

**TOWN OF NORTH HEMPSTEAD
LOCAL LAW NO. __ OF 2021**

**A LOCAL LAW AMENDING CHAPTER 42 OF THE TOWN CODE
ENTITLED “PUBLIC WATERWAYS; STRUCTURES”**

BE IT ENACTED by the Town Board of the Town of North Hempstead as follows:

Section 1. Legislative Intent

The Board finds that it is in the best interest of the residents of the Town of North Hempstead to make amendments to Chapter 42 of the Town Code entitled “Public Waterways; Structures” in order to update and clarify the requirements for obtaining a structure permit.

Section 2.

Section 42-6 of the Town Code are hereby amended as follows:

§42-6. Application for structure permits, perimeter structure reconfiguration permits and renewals.

- A. Every person who shall apply for a permit or renewal permit to construct, maintain, erect, enlarge, install, alter or improve, or cause the same to be done, a structure regulated by this chapter shall file a verified application in duplicate on forms to be provided by the Town Clerk and developed by the Building Department and shall pay the fee provided for in § 42-15 hereof.

(1) The application form shall require the applicant to state, at a minimum:

- (a) The applicant's name and address.
- (b) The applicant's status as owner of the upland immediately abutting the mean high-water mark at the place where such structure is proposed to be constructed or maintained.
- (c) The manner in which such upland is zoned.
- (d) The exact use to which the applicant intends to put such upland after the permit is issued.
- (e) The exact use to which the applicant intends to put such structure after the permit is issued, or present use thereof if an existing structure.
- (f) The length and width of the proposed or existing structure.
- (g) The estimated cost of the proposed or existing structure.

(h) A general description of any other structures proposed to be erected or maintained on such structure.

(2) The application form shall be accompanied by a minimum of five copies of:

(a) a scale drawing depicting the locations and dimensions of all proposed structures; and

(b) a site plan and aerial view with a radius of 500 feet from the point of construction on the upland property showing all proposed structures.

(3) All application documents shall also be submitted in electronic format.

~~[(2)]~~ (4) The Town Clerk may accept copies of applications submitted to the Army Corps of Engineers and the New York State Department of Environmental Conservation to the extent such applications provide the required information.

- B. In the case of applications for structures in waterways adjacent to upland residential uses, the Town Clerk, after consultation with the Commissioner of Building, may waive any application requirements that are deemed unnecessary for review of the application.
- C. Insurance. Each application for a permit as authorized under the provisions of this chapter, other than a structure permit for residential uses, shall be accompanied by proof of existing insurance, with the Town added as an additional insured, evidencing protection to the public from bodily injury or property damage sustained as a result of the use of such structure. Such policy shall contain coverage equal to or exceeding those limits to be set by a resolution adopted by the Town Board, with 30 days' notice of cancellation to be afforded to the Town Clerk.
- D. Each application for a permit as authorized under the provisions of this chapter shall be accompanied by a sworn, notarized agreement signed by the applicant which releases the Town from any obligation to repair the structure if it is damaged by any act or omission of the Town and defends, indemnifies and holds harmless the Town from any liability arising from the structure.
- E. In the case of applications for new structures in waterways adjacent to upland multifamily residential uses, marine or nonmarine commercial uses and yacht clubs, the applicant, in addition to the application required in § 42-6A, must file an environmental assessment form designated by the Commissioner of Planning, as well as any additional information required by the Building Department.

- F. Permits issued hereunder shall be transferable. Within six months of the transfer of title to a structure or adjacent upland property for which a permit has been issued, the new owner shall file a change of name with the Town Clerk. Failure to file the change of name within this period shall result in automatic termination of the permit. In the event that a change of name is not timely filed, a new permit application must be submitted to the Town Clerk by the new owner(s) of the upland tract adjacent to the structure.

Section 3.

Section 42-7 of the Town Code are hereby amended as follows:

§42-7. Permit Procedure

Upon receipt of an application prepared in accordance with §42-6 hereof, the Town Clerk shall determine if said application is complete and, if so, shall process the application according to the following procedures.

A. Residential structure permits.

- (1) For applications for a structure permit for residential use, the Town Clerk shall transfer a copy of all the application materials to the Building Department, which shall examine said application for compliance with this chapter and the laws, ordinances, regulations or specifications governing such structures. The Building Department shall approve the application if the application and the proposed structure comply with all requirements of this chapter. The Building Department's decision shall be transmitted the Town Clerk, who shall in turn inform the applicant by mail.
- (2) Upon approval by the Building Department, the Town Clerk shall issue the original or renewal permit, provided that all requirements have been satisfied. **Upon issuance of the permit, notice shall be sent to the Department of Public Safety/Bay Constable.** The Building Department may impose such conditions upon the issuance of a permit which may be reasonable and necessary to carry out the purposes of this chapter [~~including the condition that an applicant post a bond adequate to ensure faithful performance of authorized construction~~]. Should the Building Department disapprove the application, the Town Clerk shall not issue a permit, and the applicant may seek a permit from the Town Board pursuant to §42-11.

