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Reference is made to that certain Notice of Referral dated March 1, 2022 (the "Notice") in respect of Local Law of 2022 of the Village of Greenport (Attached) to amend Chapter 150 Zoning Regarding Parking Regulations which was submitted to the Village of Greenport Planning Board (the "Planning Board") for its review pursuant to Section 150-32 of the Greenport Village Code (the "Code"). The Notice relates to proposed amendments (the "Code Amendments") to Sections 150-12(A), 150-16(A)(1) and 150-16(G) of the Code as well as a proposed repeal of Section 150-12(C) of the Code.<sup>1</sup> The Planning Board has completed its review of the Code Amendments and has identified several items that the Planning Board believes requires clarification or further review by the Mayor and the Village Trustees (the "Village Board") before amendments are made to the relevant provisions of the Code. The Planning Board understands that the Village Board may be considering further modifications to the Proposed Amendments, however, the Planning Board has not yet received those proposed modifications and reserves the right to provide further comment following a review of any such modifications.

At the outset it should be noted that the Village currently lacks an approved comprehensive plan and that the working draft of the Local Waterfront Revitalization Plan ("LWRP") which is intended to provide a basis for a comprehensive plan was drafted over 10 years ago and is seriously outdated given the residential and commercial demographic changes that have occurred in the Village during the last decade. Moreover, the Planning Board's review of the Village Board meetings where the Proposed Amendments have been discussed does not appear to define with any specificity the issues that the Village Board proposes to mitigate or solve by enacting the Proposed Amendments. In the absence of a comprehensive plan and any clear definition of the problem to be addressed and mitigated by the Proposed Amendments, it is challenging, at best, to provide meaningful comments and guidance to the Village Board as to whether the Proposed Amendments adequately or effectively will serve to further the Village community's interests. It is the opinion of the Planning Board that the Village community would be better served by any update of the Village Zoning Code being predicated on an update of the LWRP and the Village's adoption of a comprehensive plan. Following the adoption of an updated LWRP and comprehensive plan, the Code could then be amended in a holistic and comprehensive manner to address issues identified by the LWRP and the comprehensive plan rather than pursuing a piecemeal approach of Code amendments that may result in an array of unintended negative consequences for the Village. The Planning Board notes that based on the discussions among the Village Board at April's Village Work Session, it does not appear that the real intention of the proposed amendments is to even address parking as an issue but rather to enact a "tax" that would apply to new "intense" uses in the Village and be used to cover maintenance costs associated with Village parking and street infrastructure. The Planning Board does not believe that this approach effectively solves any of the infrastructure issues facing the Village or provides for any additional parking resources – it appears to address a general revenue shortfall for infrastructure maintenance in the Village.

Notwithstanding the foregoing, the Planning Board respectfully makes the following comments for your consideration with respect to the Proposed Amendments:

**Repeal of Section 150-12C and Elimination of Grandfathering Exemption Language in Section 150-16(A)(1)**

Under the Proposed Amendments, Section 150-12(C) of the Code, which states, "[t]he use, adaptation or change of use of any building within the CR and WC Districts in existence as of January 1, 1991, shall be entirely exempt from any off-street parking requirements as provided in this or in any other Article. This exemption shall apply thenceforth to improved parcels only and shall not apply to unimproved parcels, notwithstanding other provisions to the contrary," would be repealed in its entirety. The Proposed Amendments similarly eliminate the grandfathering exemption concept contained in Section 150-16A(1).

<sup>1</sup> NTD: The summary of the Notice of Referral is to the Sections listed here, however the Proposed Amendments themselves address the following Sections of the Code: Section 150-12C (deleted), 150-16A(1) (amended), 150-16A(2) and 150-16G.



