “clearing”. A list of non-native invasive species is available at Village Hall and on the Village’s website.
2. As applied to an area of land: all land which has been altered from its natural state by the removal of trees, brush, or vegetation and/or ground cover, including land which is lawn or from which the ground cover has been removed. As used herein, the term “natural state” shall mean and refer to the natural condition of land without substantial alteration by human activity.

DISTURB

Any action to change, interfere with or otherwise destroy natural vegetation beyond reasonable management purposes.

FERTILIZED VEGETATION

Areas of vegetation cultivated by man which require irrigation or the application of fertilizers, pesticides, herbicides or other substances in order to grow or maintain its existences.

~~LOT CLEARING~~

~~Any action which would change, remove, interfere with or otherwise destroy natural vegetation from its existing natural state, except that the selective removal of the following plant species without removal, interference with or destruction of other vegetation shall not constitute an action within this description or definition:~~

~~[Added 7-3-990 by L.L. 3-1990]~~

1. ~~Poison ivy (Toxicodendron radicans).~~
2. ~~Sumac (Rhus species).~~
3. ~~Catbrier (Smilax rotundifolia).~~
4. ~~Mile-A-Minute Weed (Persicaria perfoliate).~~

~~[Added 5-6-2014 by L.L. 2-2014]~~

REVEGETATION

The restoration of the floral component of an ecological community where some or all of the natural vegetation has been removed. Typically, this process consists of planting indigenous species of trees, shrubs and/or grasses at a sufficient size and density to mimic an adjoining or nearby plant community in appearance and/or function. Most ecological communities are characterized by woody vegetation but some (i.e, grasslands, tidal marshes, etc.) may be characterized by herbaceous vegetation.

#### Section 2.

#### § 163-20 Clearing limitations.

**[Added 7-3-1990 by L.L. No. 3-1990; amended 5-13-1996 by L.L. No. 2-1996; 11-5-2001 by L.L. No. 4-2001; 10-4-2011 by L.L. No. 7-2011; 6-6-2017 by L.L. No. 3-2017; 6-16-2021 by L.L. No. 3-2021]**

A. Clearing regulations for undeveloped properties.

(1) In the R-1 and R-2 Residence Districts of the Village of North Haven, it shall be prohibited ~~unlawful for any person, without obtaining an approval from the Village Building Inspector~~ to remove, damage, cause to be removed or damaged, clear, grade or otherwise disturb existing and naturally occurring indigenous vegetation without the approval of either the Building Inspector or the Planning Board.

(2) Owners of undeveloped land may remove invasive vines and weeds including ~~dead, diseased or dying trees and vines, including but not limited to~~ poison ivy, climbing bittersweet, wild grape, ~~and~~ mile-a-minute vine and other noxious or invasive vines or weeds identified in the Invasive Plant Atlas of the United States. Property owners must ~~check with the Village~~ request a permit, which will require an onsite inspection, from the Building Inspector prior to removal of noxious or invasive species. ~~to determine vegetation that is acceptable to clear or remove~~.

B. Clearing regulations and process for developed properties.

(1) Allowable clearing.

(a) ~~The natural vegetation occurring on a lot shall be preserved to the maximum extent practicable; however~~, In no case shall clearing exceed the following table except for properties that can show preexisting clearing beyond what is specified below. Preexisting conditions should exist before July 1990, or properties may have preexisting clearing based on total maximum clearing percentages permitted prior to June 16, 2021. The burden is on the applicant to prove preexisting clearing. The applicant should consult with the Village about acceptable proof of preexisting clearing.

|  |  |  |
| --- | --- | --- |
|  | Total Lot Area  [square feet (acres)] | Total Maximum Clearing Permitted |
|  | 1 to 11,000 (0 to 0.25) | 85% |
|  | 11,001 to 30,000 (0.26 to 0.69) | 9,350 square feet or 60%, whichever is greater |
|  | 30,001 to 60,000 (0.70 to 1.38) | 18,000 square feet or 50%, whichever is greater |
|  | 60,001 to 90,000 (1.39 to 2.07) | 30,000 square feet or 35%, whichever is greater |
|  | 90,001 to 120,000 (2.08 to 2.75) | 31,500 square feet or 30%, whichever is greater |
|  | 120,001 to 160,000 (2.76 to 3.67) | 36,000 square feet or 25%, whichever is greater |
|  | 160,001 to 280,000 (3.68 to 6.43) | 40,000 square feet or 20%, whichever is greater |
|  | Greater than 280,000 (>6.43) | 56,000 square feet or 20%, whichever is greater, not to exceed 80,000 square feet |
|  |  | Note: Requests for >80,000 square feet can be submitted by exception, with an application to the Village Zoning Board of Appeals. |

