

**Local Law Filing**

**Village of**..... Ellicottville .....

**Local Law No 4 of the year 2021.**

**A local law** Amending Village Zoning Laws pertaining to the siting of Secondary Dwelling Units and Lockout Rooms in the Village of Ellicottville, NY.

**Be it enacted by the** BOARD OF TRUSTEE**of the**

**Village** of ELLICOTTVILLE, NY. **as follows:**

BE IT ENACTED by the Village Board of Trustees of the Village of Ellicottville, New York ("Village"), pursuant to Mun. Home Rule Law § 10as follows:

**Section 1:Title**

This Local Law shall be known as Local Law No. 4 -2021, Amending Local Law No. 1 - 1991 entitled "Zoning Local Law", as amended and revised from time to time thereafter.

**Section 2: Findings and Intent**

The Board of Trustees of the Village of Ellicottville finds that:

(a)The Village of Ellicottville, NY ( the “Village”) exists as a regional destination which balances a quaint attractive community for its residents, with outdoor activities and restaurants, that draw from various regions beyond Chautauqua County, and New York State; and

(b)During 2021 the Village saw a proliferation of permit requests seeking to add additional dwelling units, and lockout rooms, on already developed parcels both within the residential communities, and on the borders of the residential communities; and

(c) Secondary dwelling units, and Lockout Rooms, if not carefully sited pose potential noise and parking nuisance issues to the neighboring parcels, and further

threaten the character of the properties in the Village with excessive lot coverage, and excessive intensity of use; and

(d) Representatives of the Village, and Village Boards, and staff to the Village (hereinafter collectively referred to as the “Working Group”) have through a series of work sessions reviewed the Village zoning laws pertaining to Lockout Rooms, and Secondary Dwelling Units and has recommended a comprehensive series of changes to the Village zoning laws to further regulate the siting of Lockout Rooms, and Secondary Dwelling Units, within the Village, in a manner which balances the need for more affordable residential housing for the people who work in the Village, against the need to protect the character of the Village from potential nuisance impacts, and aesthetic impacts; and

(e) The Planning Board of the Village has reviewed the proposed zoning amendments submitted by the Working Group concerning Secondary Dwelling Units, and Lockout Rooms at a public session, and has recommended the adoption of the proposed amendments set forth below; and

(f) The Village has posted the proposed amendments on their published webpage to facilitate public comments, and has also set and noticed a Public Hearing to consider public comments on the proposed amendments; and

(g) Now after careful consideration of the needs of the Village the Village Board of Trustees hereby determines and finds it is reasonable and prudent to enact the following amendments and changes to the various sections of the Village’s Zoning Local Law to protect the character of the Village, reduce potential nuisance impacts threatened by increasing intensity of use of the Village, while at the same time allowing for the development of some additional Secondary Dwelling Units, and Lockout Rooms.

### **Section 3. Amendments and Additions To Zoning Local Law.**

Based upon the foregoing the Village Board of Trustees hereby adopts the following Amendments to Local Law No. 1-1991 as amended from time to time after

1991. The new text added to the Local Zoning Law is set forth in **bold**, and deleted text struck out. Italics are used to provide context and to indicate the Article and/or Section of code being amended. Only the relevant portions of zoning sections subject to amendment are set forth below:

Proposed Amendments to Article 1: General Provisions and Procedures

1.9. More Than One Principal Use per Lot

- A. Other than a single family dwelling, more than one structure containing a principal permitted or special permitted use may be allowed on a single lot, provided that the yard and other requirements of this zoning ordinance shall be met for each structure, as if they were located on individual lots.

**Where a secondary dwelling unit (accessory apartment) or a lockout unit is located within an accessory building, that secondary dwelling unit shall not be the sole use or sole occupancy in the accessory building; a stand-alone guest house shall not be permitted in the VR, LD, MD, or HD Districts.**

Where otherwise allowed in this zoning ordinance, one principal building may contain more than one allowable use, such as offices and retail uses.

