

LOCAL LAW NO. 1 OF 2022

A LOCAL LAW establishing a six (6) month moratorium on the demolition of buildings and structures.

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

SECTION 1. LEGISLATIVE INTENT. Section 230-42 requires a building permit for erection, construction, structural alteration or repair of a building. Section 230-43B provides that “no construction shall be undertaken until the building permit application is approved by the Building Inspector, . . . and the Architectural Review Board.” Section 230-49 of the Zoning Code requires that a demolition permit be obtained from the Building Inspector with notice to the Board of Trustees and property owners within 250 feet. Section 230-64B requires that an application for a building permit for the construction, reconstruction or alteration of any building or structure shall be transmitted by the Building Inspector to the Architectural Review Board (“ARB”). Section 230-65 provides standards for the ARB action that provide, among other things, that the ARB shall maintain the desirable character of the Village and disapprove the construction, reconstruction, alteration and development of buildings that are designed without consideration of the harmonious relation of the new or altered building to such buildings as already exist and make up the identity of the community. Moreover, the ARB shall maintain the identity and heritage of the Village in its review and decision-making process and that the identity of the Village is founded on its past; and the historic, architectural, cultural and natural resources of the community of the Village of Dering Harbor constitute its heritage.

In furtherance of these stated objectives, the ARB recently adopted the “Village of Dering Harbor Design Principles” which recognize that “pre-war” buildings and structures constructed prior to 1945 contribute to the historic heritage and identity of the Village. The Village Board understands that there may be some confusion as to the application of the code and the Design Principles particularly as they may apply to the ARB’s role in reviewing applications for building permits and demolition permits involving the demolition or alteration of existing buildings and structures. The Board of Trustees need time to complete a formal inventory of the existing conditions and undertake a comparative analysis of the alternatives related to the demolition or alteration of existing buildings or structures that contribute to the historic heritage and identity of the Village. Therefore, to assure that the demolition or alteration of existing buildings or structures does not change the *status quo* during the pendency of this study, and to further assure that the Village Board has an opportunity to hear all resident’s concerns and recommendations, it is the intent of this local law to impose a six (6) month (i.e. 180 days) moratorium on the demolition or alteration of existing buildings or structures and the issuance of a building permit or demolition permit and related review by the ZBA or ARB .

SECTION 2. SCOPE OF STUDY AREA AND APPLICABILITY. The provisions of this local law apply to all lands within the boundaries of the Incorporated Village of Dering Harbor

as herein provided:

- A. Except as may be provided herein, no owner of real property shall permit or cause the demolition or alteration any building or structure as the terms are defined herein during this moratorium.
- B. Except as may be provided herein, the Building Inspector, Architectural Review Board and Board of Appeals shall not accept or process any application under the provisions of Chapter 230 (Zoning) of the Village Code for the review and approval of a building permit or demolition permit involving the demolition or alteration of any building or structure as the terms are defined herein during this moratorium.
- C. For the purposes of this local law, demolition or alteration is considered to be any work on a building or structure for which a building permit or demolition permit is required and, as determined by the Building Inspector, any material change to the exterior appearance of a structure, includes the refacing or resurfacing of the roof or the exterior facade of a building or structure in any manner which would substantially and significantly affect its character and appearance, as well as an act or process which substantially and significantly changes one or more of the exterior architectural features of a building or structure, but excluding ordinary maintenance, cleaning, repainting and minor repairs. If the Building Inspector has any doubt whether the work may not be exempt under this provision, the applicant shall be referred to the Board of Trustees under Section 4 herein.
- D. For purposes of this local law, a building or structure shall be defined as any building or structure constructed prior to 1945 as recognized in the “Village of Dering Harbor Design Principles” filed at the Village Clerk's office as same may be amended from time to time.
- E. For the purposes of this local law, the Building Inspector shall have substantial evidence demonstrating that the building or structure was constructed or materially altered after 1945 to process a building permit or demolition permit. If the Building Inspector does not have such evidence or has any doubt as to the sufficiency of the evidence, the applicant shall be referred to the Board of Trustees under Section 4 herein.

SECTION 3. TIME PERIOD. This moratorium shall apply for a period of one-hundred eighty (180) days from the effective date hereof. This moratorium shall automatically expire at the end of the term stated herein, unless extended by the adoption of a local law by the Village Board amending this term.

SECTION 4. EXEMPTIONS. The demolition or alteration any building or structure and the issuance of a demolition or building permit by the Building Inspector may be exempted from the provisions of this moratorium by the Board of Trustees, following a public hearing on notice before the Board of Trustees. Notice of the public hearing shall be published in the official newspaper and by mailings to all abutting owners and those within 250 feet of the property to be

delivered by the applicant in writing by registered mail, return receipt requested, at least ten (10) calendar days prior to the hearing. Proof of such notice must be provided to the Board of Trustees to permit the public hearing to be opened. The applicant seeking such exemption from this moratorium shall make such application in writing accompanied by a survey or plot plan and detailed plans and elevations indicating the proposed demolition or alteration of the building or structure. The application shall address the factors listed below.