The Planning Board has the following comments for the Village Board's consideration in respect of the elimination of these two provisions:

1. It is not clear to the Planning Board based on its review of the Proposed Amendments and the elimination of the grandfathering exemption as to whether there will be any workable parking solution for potential uses for some of the larger commercial spaces that are potentially available for development in the CR district – in particular the Arcade and Auditorium buildings. The Planning Board would like to understand what the base number of parking spots that would be required for a use of these buildings based on square footage alone without taking into account additional parking requirements that might apply due to an intended use of these buildings. It seems that it is in the Village's best interests to ensure that if there is a person or persons interested in undertaking the development of these types of buildings that there be some path to these being accomplished without additional undue costs. It is likely that any planned use for these types of buildings would require substantial payments under the PILOP Provision (discussed below) and an approval of a variance request. The Planning Board thinks that it is important that significant thought and discussion be given to how the Proposed Amendments might impact (and potentially limit) the potential uses and developments of these structures as they are integral significant landmarks in the Village.
2. Many buildings in the CR district (and in some instances the WC district (in the form of artist dwellings) include accessory apartment dwellings. It is not clear whether the Proposed Amendments will result in off street parking requirements being applicable to these units and how this will be addressed. Currently there is at least one proposal to build up on one building to add accessory apartment dwellings – would these then become subject to the off-street parking requirements of the Code. Given the lack of affordable year-round housing in the Village, the Planning Board is of the view that accessory apartments that provide this type of housing should be exempt from compliance with off street parking requirements under the Code.
3. The Village Board should consider whether the elimination of the grandfathering exemption may not make certain structures in the CR/WC districts more valuable as tear downs to provide parking to businesses that would otherwise be required to provide parking and if this is something that the Village wants to actively encourage by eliminating the parking exemption.
4. Many of the stresses on parking and infrastructure resources that result from increased traffic in the CR/WC districts are also resulting from the increased use of residential properties as "short term/vacation" rental properties. These types of properties are effectively an "intensification" of use and operate in most instances as a business. The Village Board should consider, as part of the Proposed Amendments, including off-street parking requirements that are applicable to rental properties which are rented out on less than an annual basis.
5. The Proposed Amendments should provide clear guidance as to what triggers application of the parking requirements – i.e. any change at a building that requires site plan approval or a conditional use approval, the issuance of a building permit, a change in ownership of an existing business, a relocation of an existing business to a new location, etc. In the CR district a permitted business may not require any approval or building permit – how/when would these types of new businesses become subject to the Code's parking requirements in respect of off-street parking?
6. While presumably it is the Village Board's intent that existing businesses located in the CR/WC districts will automatically become subject to the parking requirements of the Code (after giving effect to the Proposed Amendments), there is no provision in the Proposed Amendments that specifically addresses this point and Section 150-21 of the Code which addresses "nonconforming buildings with conforming uses" does not specifically address buildings which fail to comply with Code parking requirements.



The Planning Board suggests that the Village Board consider including language in the Proposed Amendments that (a) provides clear guidance as to the circumstances under which any existing business will become subject to the applicable parking requirements of the Code and (b) makes it clear that in all other circumstances any business in existence as of the date of adoption of the Proposed Amendments remains exempt from the application of the provisions of Sections 150-12 and 150-16 of the Code to the extent it was exempt from such provisions prior to the enactment of the Proposed Amendments. In considering this point, the Village Board should consider whether and how changes in the operation of an existing business should trigger the application of offsite parking requirements under the Code and whether upon the occurrence of any such trigger an existing business should become subject to the applicable parking requirements in full or in a more limited respect to reflect only the limited change in the nature of operation. As an example, a change in operation could include an increase or decrease in the number of employees (in the first instance parking requirements applicable in the CR/WC districts are driven off of employee headcount under Section 150-12 of the Code), an increase or decrease in the number of seats in a particular eating or drinking establishment, a change or additions to the nature of products sold by a particular retail business or a fundamental change in the nature of an existing business (for instance a retail business becoming a wine bar, a clothing retail business becoming a liquor store etc.).

