

Appendix A
Viewshed Protection Overlay District Regulations

LOCAL LAW NO. 3-98

OF Aug. 10, 1998

A LOCAL LAW TO AMEND THE ZONING ORDINANCE
OF THE CITY OF NEWBURGH
TO ESTABLISH A VIEW PRESERVATION DISTRICT

WHEREAS, the Council of The City of Newburgh finds that many scenic public views of the Hudson River, Hudson Highlands and east bank of the Hudson River have been lost, altered or changed without adequate consideration of the irreplaceable loss to the people of the City as to the scenic, aesthetic, cultural, and historic values represented by such scenic vistas; and

WHEREAS, this Council desires to protect, preserve and enhance these scenic public views and to this end, hereby enacts this Scenic Resource Protection Law,

NOW, THEREFORE, BE IT ENACTED, by The Council of The City of Newburgh, New York, that Chapter 300 of the Code of Ordinances of The City of Newburgh, be and hereby is amended as follows:

Section 1. That there be and hereby is enacted, a new Article to be numbered "Article XXV" and to read as follows:

"ARTICLE XXV - View Preservation District - VPD"

Section 300-210 - Purpose and Intent

- (A) It is hereby declared as a matter of public policy that the protection, enhancement and perpetuation of scenic public views is a public necessity and is required in the interest of the general health, safety and welfare of the people. The purpose of this Law is to effect and accomplish the protection, enhancement and perpetuation of the City's scenic resources, aesthetic and cultural heritage as embodied in the landscape and geologic features of the City.
- (B) It is declared to be the intent of The City of Newburgh to protect and preserve the scenic resources of the City to ensure that the benefits provided by the Hudson River views will not be lost for present and future generations and to protect the broader public interest.
- (C) These regulations are enacted with the intent of providing an equitable balance between the rights of the individual property owner to the free use of property and the rights of present and future generations. Therefore, this Law recognizes the

rights of the owners of property within View Preservation Districts to use their property for allowed uses consistent with these and other regulations and controls, provided such use does not result in a significant loss or impairment to the scenic resources of the City.

Section 300-211 - Definitions

- (A) "Significant Loss" means the irreversible modification of geologic forms; the destruction or removal of vegetation; the modification, destruction or removal of structures, whenever the geologic forms, vegetation or structures are important to the scenic resources of the City.
- (B) "Impairment" means the addition of structures, which because of siting or scale, will reduce identified views or which because of scale form or materials will diminish the scenic resources of the City.

Section 300-212 - Identification and Designation

(A) View Preservation District

1. The Zoning Law of The City of Newburgh and the Zoning Map of The City of Newburgh are hereby amended to create, identify and designate a View Preservation District to preserve and protect views, hereinafter more specifically described, of the Hudson River Hudson Highlands and East Bank of the Hudson River from certain existing streets, parks and legally accessible public property.
2. The boundaries of the View Preservation District are described as follows: Beginning at the point in the center of the Hudson River, being the east line of Orange County at the point of intersection of the municipal boundary between the Town of Newburgh and the City of Newburgh; then westerly along that boundary to the point where North Plank Road intersects with Powell Avenue; then southerly along Powell Avenue to Gidney Avenue; then southeasterly along Gidney Avenue to Liberty Street; then southerly along Liberty Street to Overlook Place; then westerly along Overlook Place to Mill Street; then northerly along Mill Street to Dickson Street; then westerly along Dickson Street to Walsh's Road; then southerly along Walsh's Road to the municipal boundary between the Town of New Windsor and the City of Newburgh; then easterly along that boundary to the center line of the Hudson River, being the east line of Orange County.
3. The following view planes within the View Preservation District shall be protected and all construction or development within the defined view planes shall be subject to the review and approval of the Architectural Review Commission in those areas within the City's Historic District or to the review and approval of the Planning Board in those areas not within the City's Historic District.

A. Grand and Washington Streets.

1. View reference line.

The view reference line for V-A is a line at an elevation of one hundred (100) feet, located along a line extending from the eastern boundary of the Grand Street right-of-way from the northern boundary of the Washington Street right-of-way to the southern boundary of said right-of-way.

2. View framing line.

The view framing line for V-A is a line along the corporate boundary of the City centered on the Hudson River from the point of intersection with a line extending from the view reference line eight degrees north of the northern right-of-way of Washington Street to the point of intersection with a line extending from the view reference line six degrees south of the southern right-of-way of Washington Street.

3. View plane.

The view plane for V-A is an imaginary plane formed by joining the elevation of the view reference line with the elevation of the view framing line.

4. Description of scenic view.

A wall of trees is on the left. Another wall consisting of trees, the Washington's Headquarters fence and monument is on the right. Washington Street, its sidewalk and the grass strip separating them, form three parallel lines that sweep down to the river, a glimpse of which is seen in the background, along the mountain on the eastern bank. Thus, the natural properties of the enclosure provide a welcome visual contrast to the built environment of the central business district.