(b) In calculating the amount of clearing permitted by this subsection on a flag lot or a lot which is burdened by a common driveway easement or access easement, the area of any flag strip or any common driveway easement or access easement shall be excluded from lot area. Likewise, any clearing for driveway purposes within the flag strip or within the common driveway easement or access easement shall not be counted into the permissible amount of clearing.

(c) For houses with I/A OWTS waste treatment systems using pressurized shallow drain fields, the area of the drain field shall be excluded from lot area for the purpose of calculating allowable clearing.

(2) No permit shall be required under this chapter for removal of trees not specified in subsection D (1) or trees listed by NYS-Department of Transportation as invasive species; and ~~dead, diseased or dying trees (homeowners should consult an arborist if in doubt regarding the health of trees), and~~ invasive or noxious vines including but not limited to poison ivy, climbing bittersweet, wild grape, and mile-a-minute vine. In addition, these regulations shall not ~~regulate~~ apply to landscaping or planting ~~removal of trees, etc.,~~ within areas ~~which~~ that consist of established cleared/landscaped areas as defined by Subsection **B(1)** or by ~~verified~~ preexisting cleared conditions verified by way of a survey, or any other evidence that establishes pre-existing clearing limits.

(3) ~~Homeowners may, without a permit, modify prior cleared areas if they stay within the limits specified in Subsection~~ **~~B(1)~~**~~, but in no case can they clear within areas adjacent to wetlands as specified in Subsection~~ **~~B(4)~~** ~~below.~~

Homeowners may clear in previously uncleared areas without a permit but must revegetate an equivalent area of cleared property, using shrubs and trees included on the North Haven Village list of approved landscaping species, within six months of the removal of any vegetation, subject to a site inspection by the Building Inspector to verify compliance.

(4) On all lots ~~which~~ that front freshwater wetlands, tidal wetlands or coastal fresh marshes, ponds, creeks or streams, clearing shall be prohibited ~~no clearing shall be permitted~~ within seventy-five (75) feet landward of the landward edge of said wetlands, and on all lots ~~which~~ that contain or front a bluff facing Shelter Island Sound, Noyac Bay or Sag Harbor Cove, no clearing shall be permitted within seventy-five 75 feet landward of the crest of the bluff. Relief from this prohibition may be requested by applying to the Planning Board.

(5) It is the responsibility of the property owner to maintain the clearing percentages specified in Subsection **B** or the verified preexisting conditions. The homeowner must demonstrate compliance to these limits with a current survey. If a current survey does not verify compliance to the limits specified in Subsection **B**, the homeowner will not be able to obtain a valid certificate of occupancy for the property and any certificate of occupancy issued shall ~~with~~ note this violation of Village Code.

(6) Naturalized buffer.

(a) For property ~~which~~ that contains legally preexisting cleared lands within the setbacks prescribed in § **163-20C**, the Planning Board, in conjunction with a building permit application, will require revegetation within the required seventy-five (75) - foot bluff setback and/or the seventy-five-foot (75) wetland setback for the intended purposes of establishing a naturalized buffer. The depth or width of the naturalized buffer shall be commensurate with the potential impacts caused by the proposed project and the availability of land area to support such a naturalized buffer.

(b) In conjunction with a building permit application, the Planning Board shall have authority to grant relief from the ~~seventy-five-foot~~ bluff and wetland/coastal setback requirements, provided that any such application shall be heard at a public hearing and applicant shall bear the burden of establishing:

[1] Applicant is without a feasible alternative.

[2] The relief sought is not substantial.

[3] Any grant of relief shall be consistent with the purposes of § **163-20**.

[4] Any grant of relief shall not cause or allow any adverse environmental effect.