Proposed Amendments to Article 2: Definitions:

ACCESSORY APARTMENT: A secondary dwelling unit established in conjunction with and clearly subordinate **in size and subordinate in use** to ~~a~~ **the principal** primary dwelling unit, whether a part of the same structure as the ~~primary~~ principal dwelling unit or **in a detached accessory structure (such as a garage or barn) where the secondary dwelling unit remains subordinate in size and subordinate in use to the accessory use of the garage or barn.** ~~a detached secondary dwelling unit remains dwelling unit on the same lot.~~

ACCESSORY BUILDING – **non-residential**: A building upon the same lot ~~(or on a contiguous lot under the same ownership)~~ as the principal building and which is (1) clearly incidental to **in use**, and ~~are~~ **is** customarily found in connection with such principal building, ~~or use and~~ (2) is operated and maintained for the benefit of convenience of the owners, occupants, employees, customers or visitors of the lot with the principal use, **and does not include habitable space.**

ACCESSORY BUILDING - **residential**: **A building upon the same lot as the principal building and which is (1) clearly incidental to in size and use, in connection with such principal building, and (2) is operated and maintained for the benefit of convenience of the owners or occupants of the lot with the principal use and a portion of which is used as**

**habitable space.** The residential portion of a residential accessory building not being the sole use of that structure.

**BASEMENT (CELLAR):** ~~That portion of a building having its floor subgrade (below ground level) on all sides-~~ **A story that is not above grade plane.**

**CRAWL SPACE:** An underfloor space that is not a basement, which is less than five (5) feet between the floor and the floor next above and is not to be used as habitable space.

**DWELLING UNIT (DWELLING):** A building or portion thereof that provides complete housekeeping facilities for one family **or household**. Each dwelling unit shall have its own **living**, sleeping, **eating**, cooking, and toilet facilities. A dwelling unit is designed for permanent occupancy and shall not be construed to include a hotel, motel, lodge, bed and breakfast or other such use of a transient nature, **unless it has a lawful license for short-term rental.**

**FLOOR AREA:** ~~The floor area is the area of a building that is enclosed by surrounding exterior walls, excluding vent shafts and courts. In portions of the building not within the exterior walls, such as covered balconies, the usable floor space under the horizontal projection of the roof of the structure or any floors above the open area shall be included within the calculation of floor area. For purposes of bulk calculation, spaces with a floor level at least eight feet below natural grade, measured at the center of each 50-foot interval of façade width, shall not be included in the floor area calculation. Covered porches that are open on two sides may increase the allowable floor area by 5% without inclusion in the floor area calculation. Floor area is computed as provided in the New York State Uniform Fire Prevention and Building Code, except as provided herein.~~

**FLOOR AREA RATIO (FAR):** The total floor area of the principal building on a lot divided by the total area of the lot. FAR is a measure often used to determine the intensity of the land use for a zoning district. *(NOTE: amended in 2018 to exclude accessory structures.)*

———— FAR = Total building floor area/Total Lot Area

———— A FAR of 0.2 = 2,000 Square Feet allowable on a 10,000 Square Foot Parcel

~~Example- If a 23,000 square foot lot is located in a zoning district with a FAR of 0.2, the total allowable square footage is 4,600. A one story 4,600 square foot building could be built on 20% of the lot or a two story 4,600 square foot building could be built on 10% of the lot.~~

**GUEST HOUSE:** A secondary stand-alone dwelling subordinate in size and subordinate in use located on a property that already has a principal dwelling unit. A guest house is not permitted in the VR, LD, MD, or HD Districts.

**LOT COVERAGE:** The percentage of the horizontal (footprint) area of the lot that is covered by **all principal and accessory buildings and structures (including garages and barns), and other impervious areas for parking, sidewalks, paths, patios, decks and driveways.** The area of a driveway and sidewalk(s) located within the required front yard (setback) is not included in the lot coverage calculation. Horizontal areas are measured to the outside of the wall.

OPEN SPACE: (See “usable Open Space)

- ~~open space ratio—A measure of the intensity of land use, determined by dividing the total of all open space areas contained within a site by the gross area, not including Right of Way (ROW) or easements.~~

**SECONDARY DWELLING UNIT:** One additional dwelling unit established in conjunction with and clearly subordinate in size and use to the principal dwelling unit located within the same structure as the principal dwelling unit, or in a detached accessory structure (such as a garage or barn) where the secondary dwelling unit remains subordinate in size and subordinate in use to the accessory use of the garage or barn. See Also “Accessory Apartment ”

~~STUDIO APARTMENT: A dwelling unit consisting of a single room equipped for cooking, living and sleeping, and having a bathroom and kitchen area for the exclusive use of that apartment.~~

