

APPENDIX E

Village of Whitehall Waterfront Consistency Law

Village of Whitehall

Local Law No. _____ of the year of 2002

Be it enacted by the Board of Trustees of the Village of Whitehall as follows:

GENERAL PROVISIONS

I - Title

This local law will be known as the Village of Whitehall Waterfront Consistency Law.

II - Authority and Purpose

1. This local law is adopted under the authority of the Municipal Home Rule Law and the Waterfront Revitalization of Coastal areas and Inland Waterways Act of the State of New York (Article 42 of the Executive Law).
2. The purpose of this local law is to provide a framework for agencies of the Village of Whitehall to consider the policies and purposes contained in the Local Waterfront Revitalization Program when reviewing applications for actions or direct agency actions located in the waterfront area; and to assure that such actions and direct actions are consistent with the said policies and purposes.
3. It is the intention of the Village of Whitehall that the preservation, enhancement and utilization of the natural and manmade resources of the unique waterfront area of the Village take place in a coordinated and comprehensive manner to ensure a proper balance between natural resources and the need to accommodate population growth and economic development. Accordingly, this local law is intended to achieve such a balance, permitting the beneficial use of waterfront resources while preventing:
 - a. loss of fish and wildlife;
 - b. diminution of open space areas or public access to the waterfront;
 - c. erosion of shoreline;
 - d. losses due to flooding, erosion and sedimentation;
 - e. or permanent adverse changes to ecological systems.
1. The substantive provisions of this local law shall only apply while there is in existence a Local Waterfront Revitalization Program which has been adopted in accordance with Article 42 of the Executive Law of the State of New York.

III - Definitions

"Actions" means either Type I or unlisted actions as defined in SEQRA regulations (6N.Y.C.R.R.617.2) which are undertaken by an agency and which include:

1. projects or physical activities, such as construction or other activities that may affect the environment by changing the use, appearance or condition of any natural resource or structure, that:
 - a. are directly undertaken by an agency; or
 - b. involve funding by an agency; or
 - c. require one or more new or modified approvals from an agency or agencies

1. agency planning and policy-making activities that may affect the environment and commit the agency to a definite course of future decisions;

2. adoption of agency rules, regulations and procedures, including local laws, codes, ordinances, executive orders and resolutions that may affect the environment; and

3. any combinations of the above.

"Agency" means any board, agency, department, office, other body, or officer of the Village of Whitehall.

"Waterfront Area" means the Waterfront Revitalization Area delineated in the Village's Local Waterfront Revitalization Program.

"Coastal Assessment Form (CAF)" means the form used by an agency to assist it in determining the consistency of an action with the Local Waterfront Revitalization Program.

"Consistent" means that the action will fully comply with the LWRP policy standards and conditions and, whenever practicable, will advance one or more of them.

"Direct Actions" mean actions planned or proposed for implementation by an agency, such as, but not limited to, a capital project, rule making, procedure making and policy making.

"Local Waterfront Revitalization Program (LWRP)" means the Local Waterfront Revitalization Program of the Village of Whitehall, approved by the Secretary of State pursuant to the Waterfront Revitalization of Coastal Areas and Inland Waterways Act (Executive Law, Article 42), a copy of which is on file in the Office of the Clerk of the Village of Whitehall.