(7) In no event shall clearing specifically attributable to complying with the width and turnaround provision for dead-end fire apparatus access roads as provided in Section 103 of the Appendix D of the Fire Code of New York State and the 2015 International Fire Code be included as lot area in the calculation of total maximum clearing permitted under Subsection **B** of this section.

(8) Landscape irrigation, whether from permanent or temporary systems, shall also be confined to the areas cleared in conformance with and under the authority of § **163-20**, except that temporary irrigation incident to a revegetation ~~replanting~~ plan approved by the Building Inspector or Planning Board shall be permitted subject to permit conditions.

C. Clearing regulations and process in conjunction with a building permit application. When an applicant is applying for a building permit:

(1) The building permit application shall be accompanied by a survey, at a scale of not less than one-inch equals 40 feet, which clearly delineates all mature trees as defined in Subsection D and the edges of the existing and proposed limits of clearing and revegetation, along with calculations of the areas to be cleared to demonstrate conformance to the requirements of § **163-20B**, or to the property's legally preexisting clearing limits. The survey shall also illustrate the location of all easements, buffer zones and restricted areas contained on the lot proposed for clearing.

(2) The building permit application shall be accompanied by a statement signed by the property owner that no vegetation outside of the areas delineated on the survey shall be disturbed, cleared, trimmed, or thinned without further review and approval by the Building Inspector or the Planning Board when Planning Board approval is required.

(3) Where deemed necessary or appropriate, the Building Inspector may attach reasonable conditions to the building permit to ensure compliance with the clearing limitations established herein (for example, installation of project limiting temporary fencing, surveying and staking of clearing limit, etc.).

(4) When the planned work specified by the building permit requires new clearing and revegetation in excess of the areas contained in § **163-20B**, approval for a clearing and revegetation plan shall be required by the Building Inspector or Planning Board. The building permit may ~~should~~ be issued based on the approved areas to be cleared and revegetate as noted on the survey. A detailed revegetation plan showing plant species and location is ~~not~~ required prior to the issuance of a ~~for the~~ building permit ~~but must be submitted, approved, installed and verified as planned by the submission of an updated survey showing that the clearing and vegetation areas meet the areas specified on the survey approved prior to issuance of the building permit. This must be completed within six months of the completion of construction or the expiration of the building permit~~ . A certificate of compliance or certificate of occupancy will not be issued until an updated survey indicating the limit of clearing is provided to the Building Department and confirmed in the field by the Building Inspector. ~~this work is complete and the owner demonstrated compliance with §~~ **~~163-20B~~**~~, or to the property's legally preexisting clearing limits.~~

(5) For the development of a parcel within a residential subdivision approved by the Building Inspector or Planning Board after the adoption of this chapter, the extent of disturbance of natural vegetation shall not exceed the total maximum clearing permitted for the minimum required lot area of the zoning district in which the tract lies.

(6) Where an applicant has agreed to utilize the provisions of Article **III**, Clustered Zoning, of this chapter, the Planning Board may, at its discretion, modify the provisions of this subsection to allow the creation of adequately sized building envelopes for the lots created pursuant to the approval of the subdivision.

(7) When clearing is proposed on a lot which already contains preexisting nonconforming clearing, the Building Inspector or Planning Board shall have the power to review and approve plans for additional clearing where, as a condition of said clearing, a vegetation plan is submitted and approved demonstrating how the lot shall be revegetated to its preexisting nonconforming condition by revegetating existing cleared areas with plant materials consistent with the intent of ~~this~~ § **163-20**. Where deemed appropriate, the Building Inspector may attach reasonable conditions to the issuance of the approval so as to ensure compliance with ~~this~~ § **163-20**.

D. Permit for Removing Mature Trees

(1) Except for species identified as invasive by the NYS Department of Transportation, no native ~~deciduous~~ tree with a caliper of ~~16~~ 19 inches or greater at a height of 4.5 feet above ground level or American holly or cedar with a caliper above 10 inches at a height of 4.5 feet above ground level may be removed without a tree removal permit issued by the Building Inspector. Tree work conducted by or for a state-regulated public utility shall be exempt.

(2) A permit to remove a mature tree shall be granted only if in the reasonable opinion of the building inspector or an arborist certified by the International Society of Arboriculture:

(a) it is diseased, dead or dying; or ~~if~~

(b) it poses a danger to people or property or it may cause or contribute to damage to a primary or accessory structure ~~or the public~~; or ~~if~~

(c) it is within or near the building envelope of construction plans on file with the Building Department.

