

Yates County Planning Board Referral Form

Referral # 2019-19
County Use Only

Date Received 5-21-2019

Revised 4/2017

Municipality and Referring Agency Board of Trustees/Village of Penn Yan

Project Address Entire Village Project Tax Map # N/A

Zoning District All but Industrial & Planned Business

Applicant (Name & MAILING) Village of Penn Yan

111 Elm St., Penn Yan, NY 14527 Email

Property Owner (Name & MAILING) N/A

Email

Reason for Referral (Prox. to Cty Rd., State Rd., Muni Boundary, etc.) State Highway and
municipal boundary

Application Type

- Area Variance
- Use Variance
- Special Use Permit
- Site Plan
- Subdivision
- Text Amendment
- Map Amendment
- Other moratorium

Project Description

A six (6) month moratorium on senior
citizen housing is proposed due to
Supreme Court decision finding that all
formats of housing are permitted for
senior citizen housing in the Village

Supporting Documents Required (IF N/A, include explanation)

- Municipal Application
- Tax Map or Plat
- SEQR
- Site Plan *
- Variance Criteria **
- Subdivision Plat For Subdivision Referrals Only
- Other moratorium

*If Site Plan Review, Site Plan **MUST** be detailed and meet the municipal requirements.

All Variance referrals (Area/Use) **MUST include detailed justifications associated with reason/s for appeal.

Certification: *With the following signature I certify that this application provides a complete description of the proposed local action and is a complete application pursuant to NYS General Municipal Law Article 12b, Section 239-m, part c.*

[Signature], Referring Official
[Signature], Village Clerk by Village Attorney



Provision of required information is the responsibility of the referring agency. Failure to provide such information may result in a significant delay in processing.

Submit To: Yates County Planning Department, dlong@yatescounty.org or 417 Liberty St. Suite 1093, Penn Yan, NY 14527

EDWARD J. BROCKMAN
ATTORNEY AND COUNSELOR AT LAW
159 South Main Street, PO Box 457
Naples, New York 14512
Phone (585) 374-6343

May 20, 2019

Yates County Planning Board
c/o Yates County Planning Department
417 Liberty Street
Penn Yan, New York 14527

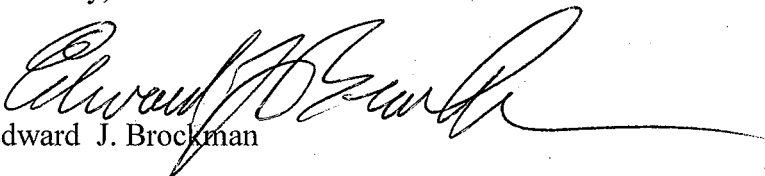
Re: Village of Penn Yan – General Municipal Law §239-m Referral: Proposed Senior Citizen Housing Moratorium Local Law

Enclosed please find a proposed Local Law and County Planning Board Referral Form with respect to the above action. This matter is referred pursuant to §239-m of the General Municipal Law of the State of New York.

As moratoriums are Type II actions pursuant to the SEQRA regulations, no SEQR review was undertaken with respect hereto.

In the event that you request further information or documentation please advise us accordingly.

Sincerely,



Edward J. Brockman

EJB/lcb
Enclosure

Local Law Filing

NEW YORK STATE DEPARTMENT OF STATE

162 WASHINGTON AVENUE, ALBANY, NY 12231

(Use this form to file a local law with the Secretary of State.)

Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

Village of Penn Yan

Proposed Local Law E of the year 2019

A Local Law establishing a six (6) month moratorium on the construction of and/or submission and processing of applications for senior citizen housing facilities within the Village of Penn Yan.

Be it enacted for a period of six (6) months by the Village of Penn Yan as follows:

Section 1. Legislative Authority

This Local Law is adopted pursuant to the provisions of the Municipal Home Rule Law of the State of New York and Article 7 of the Village Law of the State of New York, with the procedural provisions of the Municipal Home Rule Law controlling.

Section 2. Short Title

This Local Law shall be known as: "The Village of Penn Yan Senior Citizen Housing Moratorium Law of 2019."

Section 3. Definitions:

- A. "Senior Citizen Housing" – A building or group of buildings where occupancy is restricted to persons 55 years of older. In the case of double occupancy of a unit, only one resident is required to be at least 55 years of age.
- B. "Board of Trustees" – The Board of Trustees of the Village of Penn Yan.
- C. "Code Enforcement Officer (CEO)" – Code Enforcement Officer of the Village of Penn Yan.
- D. "Planning Board" – The Planning Board of the Village of Penn Yan.
- E. "Zoning Board of Appeals (ZBA)" – The Zoning Board of Appeals of the Village of Penn Yan.

Section 4. Purpose

- A. The purpose of this Local Law is to enable the Village of Penn Yan to prevent the erection or construction of senior citizen housing facilities and the processing, or further processing, of any applications for senior citizen housing facilities within the Village of Penn Yan for a reasonable time pending the Board of Trustees' consideration of

completion of and possible adoption of amendments of the regulations controlling the location, format of building, erection and construction of senior citizen housing facilities in the Village of Penn Yan.

