

VILLAGE OF UPPER NYACK
PROPOSED LOCAL LAW _____

A Local Law repealing and replacing Local Law 6 of 2020, Architectural Review Law.

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

SECTION 1. TITLE.

- 1.1. **Title.** This local law shall be known as the **ARCHITECTURAL REVIEW LAW** of the Village of Upper Nyack.

SECTION 2. LEGISLATIVE INTENT.

- 2.1. **Findings.** The Board of Trustees of the Village of Upper Nyack hereby finds as follows:

- 2.1.1. Homes and other buildings have been built in the Village of Upper Nyack for over 150 years in a variety of sizes and styles while maintaining an overall peaceful, quiet, scenic, suburban character throughout the Village. The value of individual homes, buildings and properties are dependent on the overall character of the neighborhood in which they are situated and the architectural harmony of the buildings and structures in that neighborhood.
- 2.1.2. The Board of Trustees finds that excessive uniformity or dissimilarity within a neighborhood, inappropriateness of design, scale or location, or excessive, unbroken mass or height of structures or Buildings which are inconsistent with their surroundings may adversely affect the desirability and quality of life in the immediate neighborhood, and produce deterioration of conditions affecting the health, safety and welfare of the inhabitants thereof, and destroy the proper relationship between buildings within a neighborhood and reduce the value of individual properties. The Board is particularly concerned with the impacts and loss of architecturally and historically significant buildings that may flow from demolition or exterior alterations of buildings that were constructed on or before January 1, 1970.
- 2.1.3. The Board of Trustees also finds that the proliferation of signs without reasonable review and regulation of their installation, modification and replacement with respect to content-neutral parameters such as appearance, design, colors and illumination have the potential to have an inappropriate relationship to the architecture of buildings and structures and other signs and to adversely affect the character of the neighborhood in which they are situated and, cumulatively, of the Village as a whole and, thereby reduce the value of properties within the Village.

- 2.1.4. It is the purpose of this Local Law to prevent the foregoing problems and other harmful effects of the exterior appearances of buildings and structures erected or altered in any neighborhood and to correct the conditions hereinabove mentioned and thus to promote and protect the health, safety, and general welfare of the community, to promote the public convenience and prosperity, to conserve the value of property and to encourage the most appropriate use of land within the Village. It is also the purpose of this Local Law to promote the public welfare, to preserve the historical character of the Village, to prevent the impairment of or injury to their architectural and cultural value to the community and to provide that a reasonable degree of control may be exercised over the architectural design, construction, alteration and repair of buildings, structures and signs.
- 2.1.5. To further these goals, this Local Law establishes the procedures of and criteria to be employed by the Architectural Review Board.

SECTION 3. REGULATIONS.

- 3.1. **Article 1: Definitions.** Unless the context shall otherwise clearly require, the terms, phrases, words and their derivatives used in this Local Law shall have the meanings ascribed to them below, or, if not defined below, the same meaning as those defined in the Zoning Law. Except where specifically defined herein or in the Zoning Law, all words used in this Local Law shall carry their customary and dictionary meanings.
 - 3.1.1. **APPLICANT.** The owner of land seeking approval from the ARB, the Planning Board, the Board of Trustees, or the Zoning Board of Appeals for activities within the jurisdiction of the ARB, or the owner's duly authorized representative which can include, but is not limited to, the proposed developer of or the contract vendee for a Property.
 - 3.1.2. **ARB.** The Architectural Review Board of the Village of Upper Nyack.
 - 3.1.3. **ARCHITECT.** A person licensed as an Architect by the State of New York.
 - 3.1.4. **BOARD OF TRUSTEES.** The Board of Trustees of the Village of Upper Nyack.
 - 3.1.5. **BUILDING.** Shall have the meaning ascribed to it in the Zoning Law.
 - 3.1.6. **CODE ENFORCEMENT OFFICIAL.** The duly appointed Code Enforcement Official of the Village of Upper Nyack or anyone employed within the Code Enforcement Official's office who has been delegated the authority to administer this Local Law.
 - 3.1.7. **FENCE.** Any structure, including a wall or gate, regardless of composition, except those comprised of living plants, that is erected or maintained for the

purpose of enclosing, separating or screening a piece of land or to divide a piece of land into distinct portions.