(3) The Building Inspector’s decisions under Subsection D (2) (a), (b) and (c) may be appealed to the Zoning Board of Appeals.

E~~. D~~. Violations and penalties; violations related to clearing developed and undeveloped properties.

(1) Enforcement.

(a) Notice of violation. Whenever the Code Enforcement Officer or Building Inspector determines that there has been a violation or that there are reasonable grounds to believe that there has been a violation of any provision of this section, notice shall be given of such violation or alleged violation to the entity, person or persons responsible for such violation. Such notice shall be in writing and shall specify the violation and shall provide a reasonable time, not less than 10 days nor more than 60 days, for compliance and shall be served upon the owner, agent, operator or occupant, as the case may require. Such notice shall be deemed to be properly served if it is served upon the individual or entity personally or if a copy thereof is sent by certified mail to the last known address of such person as appears on the assessment rolls of the Incorporated Village of North Haven and a copy is posted in a conspicuous place in or about the premises affected by the notice. Such notice may contain an outline of remedial action which, if taken, will effect compliance with the provisions of this section.

(b) Power to act in emergencies. Whenever the Code Enforcement Officer or Building Inspector finds a violation of this section which, in his or her opinion, requires immediate action to abate a direct hazard or immediate danger to the health or safety of the residents of the Village or occupants of the property, or the public at large, the officer may, without prior notice, issue an order citing the violation and directing that such action be taken as is necessary to remove or abate the hazard or danger. Notwithstanding any provision of this chapter, such an order shall be effective upon service and shall be complied with immediately.

(c) Reinspection. At the end of the period specified in the notice of violation or any extension thereof, it shall be the duty of the Code Enforcement Officer or Building Inspector to make or cause to be made a reinspection of the premises and, if compliance has not been established, appropriate legal action shall be instituted.

(2) Penalties for offenses.

(a) The owners of property where violations of this local law occur, ~~and have who have been Any person found guilty of violating a provision of this section~~ except Subsections B(1), B(4) , B(6) and D, shall be guilty of a violation and shall be fined not more than ~~$250~~ $1,000 and/or be imprisoned for a period not exceeding 15 days. ~~or be both so fined and imprisoned~~. A separate offense shall be deemed to have been committed upon each day during, or on which, a violation occurs or continues.

(b) Any person found guilty of violating subsections B(1),B(4) and/or (6)~~of this section~~ shall be guilty of an unclassified misdemeanor~~; the Village shall impose upon the owner of the property a~~ and fined ~~in an amount not less than $1,000~~ $2,500 ~~nor more than $2,000~~ for each day ~~of~~ the violation remains or continues and/or imprisoned~~ment~~ for not more than 90 days. ~~, or be both so fined and imprisoned~~. ~~A separate offense shall be deemed committed upon each day during or on which a violation of these subsections occurs or continues. This shall be in addition to any other fines or penalties provided by the State of New York and/or the Village Code of the Incorporated Village of North Haven.~~ Any person guilty of violating subsection D shall be fined $2,500 for each tree removed; also, any building permit in effect for the property will be suspended for 90 days; in addition, each tree must be replaced with one from the North Haven Village list of recommended species with a minimum caliper of 8 inches at 4.5 feet above ground level.

(3) In addition to any other penalty provided in this section, any person convicted of committing an offense against a provision of this section shall be liable for any expenses incurred by the Village in the elimination of the violation.

**Section 3. Severability.**

If any sentence, paragraph, subdivision, or part of this Local Law or the application thereof to any person, firm or corporation, or circumstance, shall be adjudicated by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, or part of this local law or in its application to the person, individual, firm or corporation or circumstance, directly involved in the controversy in which such judgment or order shall be rendered.

**Section 4. Effective Date.**

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

All persons in interest will be heard by the Board of Trustees at the public hearing to be held as aforesaid and may appear in person or by representative. The Village Hall is accessible to handicapped persons.

Dated: March 2, 2023

BY ORDER OF THE BOARD OF TRUSTEES

OF THE VILLAGE OF NORTH HAVEN.

BY: Eileen Tuohy,

Village Clerk/Treasurer