~~USABLE-OPEN SPACE: Landscaped or naturally vegetated area, including required yards, that is free of buildings, structures, and other substantial improvements. and includes without limitation (a) outdoor swimming pools, swimming pool areas, hard surface recreational areas, and other recreational areas that are unenclosed, and fences, and canopies and, bath houses;; (b) driveways that cross the required yard at approximately right angles and serve less than three parking spaces; (c) the ground surface above the underground facilities, provided it otherwise qualifies as usable open space under the provisions of this section; and (d) pedestrian ways to plazas within a building that are directly oriented to the major pedestrian entrance to the building and are open to view and use by the public; and (e) sidewalks, paths, decks, porches, patios, and terraces, and steps under thirty (30) inches high.~~

~~Usable open space excludes without limitation (a) public or private rights-of-way for streets or highways; (b) roofs; (c) open parking areas; (d) parking garages or structures. In all zones no more than 50% of the usable open space can be in excess of 25% in slope~~

### Proposed Amendments to Article 3A: General Requirements:

#### 3A.6. Accessory Building Square Footage and Height Requirements

With the exception of the Village Residential District and Residential Development District – Medium Density (See Section 3A-2.H and 3A-4.I. for specific requirements in these districts), no accessory buildings allowed in other zoning districts under this Section shall exceed 60 percent of the principal structure's square footage. (*adopted May 2018*).

#### 3A.7. Accessory Buildings and Accessory Apartments

##### A. Purpose and Intent.

**Where permitted in Article 3B of this Zoning Law, an Accessory Apartment shall conform to all the requirements of this section, and any other applicable regulations of**

this Law. Accessory apartments shall be allowed by Special Use Permit. In order to protect the residential character of the district, accessory apartments shall be subordinate in size and ancillary in use to the principal primary dwelling unit on the property where they are located. Accessory apartments should be designed as to not change the character of the property, or immediate neighborhood.

Special Use Permits approved for accessory apartments are limited to establishing the physical dwelling unit, and do not authorize the use of the accessory apartment for short-term rental. Short-term rental for periods less than 30 days shall only be allowed under a lawful license from the Code Enforcement Officer as issued in conformance with Section 16.15 of this Zoning Law.

In order to protect the health, safety, and welfare of the residents of the Village of Ellicottville, accessory apartments shall only be constructed and occupied in such a manner so as to not create any dangerous, injurious, noxious, or otherwise objectionable effect to the community or immediate neighbors. In this regard, accessory apartments shall conform to the standards in this Section. Failure to continue to conform to these standards may result in the revocation of the Special Use Permit.

**B. Dimensional Standards for Accessory Buildings and Accessory Apartments.**

- 1) Accessory apartments located within the principal structure lot shall meet the following standards:
  - a) **Setbacks**: Additions and footprint changes to accommodate an accessory apartment located within the principal structure on a property shall meet all the setbacks and dimensional requirements for principal buildings in the underlying district.
  - b) **Minimum Apartment Size**: The minimum size of an accessory apartment located within the principal structure shall be 550 square feet.
  - c) **Maximum Apartment Size**: In order to remain subordinate in size and character, accessory apartments located within the principal structure shall be less than 40% the total area of the principal structure. An accessory apartment may only exceed 40% of the area of the principal structure when it is necessary to meet the 550-foot minimum square footage requirement.
- 2) Accessory apartments located in accessory buildings shall meet the following standards:
  - a) **Lot Size**: As required for any structure in the underlying district.
  - b) **Side Yard**: The minimum side yard for an accessory building that contains an accessory apartment shall be the same as for a principal structure or principal use located in the underlying district.
  - c) **Rear Yard**: The minimum depth of the rear yard for an accessory building that contains an accessory apartment shall be the same as for a principal

structure or principal use located in the underlying district or ten (10) feet, whichever is greater.