An additional point for the Village Board's consideration in determining what triggers the application of the parking requirements to a business is that currently very miniscule non substantive changes by a business located in the WC districts trigger a requirement for a conditional use approval by the Planning Board— for instance in the last two years, one retail establishment was required to seek approval from the Planning Board even though it was a like for like replacement of a retail establishment and at least two restaurants that either changed owners and/or names were also required to get Planning Board approval even though there was no substantive change in the size and nature of the business of either restaurant. The fact that the bulk of the businesses that are located in the WC district adjacent to Front and Main Street are conditional uses puts these businesses in a potentially more disadvantageous position than businesses located in the CR district if the trigger for application of the parking requirements is incorrectly drafted. Finally, with respect to this point, the Planning Board notes that the Zoning Code of the Village of Sag Harbor is an example of one municipal code that addresses requirements in respect of parking that apply to preexisting buildings, structures or lots and changes of use and may provide some useful guidance. Presumably other municipalities have also encountered this issue and the Village attorney should be able to review some of these codes and provide some possible alternatives for the Village Board's consideration in addressing this issue.

#### Interaction of Requirements of Section 150-12 and Section 150-16A(1)

Both Sections 150-12 and 150-16A(1) of the Code contain parking requirements applicable to the WC and CR zones. The provisions set forth in Section 150-12 require that commercial uses in the CR and WC zones provide off-street parking spaces in an amount equal to the greater of (x) 1 per 300 feet and (y) 1 per employee. Section 150-16A(1) imposes additional parking requirements for businesses located in the CR and WC districts. In certain instances, Section 150-16A(1) sets forth a specific calculation of the number of additional off-street parking spaces required for a particular type of business/use (i.e. eating and drinking establishments, hotels and motels, professional offices of physicians, etc.). However, where a business or proposed use does not fall into one of the specified categories set forth in Section 150-16A(1), Section 150-16A(1) requires that the Planning Board determine and impose "*reasonable and appropriate off-street parking requirements*" in respect of such business/use.

The Planning Board has the following comments/questions for the Village Board's consideration in respect of the off-street parking requirements set forth in Sections 150-12 and 150-16A(1):

1. The Village Board should consider and clarify the interaction between Sections 150-12 and 150-16A(1) – are they intended to be additive or does Section 150-16A(1) override Section 150-12. This question is particularly important with respect to businesses that are subject to the Planning Board's determination of the required off street parking spaces under Section 150-16A(1).



2. How are the number of employees employed by a business determined for purposes of determining the applicable number of spaces under Section 150-12B's requirements relating to one off street parking space per employee? As an example, how are part time employees counted? How are the number of employees determined for a business that seasonally hires more employees (which is presumably the case with respect to almost all businesses located in the CR/WC districts)?
3. What is the intention of the language in Section 150-16A that states that "[a]ny land which is developed as a unit under single ownership and control shall be considered a single lot for the purpose of these parking regulations."? How does this affect the treatment of businesses that might be located in a building that has a single owner but which building includes multiple businesses for purposes of determining the requisite number of off-street parking spaces?
4. Section 150-16A(1) currently specifies that "eating and drinking places" are required to have one off street parking space for each 5 seats (as opposed to a determination based on occupancy limits). "Eating and drinking places" can cover a wide range of types of establishments, including a bar, nightclub, restaurant, deli or diner. For a restaurant establishment, in most instances, it makes sense to calculate parking requirements off of the number of seats in the establishment but drinking and other types of establishments that might fall in this category may often have a significant number of patrons that are standing rather than sitting. The Village Board should consider breaking these into separate categories and revising how parking is calculated for establishments where many patrons may not be seated.
5. Given the proposed elimination of the grandfathering exemption clauses, and in order to provide certainty and transparency to businesses that might consider opening up in the CR/WC districts, Section 150-16A(1) should be updated to include other categories of businesses customarily addressed in municipal zoning code parking requirements (rather than leaving them to the Planning Board's discretion) such as:
 

