

TOWN OF ITHACA

LOCAL LAW NO. ___ OF THE YEAR 2012

A LOCAL LAW AMENDING CHAPTER 270 OF THE TOWN OF ITHACA CODE, TITLED ZONING, TO ADD STREAM SETBACK PROVISIONS AND RELATED DEFINITIONS

Be it enacted by the Town Board of the Town of Ithaca as follows:

Section 1. Chapter 270 (Zoning), Article III (Terminology) of the Town of Ithaca Code, Section 270-5, titled “Definitions,” is amended by adding the following definitions:

AGRICULTURAL ACTIVITY -- The production of agricultural products, such as crops, livestock, poultry and dairy goods, and the preparation or marketing of such products produced, or derived from products produced, predominantly on-site. Agricultural activity shall also include practices that allow land used for agricultural activity to lie fallow for a period not exceeding five consecutive years.

BANKFULL – The condition where streamflow just fills a stream channel up to the top of the bank and at a point where the water begins to flow over its bank.

IMPERVIOUS SURFACE – Any paved, hardened or structural surface which does not allow infiltration of water. Such surfaces include, but are not limited to, impervious streets, driveways, parking lots, and tennis courts, buildings, and swimming pools.

RIPARIAN AREA – An area adjacent to a stream that typically contains trees, shrubs, and other ground covers.

SELECTION TREE CUTTING – A forestry practice used to create or maintain uneven-aged stands of trees by periodic removal of individual trees.

SLOPE – The increase in elevation per unit of horizontal distance, expressed as a percent.

STREAM – A watercourse or surface depression characterized by a defined channel and stream bed that contain rocks or gravel and where water flows perennially or intermittently; this does not include man-made stormwater conveyances, such as grassy or rip-rap stabilized swales, roadside ditches, or stormwater management practices.

STREAM BANK – The sides of the active stream channel, usually marked by a break in slope.

STREAM SETBACK – An area that extends horizontally landward a specified distance from each side of a stream bank.

STREAM SETBACK MAP – The map, as it may be amended from time to time, showing applicable minimum stream setbacks (subject to further extensions on a site-

specific basis for streamside wetlands and/or steep slopes) and prepared by the Town of Ithaca Planning Department.

STREAMSIDE WETLAND – The area immediately adjacent to a stream that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

Section 2. Chapter 270, Article XXVI of the Town of Ithaca Code, entitled “Special Regulations,” is amended by adding Section 270-219.5 as follows:

“§ 270-219.5 Stream Setback.

A. Findings.

The Town Board of the Town of Ithaca finds that steady population growth and land disturbance in the Town have resulted in the continual loss of much of its natural riparian (streamside) vegetation. Properly vegetated riparian areas provide numerous benefits including:

- (1) Riparian vegetation lessens the severity of stream bank erosion because the deep and extensive root systems of the vegetation hold soil in place;
- (2) The soil-root complex of the vegetation filters and absorbs various chemicals and particulates, keeping them out of streams;
- (3) At times of heavy rain or flooding, vegetation slows water runoff velocity to maintain the streambed and stream bank and lessens the effects of flooding;
- (4) By slowing runoff velocity, riparian vegetation allows recharging of the ground water;
- (5) By reducing the amount of particulates and chemicals in streams that enter Cayuga Lake, vegetated riparian areas are a cost-effective way to maintain the quality of this important drinking water source for the Town;
- (6) Undisturbed riparian areas provide the space needed to accommodate the natural meandering of stream channels;
- (7) Vegetated riparian areas provide important habitat for birds and other wildlife and they improve the environment for aquatic species by stabilizing water temperatures and reducing levels of sediment and pollutants. These benefits are better realized if non-native invasive plant species are not present, as these plants tend to crowd out native plant species, eliminating plant diversity and providing less food, cover, and

shade for those fish and wildlife species that depend on vegetated riparian areas; and

- (8) Vegetated riparian areas enhance the natural beauty of streams and preserve scenic values and recreational opportunities.

B. Purpose and Objectives.

The purpose of this section is to promote the public health, safety and general welfare by establishing requirements for stream set-backs to protect streams, other water resources, property, and riparian ecosystems within the jurisdiction of the Town of Ithaca. The objectives of this section are to:

- (1) Regulate activities that harm streams and native riparian vegetation, so that the benefits provided by such vegetation are not lost;
- (2) Reduce the amount of sediment, organic matter, pesticides, and pollutants entering streams;
- (3) Protect public and private property from losses due to flood damage and erosion;
- (4) Ensure land use proposals are compatible with the above purposes and specify land use in areas where standard zoning practices are not adequate;
- (5) Allow reasonable use of land that is consistent with responsible land management and that will conserve and protect streams, riparian vegetation, and streamside wetlands to the extent practicable;
- (6) Recognize the legitimate interests of landowners to make reasonable use of water resources, and otherwise engage in the use of land for certain agricultural activities;
- (7) Minimize expenditure of public money to reduce stream erosion and siltation; and
- (8) Protect the right of the public to full enjoyment of the recreational opportunities offered by the Town's streams and by Cayuga Lake.

C. Applicability.

- (1) The requirements in this § 270-219.5 apply in all zoning districts in the Town. To the extent they impose more restrictive requirements than those in the underlying districts, the requirements of this section apply.

- (2) This section shall apply as follows to all parcels that contain at least a portion of a stream setback described in Subsection D below:
 - (a) For parcels that are 0.5 acre or less as of the effective date of this section, only the provisions in § 270-219.5(D)(1), (4)-(5), and (12)-(15), H and I shall apply.
 - (b) For parcels that are greater than 0.5 acre as of the effective date of this section, all of the provisions in § 270-219.5 except § 270-219.5(D)(12) shall apply.

D. Stream setback standards.

- (1) Stream setbacks are required for those portions of streams that have upstream drainage areas equal to, or greater than, 35 acres. Streams covered by this law are shown on the Stream Setback Map, copies of which are available for inspection or by distribution to the public at Town offices and on the Town's website. The size of stream drainage areas is determined by the Town of Ithaca's Geographical Information System (GIS).
- (2) The required setback width at any point along a stream is determined by the size of the upstream drainage area, the slope of the land adjacent to the stream, and the existence of any streamside wetland.
- (3) The setback shall be composed of two distinct zones. Specified activities listed in Subsections E and F are prohibited as described in those subsections.
- (4) Streams covered by this section, with their corresponding setback widths based on drainage area, are found on the Stream Setback Map.
- (5) Notwithstanding any other provisions in this subsection, if a road shown on the Official Map of the Town is located within a stream setback, the setback shall extend from the stream to the edge of the road right-of-way or to the deeded road property line and not continue over or past the road right-of-way or deeded road property line, as applicable.
- (6) Definitions and purposes of Stream Setback Zones 1 and 2 (see Figure 1a and 1b in Appendix A).
 - (a) Stream Setback Zone 1 is the streamside zone.

- [1] The streamside zone is intended to protect the physical and ecological integrity of the stream.

- [2] To assure proper functioning of this zone, vegetation must remain undisturbed as described in Subsection F.
 - [3] For streams with upstream drainage areas less than 175 acres, this zone will begin at the stream centerline. For streams with upstream drainage areas of 175 or more acres, this zone will begin at the edge of a defined watercourse at the bankfull flow or level mark. (See Appendix A, Figure 2 for a bankfull depth illustration.) For all streams, this zone will be measured horizontally landward, along lines perpendicular to the stream bank or stream centerline at the relevant starting points, the required distance as determined by drainage area, presence of streamside wetlands, and slope, to the beginning of Stream Setback Zone 2.
- (b) Stream Setback Zone 2 is the outer setback zone.
- [1] The outer zone is intended to prevent encroachment into the streamside zone, and to provide distance between certain developments/activities and the streamside zone.
 - [2] Vegetation in this zone may vary, but planting of non-native invasive species is not allowed.
 - [3] The outer zone will be measured perpendicularly from the outer edge of Stream Setback Zone 1 and extend horizontally the remaining distance of the setback as required by drainage area, presence of streamside wetlands, and slope.
- (7) Required minimum stream setback widths based on drainage area are shown in Table 1. For streams with upstream drainage areas less than 175 acres, this setback measurement will begin at the stream centerline. For streams with upstream drainage areas of 175 or more acres, the setback measurement will begin at the edge of a defined watercourse at the bankfull flow or level mark. For all streams, the setback will be measured horizontally landward, along lines perpendicular to the stream bank or stream centerline at the relevant starting points, the specified distance required by the drainage area.

Table 1
Minimum Stream Setback Widths (Feet)

Drainage Area (Acres)	Setback Zone 1	Setback Zone 2	Total Setback Width
≥ 35 acres and less than 175 acres	20	15	35
≥ 175 acres and less than 1500 acres	30	20	50
≥ 1500 acres	50	50	100

- (8) Where a property has overlapping setbacks because of the proximity of more than 1 stream, the more restrictive measures shall apply in the area of overlap (for example, if part of a property is in Zone 1 for one stream, and some of Zone 1 overlaps with Zone 2 for another stream, the Zone 1 requirements shall apply in the area of overlap).
- (9) If there are no slopes of 25 percent or greater and no streamside wetlands present within the setbacks required by Table 1, then the total setback width will be determined on the basis of drainage area alone as indicated on Table 1.
- (10) Setback width adjustment when streamside wetlands exist:
 - (a) Where streamside wetlands are identified within a stream setback, the streamside wetland is not counted towards the required setback width. In these cases, it will be necessary to extend the setback width beyond that required by Subsection D(7) to make up for the amount of land excluded due to the existence of streamside wetlands (see Appendix A, Figure 3). The adjustment in width of the stream setback shall apply only to the areas on the parcel where streamside wetlands are located.
 - (b) Setbacks required by this section may coincide with, and are to be located and measured without regard to the presence or absence of, wetland buffers required by federal, state or local law or regulations, including buffers required by the NYS Environmental Conservation Law.
 - (c) Unless the property owner and Town agree on the streamside wetland delineation, streamside wetlands shall be delineated by a qualified professional under guidelines established by the U.S. Army Corps of Engineers and NYS Department of Environmental Conservation. Delineation is required under this subsection 10 for streamside wetlands that have been previously identified as well as for the areas where streamside wetlands may exist due to the presence of hydric soils or wetland plant indicators.
- (11) Setback width adjustments for steep slopes of 25 percent (4 on 1 slope) or greater.
 - (a) Where steep slopes (25 percent or greater) are identified within Stream Setback Zone 1 (as extended, if necessary, due to the presence of streamside wetlands), that portion of the land containing the steep slopes within Setback Zone 1 shall not be counted towards the required setback width. In these cases it will be necessary to extend the setback width in Setback Zone 1 beyond

that required by Subsections D(7) and D(10) to make up for the amount of land excluded due to the existence of the steep slopes. Notwithstanding the foregoing, the required increase in Setback Zone 1 due to steep slopes shall in no case exceed two times the required minimum stream setback width specified under Setback Zone 1 in Table 1. The adjustment in width of the stream setback due to steep slopes shall apply only to the areas on the parcel where steep slopes exist. Setback Widths for Zone 2 will remain the same as specified in Table 1. (See Appendix A, Figure 4.)

(b) Steep slopes of 25 percent or greater shall be determined by using one of the following resources or methods, as appropriate:

- [1] On-site measurement of slopes by registered professional engineers, surveyors, or landscape architects, using accepted engineering practices;
- [2] Use of two-foot topographic data created with the use of Light Detection and Ranging (LIDAR)-derived information;
- [3] United States Geological Survey 7.5 Minute Quadrangles; or
- [4] Other resources or methods that Town staff determine are of similar or greater accuracy than those listed above.

(12) For parcels that are 0.5 acre or less as of the effective date of this section and contain a stream described in Subsection D(1) above:

- (a) The required setback width is 15 feet regardless of drainage area size, and no setback width adjustments are required for streamside wetlands or steep slopes of 25 percent or greater;
- (b) For streams with upstream drainage areas less than 175 acres, the setback measurement will begin at the stream centerline. For streams with upstream drainage areas of 175 or more acres, the setback measurement will begin at the edge of a defined watercourse at the bankfull flow or level mark. For all streams, the setback will be measured 15 feet horizontally landward, along lines perpendicular to the stream bank or stream centerline;
- (c) The only prohibition within the 15-foot setback is on the construction of new buildings. This prohibition does not apply to maintenance or repair of buildings. The replacement, renovation or restoration of buildings that exist within the setback as of the

effective date of this section is also permitted, provided that the following conditions are met:

- [1] The new structure's footprint within the setback is in the same location and has the same or smaller dimensions as the replaced, renovated or restored structure's footprint; and
 - [2] None of the dimensions of the portions of the structure located within the setback increase in size.
- (13) An applicant will be responsible for delineating and identifying the stream setback zones on all subdivision applications. In addition, an applicant will be responsible for delineating and identifying the stream setback zones on all site plan applications, special permit, special approval and variance applications, building permit applications, and excavation or fill permit applications, except if the project limits (which term includes any soil-disturbing activity, staging, or other development-related activity) are more than 150 feet from the outer edge of Zone 2, including adjustments for slopes and wetlands. This delineation shall be done at the time of submission of any application. This delineation shall be subject to review and approval by the appropriate board or officer.
- (14) The Planning Board shall require the delineation and identification of any stream setback zones on all subdivision plats and site plans for properties to which this § 270-219.5 applies. The Planning Board and Zoning Board of Appeals shall reference any stream setback zones in any special permits, special approvals or variances they grant. The Planning Board and Zoning Board of Appeals may require stream setback zone restrictions to be incorporated into the deeds for properties that contain such setbacks.
- (15) The Planning Board, Zoning Board of Appeals, Public Works staff, or Code Enforcement staff may require, prior to any soil-disturbing activity, that the stream setback zones be clearly delineated with construction fencing, staking, or other suitable material by the applicant on site, and such delineation be maintained in an undisturbed state, until Public Works or Code Enforcement staff determine that soil-disturbing activities are completed within and adjacent to the stream setback zones.
- (16) Through the subdivision, site plan review, special permit, special approval and variance processes, the Planning Board and Zoning Board of Appeals may require stream setbacks for streams with upstream drainage areas less than 35 acres where environmental conditions warrant the establishment of such setbacks. Such environmental conditions may include, for example, anticipated development impacts on wetlands or vernal pools, or stormwater management, flooding or pollution problems that the proposed

development is anticipated to create. Where the Planning Board or Zoning Board of Appeals requires stream setbacks pursuant to this subsection, the size of the setbacks shall be no larger than that specified in Subsection D(7) above for drainage areas from 35 to less than 175 acres, and the prohibited uses in Setback Zones 1 and 2 shall not be any more restrictive than the prohibitions for the respective zones pursuant to Subsections F and E below.

E. Prohibited activities in stream setback zone 2.

Unless otherwise permitted by Subsection H, the following structures and uses are prohibited in Stream Setback Zone 2:

- (1) The construction, installation or erection of buildings or other structures on or after the effective date of this section, except fences and walls that are in compliance with the requirements in § 270-223. This prohibition does not apply to maintenance or repair of buildings or other structures;
- (2) The construction or installation of parking lots, parking spaces, or impervious surfaces on or after the effective date of this section, including impervious terraces, steps, unroofed porches and other similar features regardless of their height and regardless of § 270-223.1;
- (3) Replacement, renovation or restoration of any structure, unless all of the following conditions are met:
 - (a) The new structure's footprint within the setback zone is in the same location and has the same or smaller dimensions as the replaced, renovated or restored structure's footprint; and
 - (b) None of the dimensions of the portions of the structure located within the setback zone increases in size;
- (4) Agricultural activities that begin on or after the effective date of this section, and agricultural activities beginning before and existing as of the effective date of this section that thereafter cease for a period of more than one year (or the land thereafter lays fallow for a period of more than five consecutive years, in the case of land used for agricultural activity that is lying fallow). Notwithstanding the foregoing, the following agricultural activities are permitted regardless of when they begin or if they cease for more than a year and thereafter begin again:
 - (a) Grazing of livestock, where livestock are allowed by this chapter, in accordance with a conservation plan approved by the Tompkins County Soil and Water Conservation District; and

- (b) Haying, and growing of crops for commercial, educational, research or other purposes;
- (5) Land-disturbing activities that begin on or after the effective date of this section, and land-disturbing activities beginning before and existing as of the effective date of this section that thereafter cease for a period of more than one year. Notwithstanding the foregoing, the following land-disturbing activities are permitted regardless of when they begin or if they cease for more than a year and thereafter begin again:
- (a) Mowing and maintenance of lawns and sports fields, landscaping, and gardening, provided that for activities beginning on or after the effective date of this section, non-native invasive species are not planted and such activities do not harm the riparian area;
 - (b) Construction of stormwater ponds and wetlands;
 - (c) Demolition of structures;
 - (d) Emergency slope stabilization; and
 - (e) Non-emergency slope stabilization and restoration, provided that:
 - [1] The property owner consults with either a qualified professional engineer or the Tompkins County Soil and Water Conservation District about the stabilization project;
 - [2] The Town approves the relevant Stormwater Pollution Prevention Plan (SWPPP) required by Chapter 228, or a Simple Erosion and Sedimentation Control Plan if no SWPPP is required by Chapter 228;
 - [3] The property owner complies with the requirements of Chapter 157, Flood Damage Prevention, if the project takes place in an area of special flood hazard; and
 - [4] The property owner complies with the applicable requirements of § 270-217 regarding the deposit or removal of fill or related products;
- (6) Motorized recreational activities, except for:
- (a) Use of motorized golf carts on golf courses existing as of the effective date of this section; and

- (b) Use of motorized wheelchairs and scooters for the mobility-impaired;
- (7) Shelters and blinds associated with hunting, recreational, educational and agricultural activities that are erected on or after the effective date of this section, except for temporary blinds that are in place for a period of no more than 180 days within a 12-month period on any parcel;
- (8) Installation of utility lines and connections, such as water, sewer, electric, gas, telephone and cable lines and connections, on or after the effective date of this section, except the following shall be allowed:
 - (a) Installation of water wells and connections;
 - (b) Utility lines and connections for one-family and two-family dwellings;
 - (c) For uses and structures other than one-family and two-family dwellings, the installation of utility lines and connections is permitted only upon receipt of a special permit for same from the Planning Board in accordance with the procedures set forth in this chapter; and
 - (d) Repair and replacement of utility lines and connections;
- (9) Tree cutting and disturbance of vegetation, except for:
 - (a) Selection tree cutting that maintains the protective function of the setback zone;
 - (b) Disturbance of existing vegetation to:
 - [1] Remove diseased, damaged or dead trees or shrubs or non-native invasive vegetation;
 - [2] Remove vegetation in a proactive effort to minimize the spread of disease; or
 - [3] Remove vegetation that presents safety or health hazards;
 - (c) Pruning of trees and vegetation;
 - (d) Restoration of riparian habitat and native vegetation; and
 - (e) Development of a narrow permeable (non-paved) footpath within the stream setback;

- (10) Deicing of impervious and pervious surfaces, if more than the minimal amount of deicing material necessary to maintain vehicular and pedestrian safety is applied to the surface;
- (11) Dumping or disposal of snow or ice collected from roadways or parking lots located wholly outside a stream setback zone;
- (12) Installation of outlets from stormwater management practices and footer drains on or after the effective date of this section, except where sheet flow or infiltration is not practical and areas disturbed by such outlets are revegetated;
- (13) Application of herbicides, pesticides, fertilizers or other chemicals, except the following applications are allowed:
 - (a) The selective application of herbicides to control non-native invasive species, and the selective application of pesticides to protect native plant species; and
 - (b) Application of herbicides, pesticides, fertilizers or other chemicals for the protection of human or animal safety, or for agricultural purposes for farms, in accordance with product label instructions and pursuant to applicable New York State laws and regulations;
- (14) Mining or removal of soil, sand and gravel, and quarrying of raw materials, except where the New York State Department of Environmental Conservation has issued a permit expressly allowing such activities on the parcel;
- (15) Outdoor waste storage and outdoor deposition of waste, including but not limited to garbage, refuse, recyclable materials, tires, rubble, discarded motor vehicles, discarded appliances and other bulk items, except:
 - (a) Ordinary household trash temporarily stored in a covered garbage can;
 - (b) Ordinary household recyclables set out at curbside for pickup; and
 - (c) Composting of residential materials.
- (16) Outdoor storage or disposal of hazardous or noxious materials;
- (17) Storage or disposal of manure;

- (18) Installation of septic tanks or septic drain fields on or after the effective date of this section.

F. Prohibited activities in stream setback zone 1.

Unless otherwise permitted by Subsection H, the following structures and uses are prohibited in Stream Setback Zone 1:

- (1) All uses and activities prohibited by Section E above;
- (2) Mowing and maintenance of lawns and sports fields, landscaping and gardening, where such activity begins on or after the effective date of this section, or such activity begins before and exists as of the effective date of this section and thereafter ceases for a period of more than one year;
- (3) Grazing of livestock, where grazing begins on or after the effective date of this section, or grazing begins before and exists as of the effective date of this section and thereafter ceases for a period of more than one year;
- (4) Composting of residential materials, unless they are contained in such a way that does not allow leaching;
- (5) Construction of stormwater ponds and wetlands;
- (6) Installation of water wells and connections;
- (7) Haying, and growing of crops for any purpose, where such activity begins on or after the effective date of this section, or such activity begins before and exists as of the effective date of this section and thereafter ceases for a period of more than one year;
- (8) Dredging, deepening, widening, straightening or any such alteration of the beds and banks of natural streams, except where:
 - (a) The New York State Department of Environmental Conservation has issued a permit expressly allowing such activities on the parcel; or
 - (b) Dredging is performed to maintain dam safety or operational effectiveness;
- (9) Stream bank stabilization, unless all of the following conditions are met:
 - (a) The property owner consults with either a qualified professional engineer or the Tompkins County Soil and Water Conservation District about the stabilization project;

- (b) The Town approves the relevant Stormwater Pollution Prevention Plan (SWPPP) required by Chapter 228, or a Simple Erosion and Sedimentation Control Plan if no SWPPP is required by Chapter 228;
 - (c) The property owner complies with the requirements of Chapter 157, Flood Damage Prevention, if the project takes place in an area of special flood hazard; and
 - (d) The property owner complies with the applicable requirements of § 270-217 regarding the deposit or removal of fill or related products;
- (10) Construction of the following types of crossings on or after the effective date of this section:
- (a) Crossings of streams through the stream setback by driveways, roadways, vehicles, pathways, bridges, storm sewers, sewer and/or water lines, and other utility lines, except for crossings that are built substantially perpendicular to stream flow, and are designed to minimize downstream siltation and negative impacts to the stream and setback zones;
 - (b) Livestock stream crossings, except for crossings that are constructed and maintained to minimize negative impacts to the stream and setback zones with fencing substantially perpendicular and through the setback to direct animal movement.

G. Prior nonconforming uses and activities.

The provisions of § 270-204 relating to nonconforming uses of land shall not apply to uses and activities prohibited by Subsections E and F above.

H. Transition provisions.

- (1) The prohibitions in Subsections D(12), E and F above against construction of new buildings and structures in setback zones shall not apply to the following buildings and structures:
 - (a) For buildings and structures that require site plan approval, subdivision approval, special approval, and/or special permit, the prohibitions shall not apply if completed applications for all necessary approvals for site plan, subdivision, special approval, and special permit have been submitted before the effective date of

this section, provided such applications are thereafter diligently prosecuted to completion; and

- (b) For buildings and structures that do not require site plan approval, subdivision approval, special approval, or special permit, the prohibitions shall not apply if all necessary building permits and fill permits have been issued before the effective date of this section.
- (2) For the purposes of this section only, an application shall be deemed "completed" if it contains all required information, materials, initial SEQR forms and fees normally and reasonably required by the appropriate Town official(s) (e.g., Director of Planning with respect to subdivision, special permit, and site plan approval applications, and the Director of Code Enforcement with respect to special approval applications) to commence the review process by the appropriate Town board. An application shall be deemed "diligently prosecuted to conclusion" if the applicant promptly responds to any inquiries and promptly supplies any additional information reasonably required by the reviewing Town officials and/or boards, appears at all required scheduled public hearings, and otherwise cooperates so as to permit and enable the appropriate Town boards to adequately and completely review the application and render a decision on same within a reasonable period of time of its submission, and in any event within 12 months of its submission.

I. Variances.

The Zoning Board of Appeals may grant variances from the requirements of this section pursuant to § 270-235 of this chapter. A variance from the requirements of this section is an area variance, provided any use proposed to be located within the stream setback is a permitted use in the relevant zoning district. In addition to the items required by the Town for all variance applications, the applicant shall provide a proposed mitigation plan that offsets the effects of the proposed encroachment into the stream setback, if such a plan is possible for the parcel that is the subject of the variance application. Where a Planning Board approval (such as site plan, subdivision or special permit approval) is also sought pursuant to the provisions of this chapter, the Planning Board shall make a recommendation to the Zoning Board of Appeals on any proposed mitigation plan that is submitted to the Zoning Board of Appeals in connection with a variance application. Failure of the Planning Board to make a recommendation before the Zoning Board of Appeals must act as required by law shall not preclude action by the Zoning Board of Appeals nor otherwise affect the validity of any actions taken by the Zoning Board of Appeals.”

Section 3. If any provision of this local law is found invalid by any court of competent jurisdiction, such invalidity shall not affect any other provisions of this local law, which shall remain in full force and effect.

Section 4. This local law shall take effect immediately upon filing with the New York Secretary of State.