- 3.1.8. PLANNING BOARD. The Planning Board of the Village of Upper Nyack.
- 3.1.9. PROPERTY. The lot or lots which are the subject of an application to the Code Enforcement Official, ARB, Planning Board, Board of Trustees or Zoning Board of Appeals.
- 3.1.10. REFERRING AGENCY. The board, department or official which referred an application to the ARB.
- 3.1.11. REPLACEMENT SIGN. Any sign which is replacing in kind an already existing sign, that is of the same size as or smaller than the existing sign, is in the same location as the existing sign, uses a font that is of the same type and size as that which was on the existing sign and whose design features and color scheme are identical to the existing sign without any new insignia or symbol.
- 3.1.12. STRUCTURE. Shall have the meaning ascribed to it in the Zoning Law.
- 3.1.13. ZBA. The Zoning Board of Appeals of the Village of Upper Nyack.
- 3.1.14. ZONING LAW. The Zoning Ordinance of the Village of Upper Nyack as it may be from time to time amended or modified.

3.2. Article 2. Establishment; General Procedural Requirements; Notice Requirements.

- 3.2.1. Creation. The Architectural Review Board (“ARB”), as previously established, is hereby continued with all powers and duties described herein or otherwise given thereto by law. The ARB shall consist of five (5) regular members.
- 3.2.2. Members and Chair; Appointment, Term, Removal. The members, chairperson and vice chairperson of the ARB shall be appointed by the Mayor subject to the approval of the Board of Trustees. The term of office for members of the ARB shall be for a term of five (5) years and the term of office for the Chair and Vice Chair shall be for one (1) year. All members of the ARB shall be residents of the Village and shall serve without compensation. The Mayor may remove any member for cause and after a public hearing.
- 3.2.3. Attendance by Members. Meeting attendance is a requirement for serving on the ARB. Upon missing four meetings within a one-year period, a member shall be replaced under the terms of vacancy as provided in Section 3.2.4.
- 3.2.4. Vacancy. If a vacancy shall occur otherwise than by the expiration of a term, the Mayor shall appoint the new member for the unexpired term.

- 3.2.5. Architectural consultant. The ARB shall officially designate an Architect to advise and take part in its deliberations, but without vote, unless an Architect is a member of the ARB in which case the ARB may, but is not required to, designate an architectural consultant. The Board of Trustees shall fix the compensation of the consulting Architect, and pay other expenses of the ARB. Additionally, when the ARB deems it reasonably necessary, it may refer an application to an engineering, planning, legal, technical, historical, or environmental consultant or professional employed by the Village and may require the Applicant to reimburse the Village for the cost of such review in accordance with and subject to the terms, requirements and limitations applicable to professional review fees as set forth in the Zoning Law.
- 3.2.6. Alternate Member. The Mayor, subject to approval of the Board of Trustees, may appoint one alternate member to the ARB. Such alternate member shall be appointed for a two-year term of office. The Chair of the ARB shall assign such alternate member as necessary when absence of regular members of the ARB or the conflict of interest of regular ARB members would otherwise prevent five members of the ARB from considering any pending matter. Once designated to serve on a particular matter, the alternate member shall have the same powers and duties as regular members of the ARB until that matter is concluded.
- 3.2.7. Meetings of and Timing of Actions and Referrals by the ARB.
 - 3.2.7.1. Meetings of the ARB shall be held on a monthly basis or when requested by the Code Enforcement Official, the Mayor, the Chair or any two members of the ARB.
 - 3.2.7.2. Meetings of the ARB shall be open to the public to the extent provided in article seven of the Public Officers Law and notice of such meetings shall be given as provided therein and by ordinary mail addressed to the Applicant at the address stated upon the application; and the Applicant may be heard at such meetings. The ARB shall keep minutes of its proceedings, showing the vote of each member upon every application, or if absent or failing to vote, indicating such fact, and shall also keep records of its examinations and other official actions.
 - 3.2.7.3. A majority of the ARB shall constitute a quorum for the transaction of business.
 - 3.2.7.4. Any report, recommendation or decision made by the ARB must have the approval of the majority of the entire membership of the ARB.
 - 3.2.7.5. A Referring Agency shall not finally approve any application referred to the ARB unless the ARB shall first provide its recommendations or report to the Referring Agency or fail to file its recommendation or report within 60 days of the ARB meeting at which the application was first considered in the