B. Multifamily residential, marine commercial, nonmarine commercial, yacht club structure permits, or perimeter structure reconfiguration permits.

- (1) For applications for a structure permit for multifamily residential, marine commercial, nonmarine commercial, yacht club use or for a perimeter structure reconfiguration permit, the Town Clerk shall transfer a copy of all application materials **electronically** to the Commissioner of Building[s] **Safety, Inspection and Enforcement, the Commissioner of Planning and Environmental**

Protection and the Department of Public Safety/Bay Constable, who shall examine the application for compliance with this chapter and the laws, ordinances, regulations or specifications governing such structures. [~~Upon completion of such review, the Commissioner of Buildings shall transfer the application to the Commissioner of Planning, with a statement as to whether the application complies with the requirements of this chapter. The Commissioner of Planning shall review the application and issue an advisory report to the Town Board.~~] **A copy of the application shall also electronically be transferred to the Town Board liaison for the Waterfront Advisory Commission who shall forward the application to the Chair of the Town's Waterfront Advisory Commission.**

(2) Upon the completion of such review, the Commissioner of Building Safety, Inspection and Enforcement, the Commissioner of Planning and Environmental Protection and the Department of Public Safety/Bay Constable shall transfer their recommendations to the Town Clerk. The Waterfront Advisory Commission shall consider the application and recommendations at a duly-called meeting of the Commission and, afterwards, forward its recommendations to the Town Board liaison for the Waterfront Advisory Commission.

(3). No less than ten days prior to the meeting of the Waterfront Advisory Commission, the applicant shall place a buoy or other marker in the location that corresponds to the end of the proposed dock or pier.

~~[(2.)]~~**(4.) The Town Clerk shall request that** the Town Board [~~shall~~] schedule a public hearing on the application following receipt of the [~~advisory report~~] **recommendations** from the Commissioner of Planning **and Environmental Protection and the Department of Public Safety/Bay Constable.** [~~And the Town Clerk shall publish notice of the hearing in accordance with §70-240A of the Town Code. After a public hearing is scheduled, the Commissioner of Planning shall forward a copy of the application to the Chair of the Town's Waterfront Advisory Commission.~~]

~~[(3.)]~~ **(5.) The Town Clerk shall publish notice of the hearing in accordance with §42-11 of the Town Code.** Before the application is heard by the Town Board, the applicant must provide notice of the public hearing to property owners within a radius of 500 feet of the upland property affected by the application, in the manner provided in §~~[70-240]~~ **42-11** of the Town Code, and must file an affidavit as to the mailing of such notices as required by that section.

~~[(4.)]~~ **(6.)** The Town Board shall review the application under the standards set forth in this chapter and shall approve or disapprove the application. The Town Board may consider any recommendation and supporting information submitted by the Town's Waterfront Advisory Commission, **the Commissioner of Planning and Environmental Protection, the Department of Public Safety/Bay Constable and the Commissioner of Building Safety, Inspection and Enforcement.** The

Town Board may impose such conditions, upon the issuance of a permit, which may be reasonable and necessary to carry out the purposes of this chapter, including the condition that an applicant post a bond adequate to ensure faithful performance of authorized construction.

~~[(5-)]~~**(7.)** Upon approval of the Town Board, the Town Clerk shall issue the appropriate permit. **The Commissioner of Building Safety, Inspection and Enforcement shall forward a copy of final plans stamped and approved by the Town Board and Department of Building Safety, Inspection and Enforcement.**

- C. No permit shall be issued pursuant to either §42-7A or §42-7B until the applicant has submitted proof of issuance of permits by the United States Army Corps of Engineers and the New York State Department of Environmental Conservation, if the same are required, or letters of nonjurisdiction.

Section 4.

Section 42-9 of the Town Code is hereby amended as follows:

§42-9. Standards

No structure shall be constructed, erected, enlarged, installed, altered or improved unless it shall comply with the following standards:

A. General standards.

(1) No structure shall be permitted if, in the judgment of the Commissioner of Planning, the **Department of Public Safety/Bay Constable** ~~[Director of Harbor and Marine Enforcement]~~, or the Town Board, it would unreasonably impede, obstruct or interfere with navigation, the rights of adjoining owners, the public use of or passage along the foreshore or the waterway, or harmfully affect the environment.

(2) Except as provided under § 42-9C(1), no structure, vessel or combination thereof shall be permitted to project into the waterway a distance greater than required to reach navigable water depth, or to a length exceeding 150 feet, whichever is less.

(3) No structure or vessels shall extend within a distance of 50 feet of any federal, state or Town designated channel, vessel accessway, fairway or anchorage, except where a legally existing marine commercial use or yacht club can establish that the existence of such structures or placement of such vessels will not impede the safety of marine traffic in the designated channel, vessel accessway, fairway or anchorage and that such structures or placement of such vessels existed in their present form as of October 1, 1991.

(4) Notwithstanding the fact that a proposed residential structure shall not comply with this chapter in any respect, the Town Board may, in accordance with the procedures in § 42-11, direct that such permit be issued if it shall find that compliance with this chapter in such respect will create practical difficulties or unnecessary hardships or if it shall find that the proposed structure is in the public interest.

B. Structures in waterways.

(1) All structures shall be constructed in accordance with generally accepted engineering and design standards.

(2) All fixed docks shall provide:

(a) An avenue for clear passage in the land area crossed by the dock at mean low tide. Such an avenue shall be created by providing an area below the dock with a clearance of at least six feet, by providing a means of access across the main body of the dock itself, or by providing a clearly marked path across the upland immediately adjacent to the dock, which will serve the same purpose.

(b) A minimum of three feet and a maximum of eight feet above mean high water as defined by the Datum Plane and a maximum freeway clearance of two feet, except as provided for in § 42-9B(2)(a).

(3) The location, design and use of any structure in the waterway shall be compatible with this chapter and with the zoning regulations of the upland jurisdiction, as well as with all other applicable public health laws and other applicable requirements, and shall conform to generally accepted standards of construction for the prevention of fire hazards.

(4) No structure in a waterway shall be permitted unless it shall be water dependent and, except in the case of bulkheads, used solely for the purpose of gaining access to a waterway for commerce, navigation, fishing or recreation.

(5) Any structure within a waterway utilized in connection with adjacent premises shall be the minimum necessary to meet the upland use.

(6) With respect to residential or multifamily residential permits, no structure or vessel slip shall be hired out or used on a seasonal or permanent basis for dockage use by persons not actually residing at the premises. Such use of a vessel slip shall constitute a violation of this chapter concurrently with any violation of the Town's Zoning Ordinance[1] also created thereby.

(7) Except as provided under § 42-9C, there shall be no more than one dock or floating dock per lot or lot group with less than 100 feet of shoreline frontage. One additional dock or floating dock shall be allowed for each additional 100 feet of shoreline frontage. Docks and floats shall be straight, E- , F- , L- , T- or U-shaped and shall extend at right angles to the shoreline where practicable.

(8) Except as provided under § 42-9C, the number of slips permitted shall not be greater than two per upland single-family residential parcel.

(9) No slip, dock, float, vessel or combination thereof shall encroach upon the portion of the waterway adjacent to the 15-foot side yards on either side of the uplands boundary as it extends offshore.

(10) Except as provided under § 42-9C, docks for all purposes are limited to a maximum width of six feet, **except for floats which are limited to a maximum width of eight feet** for a residential structure permit and 10 feet for all other permits.

(11) The top horizontal board (wale) of any bulkhead installed pursuant to this chapter shall be at a minimum level necessary to meet the purpose for which the bulkhead is being constructed and shall in any event not be higher than six feet above mean high water as defined in the datum plane unless a certified engineering report is submitted showing that a height in excess of six feet is required for public safety reasons. All bulkheads shall also comply with generally accepted standards of marine construction.

(12) All structures shall be composed only of materials which, in the judgment of the Commissioner of Planning, will have no adverse effects on the environment or water quality.

(13) Lighting on any structure must be of a type, which will not be confused with navigation lighting, must meet United States Coast Guard standards and must not produce offensive glare when viewed from land or water.

(14) All fixed structures protruding from the mean high water line to the mean low water lines shall provide for an alternate route of travel along the shoreline over or around said structure.

C. Additional provisions for structures adjacent to multifamily residential, marine commercial, nonmarine commercial and yacht club uses.

(1) The Town Board may permit a specific number, configuration, width and length of docks, floats or slips other than what would be allowed under § 42-9B,

where the applicant can demonstrate that the proposed design or additional number of docks, floats or slips is needed to accommodate the associated use.

(2) The permissible number, configuration and width of docks, floats and slips shall be determined by considering the location, limiting natural features of the site, demonstrated need for such structures, effect on navigation, infringement on public lands and compliance with the other sections of this chapter. No structure, vessel or combination thereof shall unreasonably impede the public's use, benefit or enjoyment of publicly owned shorefront and underwater lands. Where, in the judgment of the Town Board, impairment of the public's use and enjoyment of such publicly owned areas cannot be avoided, the upland owner may be required to afford to the public a reasonable and convenient means of access over or around the structure.