- d) **Front Yard**: The minimum depth of the front yard for an accessory building that contains an accessory apartment shall be the same as for a principal structure or principal use located in the underlying district, or ten feet behind the front façade of the principal structure, whichever is the greater distance from the right-of-way.
- e) **Minimum Apartment Size**: The minimum size of an accessory apartment located within an accessory structure shall be 550 square feet, exclusive of the garage portion of the structure.
- f) **Maximum Building Size**: The maximum square footage of all accessory buildings (cumulatively), inclusive of accessory apartments and garage shall be limited to 60 percent of the total square footage of the principal building, or 1,320 s.f., whichever is greater. There shall be no more than two (2) accessory buildings (>144 s.f.) on a residential property.
- g) **Maximum Height**: The maximum height of an accessory structure having an accessory apartment shall be no greater than 70 percent of the height of the principal building.
- h) **Decks/Balconies**: Accessory structures shall not have a second-story deck or balcony. Where exterior stairs are necessary to provide access to second-story, landings shall be limited to a maximum (including railings) of 30 square feet with no single dimension greater than six feet. No deck, stairs or landing, shall be located closer than 10 feet from any property line.

C. **Pre-existing Structures**: Where a secondary dwelling unit (accessory apartment) or a lockout unit is located within a pre-existing accessory building that does not meet the setbacks established in this section for accessory buildings with accessory apartments, the following standards shall apply:

- a) That accessory structure shall be separated from adjoining residential property(ies) by a light-tight fence of natural materials.
- b) That non-conforming building shall not be expanded in footprint or height in order to add an accessory apartment.
- c) Accessory Buildings on residential properties shall not be modified or constructed to have a basement (a story below grade plane). A crawl space is not considered a basement and is allowed.

- D. A maximum total of two (2) dwelling units (a principal dwelling plus one secondary dwelling unit (accessory apartment) or one lockout unit) shall be allowed on any single property in the VR, LD, MD, HD, VC-1, and VC-2 Districts.
- E. Where a secondary dwelling unit (accessory apartment) or a lockout unit is located within an accessory building, that secondary dwelling unit shall not be the sole use or sole occupancy in the accessory building; a stand-alone guest house shall not be permitted.
- F. Demolition of existing accessory buildings shall meet the applicable standards in Section 16-9. And new structures shall meet all current applicable dimensional and use standards.

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Proposed Amendments to Article 3A: Districts and Regulations:

3A.1. *Conservation District (C)*

~~3A.1.D. Floor Area Ratio: 0.05 per lot.~~

**3A.1.D. Lot Coverage. Maximum lot coverage of all principal and accessory buildings and structures, parking, and driveways shall be 25 percent of the lot outside street rights-of-way. The remaining 75 percent of the lot shall be in open space, landscaped or natural vegetation.**

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3A.2. *Village Residential (VR)*

~~3A.3.C.6) Floor Area Ratio: Parcels 1 to 15,999 square feet 0.20 per lot.  
Parcels greater than 16,000 square feet 0.15 per lot~~

~~3A.3.C.7) Additional Square Footage: New buildings at least two stories shall be granted an additional 5% FAR.~~

~~3A.3.C.8) Open Space: At least thirty (30) percent of the total site area shall be devoted to usable open space.~~

**3A.2.C.6) Lot Coverage. Maximum lot coverage of all principal and accessory buildings and structures, parking, and driveways shall be 60 percent of the lot outside street rights-of-way. The remaining 40 percent of the lot shall be in open space, landscaped or natural vegetation.**

3A.3.G. Apartments/Lockout Rooms



**See Section 3A.7 General Requirements. Accessory Buildings and Accessory Apartments**

One apartment/lockout unit is allowed in residences in this District. A maximum of one apartment is permitted in any accessory building(s) on any property in this District by review and approval of a Special (Conditional) Use permit by the Planning Board. In the Village Residential District, one apartment/lockout unit will be permitted on any property in the District in addition to the principal residential dwelling; therefore, a maximum total of two (2) dwelling units (a principal dwelling plus one apartment/lockout unit) shall be allowed on any single property in the Village Residential District. (See Land Use Tables: multi-dwelling structures, apartments, rental of dwellings and lockout units). An apartment shall have a minimum of 550 square feet.