A. Upon such application, the Board of Trustees shall consider:

- (1) Whether the building or structure contributes to the historic heritage and identity of the Village.
- (2) Whether the demolition or alteration of the building or structure is compatible with the goals and objectives of this local law and the Village's planning study when published.
- (3) Whether the demolition or alteration of an existing feature or property is compatible with its historic character as well as with the character of nearby properties containing a building or structure contributing to the historic heritage and identity of the Village.
- (4) Whether the alteration of the building or structure will permit the property to be used as it was historically or shall be given a new use that maximizes the retention of distinctive materials, features, spaces and spatial relationships.
- (5) Whether the alteration of the building or structure will cause the replacement of intact or repairable historic materials or alteration of features, spaces and spatial relationships that characterize a property and the necessity of such replacement if it diminishes the historic character.
- (6). The existing condition of historic features shall be evaluated to determine the appropriate level of intervention needed including whether the severity of deterioration requires repair or limited replacement of a distinctive feature and whether the new material to the extent reasonably available matches the old in composition, design, color and texture.
- (7) Whether the alteration of the building or structure involve new additions, exterior alterations, or related new construction that would destroy the historic materials, features and any spatial relationship that characterizes the property. The new work shall not be differentiated from the old and shall be compatible with the historic materials, features, size, scale and proportion and massing to protect the integrity of the property and its environment.
- (8) The unnecessary hardship and unique circumstances, which do not apply throughout

the Village, of the applicant in complying with this moratorium. In considering the applicant's hardship, the Board of Trustees may consider (i) whether the property is incapable of earning a reasonable return, regardless of whether that return represents the most profitable return possible; (ii) the building or structure to be demolished or altered cannot be adapted for any other use, whether by the current owner or by a purchaser, which would result in a reasonable return; (iii) efforts to find a purchaser interested in acquiring the property and preserving it have failed; (iv) there is an absence of responsibility for any neglect of maintenance that may have contributed to the hardship; and (v) any difficulty asserted by the applicant is in no manner self-created.

(9) Approval of any permit for the demolition or alteration of a building or structure shall require an affirmative finding that any demolition or alterations shall support, advance and be consistent with the historic heritage and identity of the Village and each of the applicable criteria as set forth herein.

B. In making its determination under this section, the Board of Trustees may obtain and consider written reports from the Architectural Review Board, and such other sources as required in the judgment of the Village Board and consistent with the purpose of this local law. A grant of exemption to an applicant's premises shall include a determination of unnecessary hardship and unique circumstances and a finding that the grant of the exemption shall be in harmony with and will not be unduly disruptive to the goals and objectives of the study referred to in this law.

C. Any person aggrieved by a decision of the Board of Trustees in approving or disapproving an application for an exemption under this local law may bring a proceeding to review in the manner provided by Article 78 of the Civil Practice Law and Rules in a court of record. Such proceeding must be commenced within thirty (30) days after the filing in the office of the Village Clerk of the decision of the Board of Trustees.

SECTION 5. PENALTIES. In addition to any penalties or remedies permitted under Chapter 230, the owner of any structure or structures, or the person or entity who performs the demolition, modification, or alteration on any structure, contrary to the prohibitions contained herein shall be subject to an action for both injunction and for damages in the amount of the replacement value, in kind, of the structure or structures as of the date of its demolition, modification, or alteration. In addition to any civil action that may be taken to recover damages, the violation of this local law shall be and hereby is deemed to be a misdemeanor and shall punishable by fine in the amount of \$10,000.00 for each violation hereof, or by imprisonment not exceeding one year, or both.

SECTION 6. AUTHORITY. The proposed local law is enacted pursuant to Village Law §7-712, Municipal Home Rule Law §§10(1)(i), 10(1)(ii)(a)(11), 10(1)(ii)(a)(12), and 10(1)(ii)(e)(3), and expressly supersedes all applicable provisions of Chapter 230 (Zoning) of the Code of the Village of Dering Harbor to review and approve applications for building permits and/or

demolition permits under Article VII, review by the Board of Appeals under §230-9B or Article VIII, or review by the Architectural Review Board under Article X.

SECTION 7. SEVERABILITY. If any section or subsection, paragraph, clause, phrase, or provision of this law shall be adjudged invalid or held unconstitutional by any court of competent jurisdiction, any judgment made thereby shall not affect the validity of this law as a whole or any part thereof other than the part or provision so adjudged to be invalid or unconstitutional.

SECTION 8. EFFECTIVE DATE. This local law shall take effect upon filing with the Secretary of State pursuant to Municipal Home Rule Law.