B. Washington's Headquarters.

1. View reference line.

The view reference line for V-B is a line at an elevation of one hundred (100) feet located along the eastern edge of the monument of Washington's Headquarters.

2. View framing line.

The view framing line for V-B is a line along the near shore of the Hudson River from the point of intersection of a line extending from the view reference line on hundred sixty-one degrees northeast of the edge of the monument to the point of intersection of a line extending from the view reference line on hundred thirty-eight degrees southeast of the edge of the monument.

3. View plane.

The view plane for V-B is an imaginary plane formed by joining the elevation of the view reference line with the elevation of the view framing line.

4. Description of scenic view.

The view to the southeast focuses on the river and background mountains. The view to the west is similar in most respects to the view to the southeast. It is partially enclosed and focuses on the water. It is predominantly horizontal. The river, the lawn and the roof line of the building in the center of the picture are all horizontal in character. The view to the northeast is a clear view of the river, the background mountain and the Newburgh-Beacon Bridge. Although the monument to the left of the picture partially obstructs the view, it enhances it by helping to preserve the sense of peace and quite reflected in the foreground lawn as well as in the river.

C. Broadway and Colden.

1. View reference line.

The view reference line for V-C is a line at an elevation of one hundred (100) feet located along a line one hundred (100) feet west of Colden Street from the southerly boundary of the Broadway right-of-way to the northern boundary of said right-of-way.

2. View framing line.

The view framing line for V-C is a line along the near shore of the Hudson River from the point of intersection of a line extending from the view reference line twenty five degrees of the Broadway right-of-way to the point of intersection of a line extending from the view reference line thirty degrees southeast of the Broadway right-of-way.

3. View plane.

The view plane for the V-C is an imaginary plane formed by joining the elevation of the view reference line with the elevation of the view framing line.

4. Description of scenic view.

Looking northeast, the foreground is occupied by open space that has been identified for pedestrian walkways to the waterfront. Marine Drive runs parallel to the river in the middle ground. On the river's edge, in the background, are low buildings that do not obstruct the view. The Newburgh-Beacon Bridge fades into the horizon.

The view looking southeast, features the sloping parkland in the foreground. The middle ground is occupied by low industrial buildings and a marina bay. In general, however, the picture is dominated by the river and the highlands between which the Hudson River winds.

The view looking due east is similar in character to that looking southeast. The background is dominant because of the emphasis the mountain and river give each other. The middle-ground is occupied by industrial use. The foreground is sloping parkland and a proposed site of intensive recreational use.

D. Grand and Second Streets.

1. View reference line.

The view reference line for V-D is a line at an elevation of one hundred (100) feet, located along a line extending from the intersection of the southern boundary of the Second Street right-of-way with the western boundary of the Grand Street right-of-way.

2. View framing line.

The view framing line for V-D is a line at an elevation corresponding to the elevated rails east of Water Street, along said rails from a point corresponding with the southern boundary of the First Street right-of-way to a point corresponding with the northern boundary of the Second Street right-of-way.

3. View plane.

The view plane for V-D is an imaginary plane formed by joining the elevation of the view reference line with the elevation of the view framing line.

4. Description of scenic view.

The parking lot which occupies the foreground is greatly enhanced by the river and mountain background.

E. Public Library.

1. View reference line.

The view reference line for V-E is a line at an elevation of one hundred (100) feet located along the inside of the western wall of the Public Library from the southernmost frame of its plate glass window to the northernmost frame of its plate glass window.

2. View framing line.

The view framing line for V-E is a line at an elevation corresponding to the elevated rails east of Water Street along said rails from a point three hundred (300) feet south of First Street to a point one hundred fifty (150) feet north of South Street.

3. View plane.

The view plane for V-E is an imaginary plane formed by joining the elevation of the view reference line with the elevation of the framing line.

4. Description of scenic view.

The river and mountains can be seen from every direction.

F. First and Grand Streets.

1. View reference line.

The view reference line for V-F is a line at an elevation of one hundred (100) feet located along a line extending from the intersection of the southern boundary of the First Street right-of-way with the eastern boundary of the Grand Street right-of-way to the intersection of the northern boundary of the First Street right-of-way with the eastern

boundary of the Grand Street right-of-way.

2. View framing line.

The view framing line for V-F is a line along the corporate boundary of the City centered on the Hudson River from the point of intersection of a line extending from the view reference line five degrees north east of the First Street right-of-way to the point of intersection of a line extending from the view reference line twenty seven degrees southeast of the First Street right-of-way.

3. View plane.

The view plane for V-F is an imaginary plane formed by joining the elevation of the view reference line with the elevation of the view framing line.