<ol style="list-style-type: none"> <li>a. banks</li> <li>b. delicatessens and food markets (versus restaurants)</li> <li>c. nightclubs</li> <li>d. gyms, exercise studios, spas, and personal service providers (i.e., beauty salons)</li> <li>e. gas stations, mechanic shops and convenience stores</li> <li>f. auditoriums, theaters, museum, and art galleries</li> </ol>	<ol style="list-style-type: none"> <li>g. retail stores (including potentially stores such a physical Amazon location, CVS, or Dollar General store, etc.)</li> <li>h. conference facilities</li> <li>i. co-work sharing spaces</li> <li>j. laundromats and dry cleaners</li> <li>k. aqua culture businesses</li> <li>l. funeral homes</li> <li>m. warehouses or whole-sale businesses</li> <li>n. yacht club or other private membership clubs</li> </ol>
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These are all categories that are customarily addressed with specificity in other municipal zoning codes (including in the Town of Southold's code) where off street parking spaces are generally required to be provided by a business. The Village attorney should be able to review some of these codes and provide some possible alternatives for the Village Board's consideration in addressing this issue.

The final point for the Village Board's consideration that arises in respect of some of the foregoing points is how the Village will check for a businesses' ongoing compliance with applicable parking requirements— how will the Village know how many employees a business has on site, how many seats a restaurant or bar contains etc. If the parking requirements are triggered by these types of calculations it will add to the burden of the Village's Code Enforcement officer to ensure that businesses do not modify their operations in a manner that triggers additional parking requirements.



#### 10% Reduction of Parking Requirement Under Section 150-16(A)

The Proposed Amendments amend Section 150-16(A)(1) of the Code to provide that the Planning Board is empowered to grant a reduction of up to ten percent (10%) of the required off street parking spaces applicable under the Code to a particular business upon *“a showing that the particular circumstances of a property and the use to be made of that property require less parking than that required by this Chapter”*. Given the specificity of the Code with respect to parking requirements, it is difficult to imagine a situation where the Code calls for a certain amount of parking in respect of a particular use and there is a realistic demonstration of a “reduced need” for parking applicable to the intended use. The Planning Board would find it useful to have some background on the genesis of this provision and examples of how the Village Board envisages this working in practice.

#### Deletion of Section 150-16A(2)

The Proposed Amendments delete Section 150-16A(2) of the Code which currently provides *“Areas computed as parking spaces. Areas which may be computed as open or enclosed off-street parking spaces include any private garage, carport or other area available for parking, other than a street or a driveway. parking space, other than on a corner lot as provided in § 150-13B(1).”* It is not clear to the Planning Board why this provision is being deleted.

#### Section 150-16(G) – PILOP Provision

The Proposed Amendments update Section 150-16(G) of the Code to enable the Planning Board, so long as it determines it is in the best interests of the Village, to grant a waiver to a business in respect of the applicable off-street parking requirements under the Code in exchange for a one-time payment to the Village in lieu of providing the applicable spaces (the “PILOP Provision”). Under the Proposed Amendments, a business may only seek a waiver in respect of “[no] more than 50% of the required parking spaces or 20 required parking spaces, whichever results in a lesser waiver of required parking spaces”. The Planning Board has the following comments with respect to the PILOP Provisions set forth in the Proposed Amendments:

1. Under the proposed formulation, almost every business in the downtown Village CR/WC districts that becomes subject to the parking requirements of the Code (as amended by the Proposed Amendments) will not only be required to make a payment to the Village under the PILOP Provision (which seems to be the fundamental goal of the Proposed Amendments) but to also see a variance from the Zoning Board of Appeals in respect of the Code’s parking requirements. Currently, when a matter comes before the Planning Board, it determines (based on input by the Village’s Building Department) whether any variances (or other approvals) are required, including any request for relief from the off-street parking requirements of the Code. If a business’s site plan is unable to comply with the Code and necessitates a variance, the business is required to seek the variance (and any other applicable approvals) before requesting relief from the Planning Board under the PILOP Provision. Currently the Planning Board only considers a waiver of any applicable parking requirements under the PILOP Provision to the extent that business has not successfully obtained a variance from the Code’s off-street parking requirements.
2. Even if this process is changed so that the Planning Board considers and makes a determination of whether the PILOP Provision should apply in the first instance, an applicant will still, in almost every circumstance, need to seek a variance from the Zoning Board of Appeals in respect of some of the applicable parking requirements as the Planning Board is limited in applying the PILOP to **the lesser of (i) 20 required parking spaces and (ii) 50% of the required parking spaces**. As an example, if a business is required to provide only 2 parking spaces under the Code, the Planning Board could never apply the PILOP Provision to more than 1 (50%) of the parking spaces and if the business does not have at least one space on site it would be required to seek a variance for the remaining space. Requiring both Planning Board application of the PILOP Provision and the seeking of a parking variance seems overly burdensome and is likely to create significant uncertainty and delay for a business seeking to open up in the Village.



3. The Planning Board will defer to the Village Board in respect of the appropriate dollar threshold that should apply to the PILOP Provision but notes the following:
  - a. The use and application of the PILOP Provision as a requirement to the opening up in the ordinary course of a business in the Village will significantly favor businesses backed by deep pocketed investors that principally derive their return on business from non-Village residents (i.e., the tourism traffic) on a seasonal basis as opposed to local small business owners that are more likely to provide services to the local community on a regular ongoing basis. A deep pocketed investor is accustomed to structures such as the PILOP Provision and the potential costs associated with that structure are not likely to deter them from pursuing opportunities - on the flip side, the PILOP Provision is likely to discourage many smaller locally based businesses that are owned by individuals where every added cost makes their business more challenging. The general input Planning Board members have received from small businesses that have been in the Village for some period of time is that they aren't sure they would have been able to open their business if those added upfront costs had been added in at the time, they started their business.
  - b. If the intention is for the PILOP Provision to enable the Village to start to adequately address the demands that new businesses create on Village infrastructure, the amount/dollar figure applicable to the PILOP should either be set at a high enough level to result in significant upfront revenue to the Village to effectively start to address the infrastructure needs of the downtown CR/WC districts (including creating additional parking resources) or be assessed on an annual basis to generate ongoing maintenance revenue to the Village. This again highlights the implicit bias this structure has against businesses started by individuals (versus those funded through investor money).

As noted at the onset of this report, the Planning Board has some significant reservations about the effect and impact of the Proposed Amendments on the Village. In particular, the Planning Board is concerned that the Proposed Amendments have been proposed by the Village Trustees without fully exploring and discussing the potential implications and repercussions to the WC and CR districts that may arise from the elimination of the grandfathering exemption from the Code's parking regulations. The Planning Board believes that, in the first instance, the Village Board needs to clearly identify the parameters of the problem to be addressed in connection with any proposed amendments to the Zoning Code and then narrowly tailor any such amendments to the Code to address that issue and the desired outcome/change in behavior the Village Board seeks to achieve with amendments to the Code. To the extent that the Village Board wants to influence the business composition in the WC/RC districts there may be other methods/amendments to the Code that may be more effective at achieving that goal. The same is true to the extent that the Village Board is seeking to address a parking shortage for Village residents during the busy tourism season. The fact is that there are few buildings and/or lots in the downtown WC/CR district that are capable of providing parking so revising the Code to eliminate the grandfathering exemption puts any business that wishes to open in the WC/CR district in a bit of a quandry – some businesses may be willing to throw money at the Village to try and make the problem go away but that payment isn't really going to address the resulting demands on the Village's infrastructure or provide more parking to Village residents and only certain types of businesses will be willing to make that sort of investment. The Planning Board recognizes that this may be a big undertaking for the Village Board on top of its many other responsibilities and is happy to assist in any manner that the Village Board may request.

We hope that the foregoing is helpful in assisting the Village Board in continuing to consider these issues and coming to solutions that work for the long-term future and health of a vibrant year-round Village community.