B. It is further the purpose of this Local Law to fulfill the Village's constitutional, statutory and legal obligations to protect and preserve the public health, welfare and safety of the citizens of the Village of Penn Yan, as well as to protect the value, use and enjoyment of property in the Village by temporarily prohibiting the submission and processing, or further processing, of applications for and construction of senior citizen housing facilities within the Village during the pendency of this moratorium.

Section 5. Factual Background and Legislative Findings

A. The Village of Penn Yan, as a municipal corporation, has adopted land use regulations referred to as the "Zoning" Chapter of the Village Code. Pursuant to those zoning provisions the geographic area of the Village has been delineated into several zoning districts. One such district is classified and named as "Single Family Residential (R-1)". Pursuant to the "Use Regulation Table" of the "Zoning" Chapter, permitted residential uses in the R-1 District are limited to: "Detached 1-family dwellings", "Semi-detached 1-family dwellings", "Senior citizen housing" and "Bed and breakfasts". Other types of residential uses are prohibited in the R-1 District.

B. Application was previously made to the Village CEO for a permit to construct an eight (8) unit townhouse building for senior citizen housing on a two-plus acre parcel in the Village on South Ave. As "townhouses" are not a permitted use in the R-1 District the application was denied. The applicant thereupon sought an interpretation from the Village ZBA that the townhouse unit was senior citizen housing and therefore permitted. In the alternative a variance was sought for the senior citizen townhouse use. The ZBA made a decision, after hearing the applicant, that the townhouse format of residence was prohibited, even if designated as senior citizen housing. The variance application was also denied based upon findings made by the ZBA.

C. The applicant thereupon filed an Article 78 lawsuit against the Village ZBA and the Village seeking that the ZBA's decision be overruled as arbitrary, capricious, an abuse of discretion and erroneous. The Court struck down the decision of the CEO and the ZBA as to its interpretation. The Court's ruling held that, since "...senior citizen housing is defined in the Village Code as '... a building or group of buildings where occupancy is restricted to persons 55 years or older,' therefore the plain and unambiguous language of Section 202-6 allows for senior citizen housing to be a building or group of buildings. It does not require senior citizen housing to be a single family unit, nor does it state that senior citizen housing cannot be in the form of multi-unit condominiums".

D. The Court ignored the fact that single-family and semi-detached single family units are permitted for senior citizen housing in the R-1 District, which means that on the area available eight such units could have been constructed.. The Court's decision has the implication that any building format for senior citizen housing is permitted in the R-1 District, from manufactured home parks to high rise buildings.

E. The Court's decision is clearly applicable to the other zoning districts in the Village where senior citizen housing is permitted.

F. The Board of Trustees finds that the Court's decision abrogates any attempt through the current Village land use regulations (the "Zoning" Chapter of the Village Code) to control the building formats utilized for senior citizen housing in the Districts in which senior citizen housing is permitted.

G. Accordingly, to rectify the situation, the Board of Trustees determines that a study must be made for possible amendment of the Village "Zoning" Chapter with respect to what building formats for senior citizen housing are permitted in the zoning Districts of the Village in which senior citizen housing is permitted.

H. The result of the Court's decision could be the imposition of a myriad of building types for senior citizen housing in the Zoning districts in which senior citizen housing is permitted. The impact could very well result in dramatic changes to the present character of those Village Districts.

I. In order to study the issue of senior citizen housing formats in the various zoning districts in the Village it is necessary to adopt a moratorium on senior citizen housing uses in the Village of Penn Yan for a reasonable period of time. During the moratorium period the Village Planning and Development Committee, the Village Planning Board and the Board of Trustees will undertake a study of the issues created by the subject Court decision to make findings as to what, if any, amendment(s) to the "Zoning" Chapter is or are appropriate. The Board of Trustees finds that a period of six (6) months may be adequate to adopt the appropriate amendment(s) to the Village Code. The Board of Trustees also finds that a hardship procedure included in the Moratorium Local Law will adequately protect property owners' development rights.

Section 6. Imposition of Moratorium

A. For a period of six (6) months from and after the effective date of this Local Law: (i) no applications for the construction or erection of senior citizen housing facilities shall be accepted or processed by the Village of Penn Yan; (ii) no previously submitted applications for any purpose related to senior citizen housing facilities will be further processed by the Board of Trustees of the Village of Penn Yan, its Code Enforcement Officer, Village Department of Public Works, Planning Board, ZBA or other officer or employee thereof; and (iii) no construction or erection of senior citizen housing facilities, or any commencement thereof, shall be permitted within the geographic limits of the Village of Penn Yan, except as provided in Section 7 of this Local Law.

B. For the purpose of this Local Law, an application shall be deemed to mean any pending or future request for official action by the Board of Trustees, Code Enforcement Officer, Village Department of Public Works, Planning Board, ZBA or other, official, employee, agent or designee of the Village of Penn Yan, which request and/or approval would in any way commence, further or continue a process whereby any senior citizen housing facility, or any part or component thereof, is or may be, approved, constructed or erected.