IV - Review of Actions

1. Whenever a proposed action is located in the Village's Waterfront area, an agency shall, prior to approving, funding or undertaking the action, make a determination that it is consistent with the LWRP policy standards and conditions set forth in Paragraph II herein.
2. Whenever an agency receives an application for approval or funding of an action or as early as possible in the agency's formulation of a direct action to be located in the Waterfront area, the applicant, or in the case of a direct action, the agency, shall prepare a Coastal Assessment Form (CAF) to assist with the consistency review.
3. The agency shall refer a copy of the completed CAF to the Village Planning Board within ten (10) days of its submission and prior to making its determination, shall consider the recommendation of the Village Planning Board with reference to the consistency of the proposed action.
4. After referral from an agency, the Village Planning Board shall consider whether the proposed action is consistent with the LWRP policy standards and conditions set forth in Paragraph II herein. The Village Planning Board shall require the applicant to submit all completed applications, CAFs and any other information deemed to be necessary to its consistency recommendation.
5. The Village Planning Board shall render a written recommendation to the agency within thirty (30) days following referral of the CAF from the agency, unless extended by mutual agreement of the Planning Board and the applicant or in the case of a direct action, the agency. The recommendation shall indicate whether, in the opinion of the Village Planning Board, the proposed action is consistent with or inconsistent with one or more of the LWRP policy standards or conditions and shall elaborate in writing the basis for the opinion.
6. The Village Planning Board shall, along with the consistency recommendation, make any suggestions to the agency concerning modification of the proposed action to make it consistent with the LWRP policy standards and conditions or to greater advance them.
7. In the event that the Village Planning Board's recommendation is not forthcoming within the specified time, the referring agency shall make its decision without the benefit of the Planning Board's recommendation.
8. If the agency and the Planning Board concur in the consistency of the proposed action, the agency may proceed with the action. In the event that the agency, after reviewing the written recommendation of the Board, finds that it disagrees with the consistency recommendation of the Planning Board, the agency shall within fifteen (15) days prepare a written finding detailing its position and transmit it to the Planning Board. The Planning Board and the agency shall meet to resolve their differences within fifteen (15) days of the Planning Board's receipt of the agency's finding.

9. If the Planning Board and the agency cannot reach a mutually agreeable determination of consistency, the matter will be referred to the Village Board of Trustees for a finding of consistency. The agency shall take no action until the Board of Trustees has made a determination and finding of consistency with the LWRP.
10. The provisions of IV (7) shall not apply to the Zoning Board of Appeals. Instead, where the Zoning Board of Appeals is the agency, the Zoning Board of Appeals shall consider the written consistency recommendation of the Planning Board when reviewing and considering an application for a variance.
11. Actions to be undertaken within the waterfront area shall be evaluated for consistency in accordance with the following LWRP policy standards and conditions, which are derived from and further explained and described in Section III of the Village of Whitehall's LWRP, a copy of which is on file in the Office of Community Development and available for inspection during normal business hours. In the case of direct actions, the agency shall also consult with Section IV of the LWRP in making their consistency determination. The action shall be consistent with the policy to:
 - a. Revitalize, and redevelop deteriorated and underutilized waterfront areas for commercial, industrial, cultural, recreational, and other comparable uses.
 - b. Facilitate the siting of water-dependent uses and facilities on or adjacent to coastal waters.
 - c. Strengthen such harbors by maintaining the mix of traditional uses, assuring safe navigation and resolving use conflicts and competition through harbor and water surface use management.
 - d. Encourage the location of development in areas where public services and facilities essential to such development are adequate.
 - e. Significant fish and wildlife habitats will be protected, preserved, and, where practical, restored to maintain their viability as habitats.
 - f. In order to minimize damage to natural resources and property from flooding and erosion, development will be sited away from hazard areas wherever practical, and natural flooding and erosion protective features will not be degraded.
 - g. Erosion protection structures shall be constructed only if they are necessary to protect human life, existing development, or new water-dependent development and will result in no measurable increase in erosion of flooding at other locations. Non-structural measures shall be used whenever possible. Public funds shall only be used where the public benefits outweigh the long-term costs.
 - h. Maximize public access and recreational opportunities to the shoreline and to waterways.
 - i. Protect, enhance and restore structures, districts, and sites that are of significance to the history, architecture, archeology or culture of the state, its communities, or the nation.
 - j. Protect and improve the visual quality of the waterfront.
 - k. Municipal, industrial, and commercial discharge of effluent and pollutants, including, but not limited to, toxic and hazardous substances, into water bodies will conform to state and national water quality standards.