(3) Any new docking facilities, slips or moorings, or expansion or increase in existing docking facilities, slips or moorings, for marine commercial, multifamily residential and yacht club uses shall be required to:

(a) Demonstrate that sufficient marine sanitation pumpout capacity exists or that a satisfactory alternative approved by the Town Board is available, so as to accomplish the removal of sanitary wastes from all vessels associated with the use; and

(b) Provide for the collection and proper disposal of solid waste (garbage, trash, etc.), grease, oil and gasoline.

(4) In areas adjacent to multifamily residential or nonmarine commercial uses, in no case shall more than one dock be permitted per 100 feet of shoreline frontage.

(5) Any use permitted to dispense gasoline, diesel fuel, mixed fuels, engine oils and similar supplies shall show compliance with all federal and state laws dealing with oil spill prevention.

(6) In addition to the requirements specified under this section, the following shall apply for docks, floats or slips adjacent to nonmarine commercial uses:

(a) The docks or slips are limited to short-term transient use (no more than 48 hours) and shall be designated as the same, except for vessels owned by the adjacent upland owner.

(b) The area associated with the dock or slip may be used only as a means of vessel access to the upland use or for public access. The area shall not be used for any activity or use which is not water dependent.

Section 5.

Section 42-11 of the Town Code is hereby amended as follows:

§42-11. Review of denials of residential structure permits

- A. The Town Board may review any determination of the Building Department disapproving an application pursuant to §42-7A. A majority vote of the members shall be necessary to reverse or modify the determination of the Building Department. ~~[The Town Board may consider any recommendation and supporting information submitted by the Town's Waterfront Advisory Commissions during the public comment period.]~~
- B. Such review must be requested by the applicant within 30 days of its receipt of notification of the disapproval by the Building Department, on a form to be supplied by the Town Clerk.

C. Once the applicant has requested review of the permit application, the Town Clerk shall electronically transfer a copy of the application to:

(1) The Commissioner of Planning and Environmental Protection, and the Department of Public Safety/Bay Constable, who shall examine the application for compliance with this chapter and the laws, ordinances, regulations or specifications governing such structures; and

(2) The Town Board liaison for the Waterfront Advisory Commission who shall transfer the application to the Chair of the Town's Waterfront Advisory Commission; and

(3) The Commissioner of Building Safety, Inspection and Enforcement who shall verify that the application submitted to the Town Clerk's Office matches the application made to the Department of Building Safety, Inspection and Enforcement.

D. Upon the completion of such review, the Commissioner of Planning and Environmental Protection and the Department of Public Safety/Bay Constable shall forward their recommendations to the Town Clerk. The Waterfront Advisory Commission shall consider the application at a duly-called meeting of the Commission and, afterwards, forward its recommendations to the Town Board liaison for the Waterfront Advisory Commission.

E. No less than ten days prior to the meeting of the Waterfront Advisory Commission, the applicant shall place a buoy or other marker in the location that corresponds to the end of the proposed dock or pier.

F. The Town Clerk shall request that the Town Board schedule a public hearing on the application following receipt of recommendations from Commissioner of Planning and Environmental Protection and the Department of Public Safety/Bay Constable.

~~[C.]~~**G. The Town Clerk shall publish notice of the hearing in accordance with §42-11**

of the Town Code. ~~[The Town Board shall hold a hearing on the review of the determination, and public notice thereof shall be given by publication in the official newspaper at least 10 but no more than 20 days prior to such hearing.]~~ The applicant shall be required to send notice by certified mail to owners of all property within a radius of 500 feet of the upland property, at least 10 days prior to the hearing, advising of the application and the hearing date, and must file with the Town Attorney, prior to the hearing date, an affidavit of mailing of the notice as required by this section. ~~[After the hearing is scheduled, the Commissioner of Planning shall forward a copy of the application to the Chair of the Town's Waterfront Advisory Commission.]~~

~~[D.]~~**H.** If the record shall indicate to the satisfaction of the Town Board that strict application of the provisions of this chapter is not necessary to maintain safe navigability of the waterway or to prevent undue interference with the right of the public to use the waterfront or the littoral rights of adjacent waterfront property owners, taking into account the shape and contour of the waterway and topography of the vicinity, and if the record further indicates that the proposed development conforms to all other local, state and federal regulations relating thereto, then the Town Board may vary or modify the application of such provisions so that the spirit of this chapter shall be observed.

~~[E.]~~**I.** Upon the Town Board's reversal or modification of a determination [by] of the ~~[Building Department]~~ **Commissioner of Building Safety, Inspection and Enforcement**, the Town Clerk shall issue the appropriate permit. **The Commissioner of Building Safety, Inspection and Enforcement shall forward a copy of final plans stamped and approved by the Town Board and Department of Building Safety, Inspection and Enforcement. If the Town Board affirms the determination of the Commissioner of Building Safety, Inspection and Enforcement, the Town Clerk shall so inform the applicant.**

Section 6.

This Local Law shall take effect immediately upon filing with the Secretary of State.