

PUBLIC NOTICE

PLEASE TAKE NOTICE that the Board of Trustees of the Village of Sagaponack on the 19th day of November, 2018 adopted the following Local Law:

LOCAL LAW NO. 4 OF 2018

**A LOCAL LAW AMENDING VILLAGE CODE
SECTIONS 245-49 (D), AGRICULTURAL FENCING, AND
(E), PRESERVATION OF VISTAS**

BE IT ENACTED BY THE BOARD OF TRUSTEES OF THE VILLAGE OF SAGAPONACK AS FOLLOWS:

SECTION 1. PURPOSE.

The purpose of this local law is to address the increased need for agricultural fencing as a result of the increased population of deer in the Village. The Board of Trustees recognizes the needs of agriculture and the concerns of the community and this local law is intended to provide a reasonable balance between these needs and these concerns.

SECTION 2. AMENDMENTS*.

A. Section 245-49(D) is amended to read as follows:

D. Agricultural fencing.

(1) Within all residential districts any portion of which is situated within the Agricultural Overlay District, the Board of Trustees [Planning

* Bracketed language is deleted. Underlined language is new.

Board] may approve an increase in the permitted height of a fence [located in any front, side or rear yard] in order to protect agricultural crops from damage due to deer. The maximum height of any portion of such an agricultural fence approved by the Board of Trustees [Planning Board] may not exceed eight feet.

(2) The increase in permitted fence height shall be based on the following findings of the Board of Trustees [Planning Board]:

(a) The subject property is [currently] now or about to be land used in agricultural production[.], as that term is used in New York Agriculture and Markets Law Section 301 meaning in the context of this local law land, facilities and practices which contribute to the production, preparation and marketing as a commercial enterprise of crops subject to deer damage.

(b) The applicant can demonstrate that an economic loss will occur to agricultural crops without an increase in fencing height.

(c) Alternatives to eight (8) foot fencing that will reduce the economic loss of agricultural crops have been investigated and found not to have been reasonable.

(d) Alternative types and heights of fencing materials have been investigated and found not to have been reasonable.

(e) The installation of the fencing will be accomplished in a manner to preserve and protect the visual and scenic resources of the Village.

(f) In the case of a start up farm operation an application shall be evaluated utilizing the following:

(i) Completion of the start up period within two (2) years for crops and nurseries or such other period as

considered reasonable by the New York Department of Agriculture and Markets;

(ii) Capital investment;

(iii) Acreage in production;

(iv) Gross sales to date;

(v) Applicant's knowledge, experience and intent;

(vi) Applicant's business plans;

(vii) Applicant's direct participation in terms of time and effort; and

(viii) Financial risk of farm operation.

(3) [An application to install agricultural fencing that exceeds the permitted height shall be in the form of a building permit application submitted to the Building Inspector. The application shall include a plan of the property accurately showing the delineation of the proposed fence and a description of the proposed fence materials. The Building Inspector shall submit a complete application to the Planning Board. The Planning Board shall approve, approve with conditions or deny the application.] An application for agricultural fencing shall be an application for a special exception permit on forms provided by the Village Clerk. The application shall be reviewed by the Board of Trustees and shall include:

(a) Applicant's affidavit of service by registered mail, return receipt requested, of a copy of the application upon each property owner within a 200 foot radius of the proposed fence or any portion thereof;

(b) The required fee as fixed from time to time by resolution of the Board of Trustees;

(c) A current survey depicting at least the property and improvements thereon, the location of any crop production during the two (2) preceding years, the location of the proposed fence, and any encroachments of contiguous properties (a current survey may be waived for good cause);

(d) Any title or regulatory documents evidencing the interest of any third party in the premises including any easements of any kind, any declaration restricting use or improvement of the premises, any agency resolution limiting the use or improvement of the premises or any similar document;

(e) Current deed of record;

(f) Consent of owner if applicant is not the owner;

(g) Photograph of similar fence or sample of proposed fence material, exclusive of poles; and

(h) Any other documents, information or material requested by the Board of Trustees.

4. Any consideration of a special permit shall address at least the following:

(a) Removal at owner's expense of any fence as approved upon a field remaining fallow for two (2) years (or removal of any portion of a fence if a portion of a field remains fallow for two (2) years) and upon a failure of compliance removal by the Village on thirty (30) day's notice to the owner with any expense thereof to be assessed upon such property, constitute a lien and be enforced and collected in the same manner as provided by law for the enforcement and collection of real property taxes in the Village;

(b) Maintenance of a setback from any public road sufficient to allow safe passage of vehicles and deer;

(c) Exclusive use of round wood poles not exceeding 6 inches in diameter;

(d) Description of current agricultural production and its location at the premises or if none a schedule of all such activity to be commenced within 12 months thereafter;

(e) Description of current deer damage to crops;

(f) Competent financial records evidencing average gross sales value for sale of crops for two (2) preceding years;

(g) Whether the land is within Agricultural District 5;

(h) Whether the land has received an agricultural assessment or has applied for such assessment;

(i) Prohibition of vegetation on a continuous basis at or near the line of any fence on a public road approved hereunder so that vistas from public roads will not be impeded except as otherwise provided in subsection 245-49(E) below;

(j) Use of alternative fence materials not requiring a height in excess of 6 feet and allowing public visual access;

(k) Required renewal of any special exception permit in the event of any change of ownership of the premises or replacement of the operator of a farm by another operator; and

(l) Compliance with the New York Department of Agriculture and Markets Golden Nematode Containment Quarantine program.

B. Section 245-49(E) is amended to read as follows:

E. Preservation of vistas. Any provision hereinabove in this section to the contrary notwithstanding, any fence or hedgerow in any residential district or OSC district or agricultural overlay district which shall impede the public view from any road or street of a scenic vista, including, by way of illustration, not limitation, a farm field where development rights have been acquired by any government agency or the farm field is restricted from nonagricultural development, a preserved open space of any kind, a scenic easement or conservation easement, a public property, or any unimproved or improved area similar to the foregoing, [shall require a special exception permit from the Board of Trustees, and no such permit shall be approved which shall allow the installation of a fence of any type or kind, including hedgerows, which shall diminish existing viewsheds of areas as described in this subsection. Excepting as permitted under this subsection, fences and hedgerows impeding public views of scenic vistas as described herein are prohibited.] is prohibited except as may be permitted under this subsection. This subsection does not apply to the planting of crops, e.g., corn, grapes, and nursery stock maintained using ordinary practices of commercial production.

SECTION 3. SEQRA.

Enactment of this local law is a Type II action under 6 NYCRR 617.5(c)(20).

SECTION 4. SEVERABILITY.

Should any part or provision of this local law be decided by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the local law as a

whole nor any part thereof other than the part so decided to be unconstitutional or invalid.

SECTION 5. EFFECTIVE DATE.

This local law shall take effect immediately upon filing with the Secretary of State as provided by law.

BY ORDER OF THE BOARD OF TRUSTEES
OF THE VILLAGE OF SAGAPONACK
Rosemarie Cary Winchell, CMC
Village Clerk-Treasurer