Section 7. Alleviation of Extraordinary Hardship

A. The Board of Trustees of the Village of Penn Yan may authorize exceptions to the moratorium imposed by this Local Law when it finds, based upon evidence presented to it, that deferral of action on an application for construction of a senior citizen housing facility, the delay in construction of any senior citizen housing facility, or any part or component thereof, for the duration of the moratorium, would impose an extraordinary hardship on a landowner or applicant.

B. An application for an exception based upon extraordinary hardship shall be filed with the Village Clerk of the Village of Penn Yan, including a non-refundable fee of five hundred and 00/100 Dollars (\$500.00) for each geographic site proposed for a senior citizen housing facility claimed to be subject to extraordinary hardship, by the landowner or the applicant, upon the consent of the landowner. The application shall provide a recitation of the specific facts that are alleged to support the claim of extraordinary hardship and shall contain such other information and/or documentation as the Board of Trustees or its designee, shall prescribe as necessary for the Board of Trustees to be fully informed with respect to the application.

C. A public hearing on any application for an exception to this Local Law based upon extraordinary hardship shall be held by the Board of Trustees at a meeting of the Board of Trustees no later than forty-five (45) days after the complete application for extraordinary hardship has been filed with the Village Clerk. The Board of Trustees shall determine, by motion duly adopted, when an application based upon extraordinary hardship is complete.

D. In reviewing an application for an exception based upon a claim of extraordinary hardship, the Board of Trustees shall consider the following criteria:

1. The extent to which the applicant has, prior to the effective date of this Local Law, received any final development approval for the proposed development and has obtained all the requisite leases, rights of way or other necessities for construction of the senior citizen housing facility.

2. The extent to which the proposed senior citizen housing facility construction would cause significant environmental degradation, adversely impact adjacent natural resource areas, cause public health, comfort or safety concerns and/or have a negative impact upon the Village of Penn Yan, considering the content of Sections 4 and 5 of this Local Law.

3. Whether the moratorium will expose a property owner or applicant to substantial monetary liability to a third person or would leave the property owner or applicant completely unable, after a thorough review of alternative solutions, to have a reasonable alternative use of the property.

4. The extent to which actions of the applicant were undertaken in good faith belief that the proposed senior citizen housing facility construction complied with all applicable procedural development requirements, had no undue adverse impacts on public health or safety, and/or have a negative impact upon the Village of Penn Yan considering the content of Sections 4 and 5 of this Local Law.

E. Mere delay or concern that regulations may be adopted or that the existing comprehensive plan may be amended is insufficient to constitute an extraordinary hardship under this section.

F. At the conclusion of the public hearing and after reviewing the evidence and testimony placed before it, the Board of Trustees shall, in its sole discretion, act upon the application for an exception based upon extraordinary hardship. The Board of Trustees may approve, deny or approve in part and deny in part the application being acted upon.

Section 7. Penalties

A violation of this Local Law is hereby declared to be an offense punishable by a fine not to exceed \$1,000.00 or imprisonment for a period not to exceed ninety (90) days, or both such fine and imprisonment, together with any other civil remedies available at law. Each day that such violation continues may be considered a separate offense.

Section 9. Superseding Provisions

This Local Law shall supersede the applicable sections of Article 7 of the Village Law, including, but not necessarily limited to Sections 7-700, 7-702, 7-703-a, 7-704, 7-706, 7-708, 7-709, 7-710, 7-716, 7-722, 7-714, 7-709, 7-712-a, 7-712-b, 7-724, 7-725-a, 7-725-b, 7-728 including the default approval provision of subsection 8, 7-730, and 7-738 and Executive Law Section 381 to the extent inconsistent with the same and to the extent permitted by the New York State Constitution, the Municipal Home Rule Law or any other statute determined to be in conflict with the provisions hereof as pertains to senior citizen housing uses, as defined herein.

Section 10. Validity

In the event that any section, sentence, clause or phrase of this Local Law is held to be invalid or unconstitutional by any court of competent jurisdiction, said holding shall in no way affect the validity of the remaining portions of this Local Law.

Section 10. Effective Date

This Local Law shall become effective upon filing with the Secretary of State of the State of New York subsequent to having been duly adopted by the Board of Trustees of the Village of Penn Yan.

(Complete the certification in the paragraph that applies to the filing of this local law and strike out that which is not applicable.)

1. (Final adoption by local legislative body only)

I hereby certify that the local law annexed hereto, designated as Local Law No. of the year 2019, of the Village of Penn Yan was duly passed by the Board of Trustees on , in accordance with the applicable provisions of law.

I further certify that I have compared the preceding Local Law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph 1 above.

Gary Meeks, Village Clerk/Treasurer
Village of Penn Yan

Dated: _____

(SEAL)

(Certification to be executed by County Attorney, Corporation Counsel, Town Attorney, Village Attorney or other authorized attorney of locality)

STATE OF NEW YORK)
COUNTY OF YATES) ss:

I, the undersigned, hereby certify that the foregoing local law contains the correct text and that all proper proceedings have been had or taken for the enactment of the local law annexed hereto.

Edward J. Brockman, Legal Counsel
Village of Penn Yan
Date: