

PROPOSED LOCAL LAW 3-2020

A Local Law amending Chapter 91, Article III (Building Construction, Fees), Chapter 233 (Subdivision of Land) and Chapter 270 (Zoning) of the Village of Ossining Code.

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

Section 1. Chapter 91, Article III (Building Construction, Fees) is amended as follows with new matter underlined and deleted matter in [brackets].

§ 91-18 [Zoning Board of Appeals applications.

- A. There shall be charged for all applications to the Zoning Board of Appeals a fee set from time to time by the Board of Trustees, which shall include publication costs.
- B. In addition to the payment of the fees required by this section, the Board of Trustees, upon the recommendation of the Zoning Board of Appeals, shall adjust the required fees sufficiently to reimburse the Village for the actual cost of professional consultation fees and other expenditures attributable to the application. The Village Board may require the establishment an escrow account funded by the applicant prior to the authorization by the Zoning Board of Appeals of the performance of any consulting services in connection with the application.

§ 91-19 Planning Board and planned economic development review.

- A. For Planning Board review, including planned economic development review there shall be charged fees as set from time to time by resolution of the Village Board of Trustees.
- B. In addition to the payment of the fees required by this section, the Board of Trustees, upon the recommendation of the Planning, shall adjust the required fees sufficiently to reimburse the Village for the actual cost of professional consultation fees and other expenditures attributable to the application. The Village Board may require the establishment an escrow account funded by the applicant prior to the authorization by the Planning of the performance of any consulting services in connection with the application.]

§ 91-18 Purpose.

The purpose of this article is to ensure reimbursement to the Village for the actual costs of professional consulting and Village professional staff services with respect to the review of land use applications to the Board of Trustees or any other board or commission having jurisdiction to approve or recommend with respect to the application. Applicants should bear the cost of the professional services the Village needs to review their land use applications in a fair and equitable manner, consistent with the law of the State of New York.

§ 91-19 Definitions.

For purposes of this chapter, the following terms shall have the meanings ascribed to them in this section:

APPLICANT

The person or entity making an application for approval to use land, but not a board, commission or other entity of the Village of Ossining.

CONSULTANT

A person or entity providing professional services, other than an employee of the Village of

LAND USE APPLICATION

Any application by an applicant for subdivision approval, site plan approval, a special permit, a conditional use permit, a freshwater wetlands permit, environmental quality review, a certificate of appropriateness, a zoning text amendment, a zoning map change, an amendment to the comprehensive plan, a use and/or area variance, an interpretation of the zoning code, a consistency determination or an appeal by an applicant to the Zoning Board of Appeals from a determination of the Building Inspector.

PROFESSIONAL SERVICES

The planning, environmental, engineering, legal, architectural, accounting or other professional services reasonably necessary to review a land use application, whether provided by a consultant or Village staff.

REVIEWING BOARD

The Board of Trustees or any other board or commission of the Village of Ossining having jurisdiction to approve or recommend with respect to any land use application.

§ 91-20 Payment for the cost of professional services.

- A. Notwithstanding any inconsistent provision of any local code, every reviewing board shall require the applicant for any land use application to pay the cost of the professional services necessary to review the application. The provisions regarding reimbursement of professional consulting and Village professional staff fees shall not be applicable to applicants seeking approvals solely for the construction and/or modification of a single one or two-family residence and/or structures accessory thereto.
- B. Before a land use application is determined to be complete, the Director of Planning, in consultation with the Building Inspector, Corporation Counsel, Village Engineer and such other personnel as necessary, shall:
- (1) Advise the applicant that the applicant will be required to pay the cost of the professional services necessary to review the application;
 - (2) Advise the property owner, if different from the applicant that the owner shall be personally responsible to reimburse the Village for any unpaid fees of the applicant. The owner shall execute a written acknowledgement of this obligation before any matter is considered by a reviewing board;
 - (3) Identify the professional services needed by any reviewing board to review the application;
 - (4) Specify the scope of the necessary professional services;
 - (5) Determine whether those professional services will be provided by a consultant or by Village staff;
 - (6) Determine the amount reasonably necessary for the applicant to deposit with the Treasurer to ensure that the Village has sufficient funds to pay the cost of the necessary professional services on a timely and continuing basis;
 - (7) Require the applicant to deposit the escrow amount with the Treasurer; and
 - (8) Provide the applicant with a written statement of these determinations and requirements, which

will become part of the application.

- C. Before any reviewing board may undertake any further review with respect to the application, the applicant must deposit with the Treasurer the amount the Director of Planning has determined to ensure that the Village will have sufficient funds to pay the cost of the necessary professional services on a timely and continuing basis. The Treasurer will hold the escrow deposit in a non-interest-bearing account. If the Treasurer determines at any time during the review process that the amount in the escrow account has fallen below 50% of the escrow amount required by the Director of Planning, the Treasurer will notify the Director of Planning that an additional deposit with the Treasurer sufficient to bring the balance in the escrow account to the amount required must be made. The Director of Planning or designee shall notify the applicant and, if different, the property owner, that the escrow must be replenished. If the applicant receives such a notice at least seven days before a meeting of a reviewing board and fails to make the additional deposit before that meeting, the Treasurer will so notify the Director of Planning and the reviewing board. The reviewing board will not consider the application further until the applicant deposits the additional funds. All time limitations for the reviewing board to take action, conduct a public hearing or render any other determination related to the application, including time limitations which may related to a default approval, shall be tolled until such time as all reimbursement of costs and expenses have been fully paid.
- D. At the initial meeting of each reviewing board with respect to the application, the reviewing board will review the determinations made by the Director of Planning with respect to the deposit for the payment for professional services, confirm or modify the Director of Planning's determination as to the professional services needed for review of the application and, where consultants' services are needed, request that the Director of Planning retain a consultant or consultants to provide the necessary professional services. If after further consideration of the application a reviewing board determines that additional or different consultants' services are necessary to review the application, the reviewing board will so notify the Director of Planning who will take appropriate action consistent with this section.
- E. In the event that an application is required to be reviewed by more than one reviewing board, then in such event and to the extent applicable, such reviewing boards shall use the same consultant(s), who shall in such case prepare one report providing the data, information and recommendations requested. In all instances, duplication of consultants' reports shall be avoided whenever possible in order to minimize the cost of such consultants' reports to the applicant.

§ 91-21 Payment of review costs.

- A. Consultants and Village staff members providing professional services will submit monthly statements to the Director of Planning for their professional services setting forth the services provided and the cost of those services. The cost of professional services provided by a consultant will be as provided in the consultant's agreement with the Village, consistent with the usual charges for such services in Westchester County. The cost of professional services provided by the Village's professional staff will be at hourly rates based upon the actual salary and benefits paid by the Village, as determined by the Treasurer.
- B. Within 15 days of the receipt of a monthly statement from a consultant or the Village's professional staff, the Director of Planning will provide a copy of the statement to the applicant by regular mail to the address specified by the applicant or by electronic mail if the applicant specifies an electronic mail address. The applicant may dispute any charge by notifying the Village Manager of the basis for the dispute in writing within 15 days of the date on which the Director of Planning gives the applicant notice of the statement.
- C. If the applicant does not dispute any charge, the Director of Planning will direct the Treasurer to

pay the charges out of the escrow account. If the applicant disputes any charge, the Village Manager will determine within 15 days, based upon the applicant's statement, whether to pay the disputed charge, and will direct the Treasurer to pay the charges the Village Manager determines to be reasonable and consistent with the provisions of this article.

- D. All payments for review costs shall be in addition to any application, inspection or other fees as may be required by any other laws of the village and shall not be used to offset the Village's general expenses of engineering, legal and planning services for the reviewing boards, nor to offset the Village's general expenses.

§ 91-23 Failure to pay review costs.

- A. The Building Inspector shall not grant a building permit, certificate of occupancy or certificate of compliance until all fees and costs required herein have been paid in full.
- B. If, after final action is taken on the land use application and the Director of Planning has received and approved all statements for professional services with respect to the application, the escrow amount held by the Treasurer is less than the charges for the approved professional services, the applicant must pay the remaining balance within 30 days. If the applicant fails to do so, the Treasurer will cause the unpaid amount to be added to the next Village tax bill for the property that is the subject of the application.
- C. If, after final action is taken on the land use application and the Director of Planning has received and approved all statements for professional services with respect to the application, the escrow amount held by the Treasurer is greater than the charges for the approved professional services, the Treasurer will refund the balance to the applicant within 30 days.
- D. Withdrawal of a land use application before action is taken does not relieve the applicant of the applicant's obligation to pay the cost of professional services incurred in connection with the review of the application prior to its withdrawal.

Section 2. Chapter 233, Article III (Subdivision of Land, Preliminary Plat) is amended as follows with new matter underlined and deleted matter in [brackets].

§ 233-5 [Review procedure.] Payment for cost of professional services

- L. [The Planning Board, in the review of any application, may refer such application to such engineering, planning, legal, technical, environmental or other professionals as the referring board deems reasonably necessary to enable it to review the application as required by law.] The retention of consultants and payment for professional services provided by such consultants including Village staff, shall be governed by the provisions in chapter 91, article III (Building Construction, Fees).
- [(1) At the time of submission of any application, or during the review process, the reviewing board or official may require the establishment of an escrow account from which withdrawals shall be made to reimburse the Village for the costs of professional review services.
- (2) The Planning Board shall not consider or consider further any application for which a deposit is required under this chapter until the Treasurer has certified that the deposit has been made.
- (3) If such account is not replenished within 30 days after the applicant is notified, in writing, of the requirement for such additional deposit, the reviewing board or official may suspend its review of the application.

- (4) After all pertinent charges have been paid, the Village shall refund to the applicant any funds remaining on deposit.]

Section 3. Chapter 233, Article IV (Subdivision of Land, Final Plat) is amended as follows with new matter underlined and deleted matter in [brackets].

§ 233-10 **[Review procedure.]** Payment for cost of professional services.

- S. [The Planning Board, in the review of any application, may refer such application to such engineering, planning, legal, technical, environmental or other professionals as the referring board deems reasonably necessary to enable it to review the application as required by law.] The retention of consultants and payment for professional services provided by such consultants including Village staff, shall be governed by the provisions in chapter 91, article III (Building Construction, Fees).
- [(1) At the time of submission of any application, or during the review process, the reviewing board or official may require the establishment of an escrow account from which withdrawals shall be made to reimburse the Village for the costs of professional review services.
- (2) The Planning Board shall not consider or consider further any application for which a deposit is required under this chapter until the Treasurer has certified that the deposit has been made.
- (3) If such account is not replenished within 30 days after the applicant is notified, in writing, of the requirement for such additional deposit, the reviewing board or official may suspend its review of the application.]

Section 4. Chapter 270, Article X (Zoning; Planning Board; Conditional Uses; Site Plan Review) is amended as follows with new matter underlined and deleted matter in [brackets].

§ 270-52 **Site development plan rules and regulations.**

- C. Procedure. The Planning Board shall follow procedures as prescribed by Article 7, § 7-725, of the Village Law and by this chapter.
- (4) [The Planning Board, in the review of any application, may refer such application to such engineering, planning, legal, technical, environmental or other professionals as the referring board deems reasonably necessary to enable it to review the application as required by law.] The retention of consultants and payment for professional services provided by such consultants including Village staff, shall be governed by chapter 91, article III (Building Construction, Fees).
- [(a) At the time of submission of any application, or during the review process, the reviewing board or official may require the establishment of an escrow account from which withdrawals shall be made to reimburse the Village for the costs of professional review services.
- (b) The Planning Board shall not consider or consider further any application for which a deposit is required under this chapter until the Treasurer has certified that the deposit has been made.
- (c) If such account is not replenished within 30 days after the applicant is notified, in writing, of the requirement for such additional deposit, the reviewing board or official may suspend its review of the application.
- (d) After all pertinent charges have been paid, the Village shall refund to the applicant any funds remaining on deposit.]

Section 5. Effective Date.

This local law shall take effect immediately upon filing with the New York Secretary of State pursuant to section 27 of the Municipal Home Rule Law.

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