- l. Policies and management objectives of approved Local Waterfront Revitalization Programs will be considered while reviewing water body classifications and while modifying water quality standards; however, those waters already overburdened with containments will be recognized as being a development constraint.
 - m. Best management practices will be used to ensure the control of stormwater runoff, combined sewer overflows, and the non-point discharge of excess nutrients, organics, and eroded soils into state waterways.
 - n. Discharge of waste materials into state waters from vessels subject to state jurisdiction will be limited so as to protect significant fish and wildlife habitats, recreational areas, and water supplies.
 - o. Excavation, dredging, and dredge spoil disposal will be undertaken in a manner which protects fish and wildlife habitats, scenic resources, natural protective features, important agricultural land, and wetlands, and does not cause an increase in the erosion of such land.
 - p. Preserve and protect wetlands and the benefits derived from these resources.
1. If the agency determines that the action would not be consistent with one or more of the LWRP policy standards and conditions, such action shall not be undertaken unless the determining agency makes a written finding with respect to the proposed action that:
 - a. no reasonable alternatives exist which would permit the action to be undertaken in a manner which will not substantially hinder the achievement of such LWRP policy standards and conditions;
 - b. the action would be undertaken in a manner which will minimize all adverse effects on such LWRP policy standards and conditions;
 - c. the action will advance one or more of the other LWRP policy standards and conditions; and
 - d. the action will result in an over-riding village, regional or state-wide public benefit.
 1. Such a finding shall constitute a determination that the action is consistent with the LWRP policy standards and conditions.
 2. Each agency shall maintain a file for each action made the subject of a consistency determination, including any recommendations received from the Planning Board Administrator. Such files shall be made available for public inspection upon request.

V - Enforcement

1. The Village Building Inspector shall be responsible for enforcing this Chapter.
2. No work or activity on a project in the Coastal Area which is subject to review under this Chapter shall be commenced or undertaken until the Building Inspector has been presented with a written determination from an agency that the action is consistent with the Village's LWRP policy standards and conditions.
3. In the event that an activity is not being performed in accordance with this Chapter or any conditions imposed thereunder, the Building Inspector shall issue a stop work order and all work shall immediately cease. No further work or activity shall be undertaken on the project so long as a stop work order is in effect.

VI - Violations

1. A person who violates any of the provisions of, or who fails to comply with any condition imposed by, this Chapter shall have committed a violation, punishable by a fine not exceeding five hundred dollars (\$500.00) for a conviction of a first offense and punishable by a fine of one thousand dollars (\$1,000.00) for a conviction of a second or subsequent offense. For the purpose of conferring jurisdiction upon courts and judicial officers, each week of continuing violation shall constitute a separate additional violation.
2. The Village's Counsel is authorized and directed to institute any and all actions and proceedings necessary to enforce this local law. Any civil penalty shall be in addition to and not in lieu of any criminal prosecution and penalty.

VII - Severability

The provisions of this local law are severable. If any provision of this local law is found invalid, such finding shall not affect the validity of this local law as a whole or any part or provision hereof other than the provision so found to be invalid.

VIII - Effective Date

This local law shall take effect immediately upon its filing in the office of the Secretary of State in accordance with Section 27 of the Municipal Home Rule Law.

DESIGN GUIDELINES

A. Integration of Procedures

The following standards are recommended to be included as part of any effort to revise the Zoning Ordinance. Whenever the particular circumstances of the proposed development require compliance with other requirements of the Village, the Planning Board shall attempt to integrate, as appropriate, site plan review as required by this section with the procedural and submission requirements for such other compliance.

B. Applicable Design Standards

All development and redevelopment in the Village must meet the following standards:

1. Overall Design

While various land use elements (e.g. commercial, residential, recreational, water-dependent, industrial) will comprise the land area within the Village, uses must be complementary and provide for visual and physical access to the Champlain Canal and South Bay whenever possible. Development must also encourage an economic stimulus and revitalization of the Village. All new projects and redevelopment projects must be consistent with the Village's Local Waterfront Revitalization Program.

2. Relationship to Champlain Canal and South Bay

All elements of proposed projects within the Village shall be sensitive to the unique and important relationship to Champlain Canal and South Bay all land should be developed in such a way as to maximize views to the lake and canal.

3. Architectural Design Standards

The following standards are not intended to restrict imagination, innovation or variety, but rather focus on design principles that will result in creative solutions and quality designs that relate the project to its surroundings and foster economic revitalization.

The purpose of these design standards is to afford a priority to waterfront compatible, well-designed uses, achieve public access to the waterfront.