case of a referral on which no public hearing was held, or within 60 days of the close of the public hearing for a referral for which a public hearing is required or for which the ARB elected to hold a public hearing. If the ARB fails to act within said 60-day time period, the application shall be deemed to have received a favorable recommendation by the ARB without condition, unless said deadline is extended by mutual consent of the Applicant and the ARB.

3.2.8. Public Hearings.

3.2.8.1. *Public Hearing Required:* The ARB shall hold a public hearing on all applications over which it has Approval Jurisdiction pursuant to Section 3.3.1 or any subsection thereof and on all applications for Site Plan or Subdivision approval referred to it by the Planning Board for review pursuant to Section 3.3.2.1. The ARB may, but is not required, to hold a public hearing on any other type of matter within its jurisdiction.

3.2.8.2. *Notice of Public Hearing:* In addition to any other notice required by law, notice of a public hearing before the ARB shall be given as follows:

3.2.8.2.1. *Newspaper:* The ARB shall cause notice of a public hearing and a summary of the substance of such application to be published in the official newspaper of the Village at least five (5) days before the date of such hearing.

3.2.8.2.2. *Mailing:* The applicant shall cause notice of a public hearing and a summary of the substance of the Application to be sent to all owners of property located within 200 feet of the subject Property as set forth on the most recent final assessment roll of the Village of Upper Nyack (or if such adjoining property is located in the Village of Nyack, the assessment roll of the Town of Orangetown or, if located in the Town of Clarkstown on the official assessment roll of the Town of Clarkstown), and to such other persons as the ARB or Code Enforcement Official may direct in writing. Such notice shall be sent by U.S. First Class Mail at least five (5) days before the first session of any public hearing on such application (no additional notice mailing is required for the continuation of a public hearing on an application). At least two (2) business days prior to the commencement of the public hearing, the Applicant shall file proof of mailing of such notice with the ARB clerk, which shall consist of: (i) a completed United States Postal Service Certificate of Mailing; (ii) an affidavit of mailing stating the date the notice was mailed and the names and addresses of the persons served with the notice; and (iii) all envelopes that were returned to the Applicant as undeliverable prior to the hearing.

3.2.8.2.3. *Notice Signs:* The Applicant shall post one or more notice signs provided by the ARB clerk on the Property which is the subject of said application at least five (5) days prior to the public hearing and must

maintain the posted sign(s) place until the ARB has rendered its final decision on the application. The sign(s) shall be erected not more than 10 feet from each boundary of the lot that abuts a public street and must be conspicuous to the public. The bottom edge of each sign so erected shall be positioned no less than approximately 14 inches and no more than approximately 36 inches above the ground. If the subject property abuts more than one road, additional signs shall be posted facing each public street on which the property abuts. If the Property does not abut a public street, one or more signs shall be posted in locations approved by the Code Enforcement Official that can readily be seen by the public. Any sign erected under this provision must be removed within 10 days after the ARB has rendered its final decision approving or denying said application.

3.3. Article 3: Jurisdiction of the ARB.

3.3.1. Approval Jurisdiction.

3.3.1.1. The ARB shall review and approve, approve with modifications or conditions, or disapprove the following:

3.3.1.1.1. Every application for a building permit to construct, modify or alter the exterior of a Building or Structure, whether principal or accessory (including applications to install roof mounted solar panels on a Building or Structure), that is not being reviewed as part of an application to the Planning Board for approval of a Site Plan or Subdivision, or that is otherwise exempt from review under SECTION 3, Article 5 of this Local Law. In reviewing such applications, the ARB may review, among other things, the proposed arrangement, color, material and layout of all architectural finishes and exterior features of the Building or Structure.

3.3.1.1.2. Every application for a permit to substantially demolish any Building that was constructed on or before January 1, 1970.

3.3.1.1.3. Every application to install, modify or replace Sign(s) as that term is defined in the Zoning Law, unless the proposed Sign is otherwise exempt from review under SECTION 3, Article 5 of this Local Law. Applications to install exterior Signs shall be made on the Exterior Building Permit Application Form or on such other form as the Code Enforcement Official shall from time to time require.

3.3.1.1.4. Every building permit application for the erection or alteration of a Fence where an area variance for such Fence is required and has been granted by the ZBA.

3.3.1.1.5. Every application to erect, install or substantially modify a Small or Large Collocated Wireless Telecommunication Facility in accordance with the terms and conditions of the Zoning Law.

3.3.1.2. Referrals from the Code Enforcement Official. The Code Enforcement Official shall refer any application within the Approval Jurisdiction of the ARB to the ARB within 10 business days of receiving a complete application for any such application and shall advise the Applicant to make a complete application to the ARB for review.

3.3.1.3. No building permit or demolition permit subject to review and approval by the ARB shall be issued by the Code Enforcement Official unless it conforms with an approval granted by the ARB.

3.3.1.4. Expiration of Approvals.

3.3.1.4.1. An approval granted by the ARB shall expire if a building permit has not been issued within one year of the date such approval is granted or if all improvements are not completed and a Certificate of Occupancy has not been issued within two years of the date the building permit is issued.

In the case of a demolition permit approved by the ARB pursuant to Section 3.3.1.1.2 hereof, the ARB approval shall expire if the proposed demolition is not completed within one (1) year of the date that the ARB approval is issued.

3.3.1.4.2. Extension of Approval. An approval granted by the ARB may be extended by the ARB for one (1) additional one (1) year period upon written request by the applicant showing good cause for such extension. No public hearing shall be required in connection with an approval extension request pursuant to this Section 3.3.1.4.2.

3.3.2. Advisory Jurisdiction.

3.3.2.1. Applications Referred from the Planning Board.

3.3.2.1.1. Unless otherwise provided by law, the Planning Board shall not finally approve any application for Site Plan or Subdivision approval which proposes the construction, alteration or modification of a Building unless it refers such application to the ARB for its review and recommendation.

3.3.2.1.2. The ARB shall review any application referred to it by the Planning Board in accordance with the criteria set forth in SECTION 3, Article 6 hereof and shall recommend approval, approval with

modifications or conditions, or disapproval of any application based on such criteria.

3.3.2.1.3. The Planning Board shall not act contrary to the recommendation of the ARB on aspects of the plan within the ARB's jurisdiction except by a majority plus one vote of the Planning Board.

3.3.2.1.4. Referrals on applications including signs. On any application to the Planning Board relating to a plan which includes signs, the Planning Board will refer it to the ARB for a report and recommendation. Following any approval of the application by the Planning Board of a plan that includes a sign, the Applicant shall make an application for a building permit for such sign which permit shall be subject to review and approval in accordance with Section 3.3.1.1.3 hereof.

3.3.2.1.5. On any application for Site Plan or Subdivision Approval for which referral to the ARB is not required pursuant to Section 3.3.2.1.1, the Planning Board may, but is not required, to refer the application to the ARB for review and recommendation. The ARB shall not be required to hold a public hearing on referrals from the Planning Board made pursuant to this Section 3.3.2.1.5.

3.3.2.2. *Applications Referred from the ZBA.*

3.3.2.2.1. On any application for a variance or variances from the requirements of the Zoning Law, the ZBA may, but is not required, to refer the application to the ARB for review and recommendation.

3.3.2.2.2. The ARB shall not be required to hold a public hearing on referrals from the ZBA.

3.3.2.3. *Applications Referred from the Board of Trustees.*

3.3.2.3.1. On any land use application or any matter related to Village-owned or occupied buildings, the Board of Trustees may, but is not required to, refer the matter to the ARB for review and recommendation.

3.3.2.3.2. The ARB shall not be required to hold a public hearing on referrals from the Board of Trustees.

3.4. **Article 4: Submission Requirements for the ARB.**

3.4.1. Submission Materials Required for All Applications within the ARB's Approval or Advisory Jurisdiction, other than applications for Small and Large Wireless Facilities (see submission requirements for such applications in the Zoning Law). Application to the ARB shall be made in writing on forms and in a number of copies provided by the Code Enforcement Official and shall include

any fee required as set forth on a fee schedule adopted by the Board of Trustees and such other supporting plans, studies or information as the Code Enforcement Official or the ARB may require.

3.4.2. Additional Application Materials; Applications within the ARB’s Approval Jurisdiction. In addition to the general submission requirements set forth in Section 3.4.1, applications for permits for the substantial demolition of a building that was constructed on or before January 1, 1970 shall include a written statement disclosing:

- 3.4.2.1. The year the building was built along with information about any significant renovations to the building.
- 3.4.2.2. The name of the architect, engineer, builder or other design professional who designed or implemented the construction of the building, if available;
- 3.4.2.3. Whether the property, structure or building is identified in the most recent Village Comprehensive Plan as being historically or architecturally significant;
- 3.4.2.4. Whether the building being substantially demolished is located wholly or partially within, or substantially contiguous to, any historic building, structure, facility, or site that is listed on the National Register of Historic Places or the State Register of Historic Places or that has been determined by the Commissioner of the New York State Office of Parks Recreation and Historic Preservation to be eligible for listing on the State Register; and
- 3.4.2.5. Information sufficient to allow the ARB to evaluate whether the building is historically or architecturally significant according to the criteria for such evaluation set forth in Section 3.6.2.

3.4.3. Waiver of Application Requirements. On any application to the ARB for review in accordance with its Approval or Advisory Jurisdiction, the ARB, the Code Enforcement Official or the Referral Agency, as appropriate, may waive the inclusion of those components of an application listed in SECTION 3, Article 4, which it deems unnecessary to the ARB’s evaluation of and decision on the application.

3.5. Article 5: Exempt Activities.

3.5.1. Exemptions. The following activities are exempt from review by or referral to the ARB:

- 3.5.1.1. Substantial demolition of a Building or Structure which is accessory to a single-family home that was constructed on or before January 1, 1970, which is not located in the front yard and is not in excess of 300 square feet in area and 15 feet in height.

- 3.5.1.2. Painting, staining, or changing the siding or exterior material of a Building or Structure unless such work is proposed as a part of a larger project that otherwise requires ARB review and approval pursuant to Section 3.3.1.1.1 of this Local Law or Site Plan or Subdivision Approval by the Planning Board.
- 3.5.1.3. Repairs and replacements in kind of architectural features of the exterior of a Structure or Building (for example, windows, doors, trim, shutters, leaders and gutters, and other similar features) unless otherwise required in connection with the review of a building permit pursuant to Section 3.3.1.1.1 of this Local Law.
- 3.5.1.4. Demolition of a Building or Structure that was constructed after January 1, 1970.
- 3.5.1.5. Installation or erection of any Sign on a Property improved with a One-Family or Two-Family Dwelling and non-illuminated Signs that are 6 square feet in area or smaller for a period of no longer than 90 days and are otherwise permitted pursuant to the Zoning Law for the district in which they are located on property used for any purpose other than a One-Family or Two-Family Dwelling.
- 3.5.1.6. The installation of Replacement Signs.
- 3.5.1.7. A building permit application for the construction, installation or alteration of a Fence unless the proposed Fence is subject to review pursuant to Section 3.3.1.1.4 (fences requiring a variance from the ZBA) or a shed that complies with the requirements of Section 6.8 of the Zoning Law.
- 3.5.1.8. Applications for the construction or alteration of a chicken coop or any associated fences and structures for which special use permit approval from the ZBA is required.

3.6. **Article 6. Criteria for ARB Determinations and Recommendations.**

- 3.6.1. Criteria for applications within the ARB's Advisory Jurisdiction and within the ARB's Approval Jurisdiction Pursuant to Sections 3.3.1.1.1 and 3.3.1.1.4. In determining whether to make a positive or negative recommendation to the Planning Board, Board of Trustees or ZBA with respect to items over which it has Advisory Jurisdiction or, to the extent relevant, in its approval or disapproval of applications pursuant to Sections 3.3.1.1.1 and 3.3.1.1.4 of this Local Law, the ARB shall consider the following Criteria and may only deny or recommend disapproval of an application where it finds that the proposed activity will:

- 3.6.1.1. Fail to preserve and enhance the distinctive character of the Village, in which consideration it shall take into account the Planning Goals outlined in the Village Comprehensive Plan;
- 3.6.1.2. Be incompatible with the size, height, mass or style of Buildings located on contiguous properties;
- 3.6.1.3. Conflict with the intent and purpose of this Local Law as set forth in SECTION 2 of this Local Law; or
- 3.6.1.4. In relation to any other Structure or Building existing or for which a permit has been issued on the Property or on any Property within 200 feet of the subject Property, be incompatible with the Structures or Buildings in such area due to:
 - 3.6.1.4.1. Excessive similarity in respect to one or more of the following features of exterior design and appearance:
 - 3.6.1.4.1.1. apparently identical façade;
 - 3.6.1.4.1.2. substantially identical size and arrangement of either doors, windows, porticos or other openings or breaks in the façade facing the street, including reverse arrangement; and
 - 3.6.1.4.1.3. other significant identical features, such as but not limited to material, roofline and height or other design elements, provided that a finding of excessive similarity shall state not only that such exists, but further that it is of such a nature as to be expected to provoke one or more of the harmful effects set forth in SECTION 2;
 - 3.6.1.4.2. Excessive dissimilarity or inappropriateness in respect to one or more of the following features of exterior design and appearance:
 - 3.6.1.4.2.1. exterior materials or colors;
 - 3.6.1.4.2.2. visually unbroken or unfenestrated walls;
 - 3.6.1.4.2.3. visually unbroken architectural masses that appear to loom over or throw excessive shadow onto adjoining Buildings or properties;
 - 3.6.1.4.2.4. other significant design features, including but not limited to the layout of roof mounted solar panel arrays, of such a nature as to be expected to provoke one or more of the harmful effects set forth in SECTION 2.

- 3.6.2. Criteria to be employed in deciding to approve or disapprove a permit to substantially demolish a building constructed on or before January 1, 1970.
- 3.6.2.1. In determining whether to approve or disapprove a permit to substantially demolish a building constructed on or before January 1, 1970, the ARB shall consider the level of significance in American history, architecture, archeology, engineering, construction technique and culture present in the building, as well as the integrity of location, design, setting, materials and workmanship of the building and may disapprove the subject permit if it finds that the building meets one or more of the criteria set forth in this Section 3.6.2.1. The ARB may refer the application to the Village Historian or such other qualified consultant or professional as necessary in the reasonable determination of the ARB to assist in in making a determination on the application.
- 3.6.2.1.1. Is identified in the most recent Village Comprehensive Plan as being historically or architecturally significant.
- 3.6.2.1.2. Is associated with events that have made a significant contribution to broad patterns of Village, regional, state or national history.
- 3.6.2.1.3. Is associated with the life of a person or persons of historical significance.
- 3.6.2.1.4. Is the work of an architect, engineer, builder, artist or other person generally recognized as significant in the field of design, engineering or construction.
- 3.6.2.1.5. Embodies the distinctive characteristics of a type, period or method of construction that possess high artistic value.
- 3.6.2.1.6. Has yielded or may be likely to yield information important in prehistory or history.
- 3.6.2.1.7. Is listed on the National Register of Historic Places or the New York State Register of Historic Places.
- 3.6.3. Criteria for sign permits. In determining an application for a sign permit the ARB shall balance the right of individuals to identify their businesses and/or convey their messages against the right of the public to be protected against the unrestricted proliferation of signs on a content-neutral basis.
- 3.6.3.1. In undertaking the required balancing, the ARB shall consider whether the proposed sign:
- 3.6.3.1.1. Maintains and enhances the aesthetic environment.

3.6.3.1.2. Is located suitably relative to the location and improvements on the Applicant's property.

3.6.3.1.3. Is of a suitable size and contains appropriate lettering and symbols to convey a message, without being overwhelming or visually offensive.

3.6.3.1.4. Is consistent with the quality and architectural elements and design of the building(s) on the Property and does not detract from or cover significant architectural features of a building.

3.6.3.1.5. Is harmonious with the neighborhood and the general character of the Village.

3.6.3.1.6. Does not impair sight distance at the entry to or egress from the property and otherwise does not create any traffic hazard.

3.6.4. Criteria for Wireless Telecommunication Facilities.

3.6.4.1. In determining an application for a Wireless Telecommunication Facility, the ARB shall apply the criteria set forth for the review of such applications in the Zoning Law.

3.7. **Article 7. Review of Wireless Telecommunication Facilities.**

3.7.1. Notwithstanding any other provision of this Local Law, the review and approval procedure for Wireless Telecommunication Facilities is set forth in the Village's Zoning Law. To the extent that any provision of this Local Law conflicts with the applicable sections of the Zoning Law, the provisions of the Zoning Law shall control.

3.8. **Article 8. Appeals from Decisions Made by the ARB within its Approval Jurisdiction.**

3.8.1. Appeal to the ZBA. Any person aggrieved by a decision of the ARB for which the ARB exercises Approval Jurisdiction other than applications pursuant to Section 3.3.1.1.2 (permits for demolition of structures completed on or before January 1, 1970) may appeal such decision to the ZBA within 30 days of the filing of the ARB's decision in the Village Clerk's office, in accordance with the procedures that apply to applications for appeals to the ZBA as set forth in the Zoning Law. The ZBA may reverse or affirm, wholly or partly, or may modify the ARB's decision appealed from shall make such order, requirement, decision, or determination as in its opinion ought to have been made, and to that end shall have all the powers of the ARB in making such decision.

- 3.8.2. ZBA Decisions. Decisions made by the ZBA in accordance with this SECTION 3, ARTICLE 8 must have the approval of the majority of the entire membership of the ZBA.
- 3.8.3. Article 78 Proceeding: Any person or persons aggrieved by a decision of the ZBA pursuant to this SECTION 3, ARTICLE 8 may apply to the New York State Supreme Court, Rockland County for review by a proceeding under article seventy-eight of the civil practice law and rules. Such proceeding shall be instituted within 30 days after the filing of a decision of the ZBA in the office of the Village Clerk.

3.9. Article 9. Certificate of Appropriateness.

- 3.9.1. Application to the Board of Trustees. An owner or Applicant whose application to substantially demolish a Building or Structure that was constructed on or before January 1, 1970 that has been denied by the ARB may apply to the Board of Trustees for a Certificate of Appropriateness in order to proceed with such demolition.
 - 3.9.1.1. Such application shall consist of all the materials required to be submitted to the ARB in accordance with Sections 3.4.1 and 3.4.2 hereof along with proof sufficient to demonstrate that the application meets each of the criteria set forth in Section 3.9.2 hereof.
 - 3.9.1.2. The Board of Trustees shall hold a public hearing on any application for a Certificate of Appropriateness in accordance with the requirements of Section 3.2.8.
 - 3.9.1.3. In reviewing an application for a Certificate of Appropriateness, the Board of Trustees may: (1) affirm, reverse or modify the decision of the ARB made pursuant to Section 3.6.2 of this Local Law; and (2) in cases in which the Board of Trustees affirms a decision of the ARB denying a permit to demolish a building that it determines to be historically or architecturally significant, grant a Certificate of Appropriateness if it finds that the denial of the demolition permit or conditions constitute a hardship upon the property owner as evaluated by applying the criteria set forth in Section 3.9.2.
- 3.9.2. Criteria for Determining Hardship. In order to prove the existence of a hardship, the owner shall establish that:
 - 3.9.2.1. The subject building is incapable of earning a reasonable return, regardless of whether that return represents the most profitable return possible;
 - 3.9.2.2. The subject building cannot be adapted for any other permitted principal use or principal use permitted by Special Use Permit in the zoning district in

which it is located, whether by the owner or by a purchaser, which would result in a reasonable return;

- 3.9.2.3. Reasonable good faith efforts to find a purchaser interested in acquiring the subject building and preserving it have failed; and
- 3.9.2.4. The hardship is not the result of any act or omission to act of the owner or Applicant.
- 3.9.3. Board of Trustees' Decision. Decisions made by the Board of Trustees in accordance with this SECTION 3, Article 9 must have the approval of the majority of the entire membership of the Board of Trustees and shall be filed with the Village Clerk.
- 3.9.4. Expiration of Board of Trustee Approval. Approvals granted by the Board of Trustees pursuant to this SECTION 3, Article 9 shall expire if demolition is not completed within one (1) year of the date of the Board of Trustees' decision on the application.
- 3.9.5. Issuance of Demolition Permit. If the Board of Trustees reverses a decision of the ARB on a demolition permit or finds that the ARB's demolition permit denial caused a hardship to the owner, then the Code Enforcement Officer shall issue a demolition permit to the owner in accordance with the Board of Trustees decision without further review by the ARB, provided that all other requirements for the issuance of a demolition permit are met.
- 3.9.6. Article 78 Proceeding. Any person or persons aggrieved by a decision of the Board of Trustees pursuant to this SECTION 3, Article 9 may apply to the New York State Supreme Court, Rockland County for review by a proceeding under article seventy-eight of the civil practice law and rules. Such proceeding shall be instituted within thirty (30) days after the filing of a decision of the Board of Trustees in the office of the Village Clerk.

SECTION 4. **Enforcement, Costs and Penalties.**

4.1. Enforcement.

- 4.1.1. Enforcement authority of this Local Law is vested in the Code Enforcement Official and any Code Enforcement Officer of the Village who may issue Stop-Work Orders and Appearance Tickets for violation of this Local Law.
- 4.1.2. Any person violating the provision of this Local Law shall be guilty of an offense punishable by a fine of not exceeding \$250 for each offence. Each week's continued violation shall constitute a separate additional violation
- 4.1.3. The foregoing provisions for enforcement of the regulations in this Local Law are not exclusive but are in addition to any and all laws applicable thereto,

including the right of the Village to seek injunctive relief in a court of competent jurisdiction.

SECTION 5. SEVERABILITY.

- 5.1. Severability. If any word, clause, sentence, paragraph, subdivision or part of this local law shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder hereof, but shall be limited in its application to the word, clause, sentence, paragraph, subdivision or part hereof directly involved in the controversy in which such judgment shall have been rendered.

SECTION 6. RELATIONSHIP TO OTHER PROVISIONS.

- 6.1. Except where otherwise expressly provided, the Local Law shall not repeal, abrogate, annul or in any way impair or interfere with any existing provisions of law or ordinance or any rules or regulations previously adopted or issued or which shall be adopted or issued pursuant to law relating to the use of building, structures, lots or land, provided that where this Local Law imposes greater restriction upon the use of buildings, structures, lots or land, the provisions of this Local Law shall control.

SECTION 7. EFFECTIVE DATE AND REPEAL OF PRIOR LOCAL LAW.

- 7.1. This Local Law shall take effect immediately upon filing in the Office of the Secretary of State. Upon such effective date, Local Law 6 of 2020 shall be repealed.