4. Description of scenic view.

The northern view is predominantly horizontal in orientation. This is reflected in the level street and sidewalk, the river, the Newburgh-Beacon Bridge and the roofline of the residential buildings in the background.

The southern view is enclosed by the Key Bank building on the right and the mountains on the left. The river in the middle ground thus becomes an area on which the eye focuses readily.

G. Montgomery Street and Leroy Place.

1. View reference line.

The view reference for V-G is a line at an elevation of one hundred ten (110) feet located along a line extending from the intersection of the western boundary of the Montgomery Street right-of-way with the western boundary of the Leroy Place right-of-way to the intersection of the eastern boundary of the Montgomery Street right-of-way with the northern boundary of the Nicoll Street right-of-way.

2. View framing line.

The view framing line for V-G is a line along the corporate boundary of the City centered on the Hudson River from the point of intersection of a line extending from the view reference line forty seven degrees east of the

eastern boundary of the Montgomery Street right-of-way to the point of intersection of a line extending from the view reference line ten degrees east of the western boundary of the Montgomery Street right-of-way.

3. View plane.

The view plane for V-G is an imaginary plane formed by joining the elevation of the view reference line with the elevation of the view framing line.

4. Description of scenic view.

This view shows the river and the highlands.

H. Montgomery Street.

1. View reference line.

The view reference line for V-H is a line at an elevation of one hundred (100) feet located along a line extending from the intersection of the southern boundary of the South Street right-of-way with the eastern boundary of the Montgomery Street right-of-way to the intersection of the northern boundary of the South Street right-of-way with the eastern boundary of the Montgomery Street right-of-way.

2. View framing line.

The view framing line for V-H is a line at an elevation five (5) feet above the sidewalk along the eastern side of Water Street along said sidewalk from the point of intersection with the northern boundary of the street right-of-way to a point thirty (30) feet north of the northern boundary of the South Street right-of-way.

3. View plane.

The view plane for V-H is an imaginary plane formed by joining the elevation of the view reference line with the elevation of the view framing line.

4. Description of scenic view.

This view shows Bannerman's Island; the river and mountains in the background. It is prominent not only because it is picturesque, but also because it is seen from a position in the Historic District where the historic

preservation movement in Newburgh began.

I. Leroy Place and Park Place.

1. View reference line.

The view reference line for V-I is a point at an elevation of one hundred fifty (150) feet located at the intersection of the eastern boundary of the Liberty Street right-of-way with the northern boundary of the Park Place right-of-way.

2. View framing line.

The view framing line for V-I is a line along the near shore of the Hudson River from a point sixty (60) feet south of the southern boundary of the Park Place right-of-way to a point sixty (60) feet north of the northern boundary of the Park Place right-of-way.

3. View plane.

The view plane for V-I is an imaginary plane formed by joining the elevation of the view reference line with the elevation of the view framing line.

4. Description of scenic view.

This view is highly enclosed by the trees on either side of the corridor and by the mountain in the background. The sudden glimpse of the river thus produced, adds variety to the landscape along Leroy Place and Water Street, the main north-south transportation route on the waterfront.

5. The View Preservation District shall be an overlay zoning district superimposed on the zoning districts as shown on the amended zoning map.

Section 300-213 - Use and Development within View Preservation Districts

(A) Use Restrictions

1. No building, structure or permanent improvement shall be erected, have its exterior reconstructed, restored, structurally altered, or placed within a defined view plane within the View Preservation District in a manner which may impair or cause significant loss of an existing scenic public view unless visual site plan approval by the Architectural Review

Commission within the Historic District or the Planning Board if outside the Historic District in accordance with the provisions of this Law has been obtained.

2. The provisions of this Law shall not apply to ordinary care and maintenance of structures and property nor to the reconstruction of a structure pre-existing the adoption of this ordinance, provided that an application for a building permit to make such reconstruction is filed with the Building Inspector within one year after the destruction or damage to said structure and further, that the reconstruction work in accordance with said permit is diligently prosecuted.

(B) Architectural Review Commission and Planning Board Visual Site Plan Standards and Procedures

1. a. When the Building Inspector receives an application to permit the erection of a building or structure, exterior reconstruction, restoration, alteration, demolition or permanent improvement in the View Preservation District which will impact a defined view plane, the Building Inspector shall require the applicant to submit a Visual Environmental Assessment Form (VEAF) and plan elevation in accordance with the requirements of this local law. The application, together with the VEAF and plan elevation, shall be referred to the Architectural Review Commission in regard to properties within the City of Newburgh Historic District or to the Planning Board in regard to properties located outside the Historic District. The Architectural Review Commission or Planning Board shall evaluate the proposed activity so as to avoid impairment or significant loss of scenic public views of the Hudson River, Hudson Highlands and East Bank of the Hudson River. To assist in the evaluation, the Waterfront Advisory Committee shall provide the Architectural Review Commission or the Planning Board with a written advisory opinion and recommendation concerning the impact of the proposed activity upon such views. If the Waterfront Advisory Committee fails to submit an advisory opinion within thirty (30) days after the submission of the VEAF and elevation plan to them, the Architectural Review Commission or Planning Board may act without such opinion from the Waterfront Advisory Committee.
- b. Visual plan review in accordance with the provisions of this Law shall be in accordance with the provisions for approval contained herein. The Architectural Review Commission or the Planning Board may require the submission of additional information as they may deem necessary to evaluate the effect of the application on scenic public views including the submission of a photo simulation. A public hearing shall be held in all instances, noticed in the same manner as provided in the Zoning Ordinance

for public hearing before the Zoning Board of Appeals. A decision shall be rendered no later than Thirty days after the public hearing is closed and all information requested has been submitted.

- c. Coordination with other reviews. To the maximum extent possible, the review, hearings and decision required under this article shall be coincident with other procedures and applications that may be before the Planning Board and Zoning Board of Appeals related to the same proposed activity.

2. Visual analysis procedures and standards.

The Architectural Review Commission, Planning Board and the Waterfront Advisory Committee shall be governed by the following standards and procedures in rendering a visual site plan approval or an opinion and recommendation, respectively.

a. Visibility analysis procedures:

(1) The Architectural Review Commission or Planning Board shall:

- (a) identify the site and perform a site inspection and examination for any public Hudson River view.
- (b) Determine the visibility of the project within the protected view planes and the extent to which a scenic view or views could be impacted.
- (c) Determine the project's visual impact based on:
 - i. Distance - the proximity of the project site to a viewpoint.
 - ii. Aspect - the direction of a project relative to the observer. The more directly a project faces the observer, the greater its impact.
 - iii. Relationship - Location of the project within the view shed protection district.
 - iv. Other Impacts - Other impacts such as color, size shape and type of use.

b. The Architectural Review Commission or Planning Board and the

Waterfront Advisory Committee shall, where appropriate, utilize the following siting considerations:

- (1) Structures should be oriented so that the longest dimensions are not in full sight of the public view.
- (2) Structures should be angled rather than positioned flush with the street line to avoid a wall effect.
- (3) Structures should be situated in areas of shallow slope.
- (4) Structures should be situated mid-slope or at the base of slopes rather than at the top of slopes.
- (5) Where multiple structures are to be located on a site, buildings should be grouped in non-view areas or scattered throughout the site or around an open space green area to avoid a wall effect.
 - (a) Setbacks should be varied
 - (b) Large rectangular configurations should be avoided

c. The Architectural Review Commission or Planning Board and the Waterfront Advisory Committee shall, where appropriate, utilize the following scale considerations:

- (1) Low rise structures are not as visually dominant as multi-story structures and are to be encouraged.
- (2) Development is to be integrated with existing vegetation.
- (3) Construction should be compatible in scale with neighboring properties.

d. The Architectural Review Commission or Planning Board and the Waterfront Advisory Committee shall, where appropriate, utilize the following landscaping considerations:

- (1) Keeping existing trees and other shrubbery on site is highly desirable. To retain the natural characteristics of a property, care during site preparation and construction is essential, unnecessary tree removal is to be avoided and landform alterations should be minimized wherever possible.

- (2) The use of deciduous vegetation, which permits seasonal Hudson River views, is encouraged.
- (3) Trees, shrubs and hedges shall be planted and maintained so as to avoid obstruction of protected views of the Hudson River. Existing vegetation shall be maintained so as to avoid obstruction of a protected view.
- (4) Where vegetation is too thick, views of the river can be opened up through selective cutting rather than wholesale removal of existing vegetation.

Section 2. The Zoning Ordinance of the City of Newburgh is hereby amended by amending Section 300-5 entitled "Districts Designated", so as to add to the list of zoning districts within the City the following:

<u>Symbol</u>	<u>Name</u>
VPD**	View Preservation District

****Note:** The View Preservation District is an overlay district superimposed on identified areas of the other Zoning Districts. This overlay district is established to provide for the preservation and protection of scenic Hudson River views. The development and use of properties within the VPD shall comply with all provisions of this zoning law.

Section 3 - Severability

If any clause, sentence paragraph, section or part of this article shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been rendered or as determined by such judgment.

Section 4 - Effective Date

This local law shall take effect immediately upon its filing with the Secretary of State.

I, Nancy A. D'Addio, City Clerk of the City of Newburgh, hereby certify that I have compared the foregoing with the original resolution adopted by the Council of the City of Newburgh at a regular meeting held 8/10/98 and that it is a true and correct copy of such original.

Witness my hand and seal of the City of Newburgh this 17th day of Aug 1998

Nancy A. D'Addio
City Clerk