The following architectural design standards shall apply to the Village:

- Appropriate architectural scale, form, and material shall be utilized to ensure that buildings and structures are compatible with and add interest to the landscape. More specifically, the design and improvement of all structures is to be compatible with that of the surrounding structures and neighborhoods. Compatibility shall be determined by a review of proposed: (1) use of materials; (2) scale; (3) mass; (4) height; (5) color; (6) texture; and (7) location of the structures on the site, as applicable and appropriate.
- The various elements of the project shall be integrated by cohesive architectural treatment and compatible design. Buildings shall be designed and improved in consideration of appearance from all vantagepoints; both within and outside of the Village.
- Architectural elements shall be used to provide visual interest, reduce apparent scale of the development, and promote integration of the various design elements in the project.
- Groups of related buildings shall be designed to present a compatible appearance in terms of architectural style and building materials.
- Building lines shall be varied to the extent practical in order to provide an interesting interplay of buildings and open spaces.
- Appurtenances on buildings and auxiliary structures, such as mechanical equipment, garages, or storage buildings, shall receive architectural treatment consistent with that of principal buildings.
- When replacing windows on a façade, a window of the same trim size and character as the original should be used.
- In renovations, natural, unpainted brick should be retained. Already painted brick, if weathered and losing its paint finish, can be stripped using chemical solutions. If necessary to protect older, softer brick, painted brick should remain painted.
- Façade renovations should not destroy or cover original details on a building.
- Colors shall be harmonious and only compatible accents shall be used.
- Brick and stone facades should not be covered with artificial siding or panels.
- Materials and finishes shall be selected for their durability and wear as well as for their beauty. Proper measures shall be taken for protection against weather, neglect, damage and abuse.

4. Landscaping, Screening and Buffering

- All sidewalks, open spaces, parking areas, and other similar service areas shall be landscaped and/or paved in a manner, which will harmonize with proposed buildings. Materials for paving, walls, fences, curbs, benches, etc., will be attractive, durable, easily maintained and compatible with the exterior of adjacent buildings.
- The planning board may require buffer landscaping, fencing or screening, to separate different types of land uses and to screen utility buildings, refuse collection areas, cooling systems, and other similar installation and features.
- All plants, trees, and shrubs shall be installed in accordance with a planting schedule provided by the applicant and approved by the planning board. Landscape materials selected shall be appropriate to the growing conditions of the environment of the Village, this climatic zone, and native species.

5. Lighting

Drives, walkways, and other outdoor areas shall be properly lighted to promote safety and encourage pedestrian use. All exterior lighting for the project shall be directed downward or otherwise appropriately shielded and designed to minimize excessive light. It shall have an attractive appearance, compatible with the overall project design and waterfront character. Lighting type, number, and locations shall be subject to Planning Board review and approval as part of the site plan review.

6. Signage

All signs shall be subject to Planning Board review and approval as part of site plan/building plan review.

All signs shall be of a size and scale as determined appropriate by the Planning Board to accomplish their intended purpose. At a minimum, proposed signage shall comply with the standards for different types of land uses identified Whitehall Zoning Regulations. Signs should complement the architectural style and scale of the building. Signs should be compatible with adjacent premises, and graphic elements shall be held to the minimum needed to convey the sign's major message.

7. Vehicular Circulation System and Traffic Access

In general, the rights-of-way and pavement widths for all internal streets, drives, walks and other accessways for vehicles and/or pedestrians shall be determined on the basis of sound current planning and engineering standards, shall be planned and built so as to promote safety and efficiency of movement, shall accommodate projected demand, and shall minimize impervious surfaces and paving materials to the maximum extent possible.

8. Public Access to Waterfront

While waterfront development will require certain private elements for the security and benefit of its residents and property owners, new development should provide pedestrian waterfront public access in a manner which:

- Enhances existing public access opportunities at the riverfront, in furtherance of the Village's LWRP and the State's Coastal Policies;
- Coordinates such public access with existing or anticipated opportunities for public access on adjacent public lands to facilitate further linkages in a continuous trailway system; and
- Provides meaningful, permanent public access to the Champlain Canal and South Bay in the form of safe and unobstructed access to and along the dry shore areas of the Champlain Canal and South Bay for all members of the public for purposes of providing a public access system to and along the waterfront and/or public rights-of-way.

Access may be regulated by reasonable conditions in a management plan submitted by the applicant and approved by the Planning Board as part of the final site plan approval.

9. Off-Street Parking and Loading

- Off-street parking and loading areas shall be designed with careful regard to their relationship to the uses served and to the objectives for other open spaces. The areas shall be coordinated with the public street system serving the project in order to avoid conflicts with through traffic or obstruction to pedestrian walks. In addition, all parking areas shall be designed to include provisions for handicapped parking.
- Parking and loading facilities not enclosed in structures shall be suitable landscaped and/or screened as determined appropriate by the Planning Board.

- The number of off-street parking spaces required shall be as set forth below and shall be applicable only to those uses in the Village:

Use	Minimum Off-Street Parking Requirement
One-family, two-family Multi-family dwelling	One (1) space per unit plus one-half (1/2) space per bedroom.
Marina	One-half (1/2) space per slip or dry rack storage facility.
Retail or service business	One (1) space for each 200 square feet of gross floor areas, excluding basement storage utility areas.
Restaurant	One (1) space for each three (3) patron seats or one (1) space for each 75 square feet of gross floor areas, whichever is greater.
Office for business or professional use	One (1) space for each 250 square feet of gross floor area.
Auditorium, community building, club	One (1) for each 200 square feet of area occupied by all principal uses or structures.
Hotel, motel, bed and breakfast facility	One (1) for each guest room.

- With respect to any building, structure, or use for which the required number of parking spaces is not specifically set forth in the above schedule, the Planning Board in the course of site plan review shall determine the number of off-street parking spaces required, which number shall bear a reasonable relation to the minimum off-street parking requirements for specified uses as set forth in the above schedule. In addition, all parking areas shall be designed to include provisions for handicapped parking.
- Up to thirty percent (30%) of the required parking may be designated for compact automobiles at the discretion of and in accordance with standards determined by the Planning Board.
- New marina projects must incorporate best management practices in their design, including but not limited to the following:
 - Maximize pervious land surface and vegetative cover to minimize stormwater runoff and to prevent polluted waters from reaching adjacent waters and wetlands. Direct runoff away from adjacent waters and wetlands to the extent feasible by site grading or other methods.

- Treat runoff from parking lots, maintenance, fueling, and washdown areas in a manner that prevents oils, grease, and detergents from reaching adjacent waters. Accepted treatment methods include oil and grease filtering catch basins, retention areas and exfiltration systems.
- Alternative methods of meeting off-street parking requirements in the Village:
 - The Village encourages a mix of land uses, wherein the cumulative parking demand is less than the sum of the peak demand values for each individual land use. This makes it possible to share parking without conflict and to avoid a large surplus of parking spaces in the waterfront area.

Also, because of the special nature and value of land along the waterfront, and because of the anticipated mix of land uses, alternative parking solutions, such as parking incorporated into buildings, valet parking, off-site parking, etc., may, in certain situations, also be appropriate.

- The Planning Board shall be authorized to find that any portion of the off-street parking requirements of a Village development have been satisfied when the applicant establishes to the Board's satisfaction that alternative parking solutions are appropriate and will provide adequate parking for the project. If an applicant wishes to use alternative parking methods, the applicant must submit an analysis to the Planning Board for review. This analysis must include estimate of peak parking demands for different land uses for different hours of the day and days of the week. It shall also define strategies intended to incorporate alternative parking methods and the advantages of such strategies.
- Off-street loading shall be provided, as the Planning Board may find appropriate and necessary.

10. On-Site Utilities and Services

- All development shall be served by public water supply and sewage systems.
- All on-site television, power and communication lines, as well as on-site water, sewer, and storm drainage lines, shall be installed underground in the manner prescribed by the regulations of the government agency or utility company having jurisdiction. Any utility equipment, which will necessarily be located above ground, shall be adequately screened from view in an attractive manner.

11. Building Height and Setback Requirements in the Village

- No portion of a building or structure shall be erected within fifty (50) feet of the Champlain Canal and South Bay except for a marina building, marine fuel service building or dock, a marina's service building requiring direct connection to the waterfront to service boats, or other similar water-dependent uses. Such buildings shall not exceed fifteen (15) feet in height.
- Beyond fifty (50) feet from the Champlain Canal and South Bay, no portion of a building or structure shall be erected to a height in excess of thirty-five (35) feet.