~~H. Accessory Building~~

~~No accessory building shall be greater than 50 percent of the total square footage of the principal building and 60 percent of the height of the principal building, and shall comply with the front, rear and side setback requirements set forth for this district.~~

~~Additional requirements for accessory buildings/structures are as follows:~~

~~1.) When a principal building is either one story and/or less than 1,000 square feet in total floor area, an owner of the structure may build an accessory building up to one and a half stories and a total square footage of 100 percent of the principal building on the property.~~

~~2.) The maximum square footage of any accessory building/structure shall be 1,650 square feet for all principal buildings over 2,200 square feet and shall be measured according to appropriate calculations as defined by the New York State Building Code and Section 2 of this Zoning Ordinance.~~

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3A.3 *Residential Development District - Low Density (LD)*

~~3A.3.C.6) Open Space: At least sixty (60) percent of the total site shall be devoted to useable open space.~~

**3A.3.C.6) Lot Coverage. Maximum lot coverage of all principal and accessory buildings and structures, parking, and driveways shall be 40 percent of the lot outside street rights-of-way. The remaining 60 percent of the lot shall be in open space, landscaped or natural vegetation.**

3A.3.E. Apartments/Lockout Rooms

**Accessory See Section 3A.7 General Requirements. Accessory Buildings and Apartments**

~~One apartment/lockout unit is allowed in residences in this District. A maximum of one apartment is permitted in any accessory building(s) on any property in this District by review and approval of a Special (Conditional) Use permit by the Planning Board. See Land Use Tables: multi-dwelling structures, apartments, rental of dwellings and lockout units). An apartment shall have a minimum of 550 square feet.~~

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3A.4. *Residential Development District - Medium Density (MD)*

~~3A.4.C.6) Floor Area Ratio: 0.25 per lot.~~

~~3A.4.C.7) At least sixty (60) percent of the total site area shall be devoted to usable open space.~~

**3A.4.C.6) Lot Coverage. Maximum lot coverage of all principal and accessory buildings and structures, parking, and driveways shall be 40 percent of the lot outside street rights-of-way. The remaining 60 percent of the lot shall be in open space, landscaped or natural vegetation.**

3A.4.E Apartments/Lockout Units

**Accessory See Section 3A.7 General Requirements. Accessory Buildings and Apartments**

~~One apartment/lockout unit is allowed in residences in this District. A maximum of one apartment are permitted in any accessory building(s) on any property in this District by review and approval of a Special (Conditional) Use permit by the Planning Board. (See Land Use Tables: multi-dwelling structures, apartments, rental of dwellings and lockout units). An apartment shall have a minimum of 550 square feet.~~

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3A.6. *High Density Residential District - (HD)*

~~3A.6.C.4) Open Space: On any lot at least sixty (60) percent of the lot shall be devoted to usable open space.~~

~~3A.6.C.5) Floor Area Ratio: 0.30 per lot.~~

**3A.6.C.7) Lot Coverage. Maximum lot coverage of all principal and accessory buildings and structures, parking, and driveways shall be 40 percent of the lot outside street rights-of-way. The remaining 60 percent of the lot shall be in open space, landscaped or natural vegetation.**

3A.6.E Apartments/Lockout Room

**Accessory**                      **See Section 3A.7 General Requirements. Accessory Buildings and Apartments**

~~Apartments/lockout rooms available for nightly, weekly and/or longer period rental are permitted in this zone through Special (Conditional) Use permit review and approval by the Village Planning Board (See Land Use Tables Multi-dwelling structure, apartments, rental of dwellings and lockout units). An apartment shall have a minimum of 550 square feet.~~

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3A.7. Village Commercial District - One (VC-1)

~~3A.7.D.6 Floor Area Ratio: 1.5 per lot.~~

~~3A.7.D.7 Open Space: With the exception of properties that are located within the Village Historic Overlay District (added in 2018), at least 20% of the total site area shall be devoted to usable open space.~~

3A.7.J Apartments/Lockout Rooms

**See Section 3A.7 General Requirements. Accessory Buildings and Accessory Apartments**

~~Apartments/lockout rooms available for nightly, weekly and/or longer period rental are permitted in this zone through Special (Conditional) Use permit review and approval by the Village Planning Board (See Land Use Tables Multi-dwelling structure, apartments, rental of dwellings and lockout units). An apartment shall have a minimum of 550 square feet.~~

**3A.7.D.6) Lot Coverage. Maximum lot coverage of all principal and accessory buildings and structures, parking, and driveways shall be 80 percent of the lot outside street rights-of-way. With the exception of properties that are located within the Village Historic Overlay District, the remaining 20 percent of the lot shall be in open space, landscaped or natural vegetation. There shall be no open space requirement for non-residential properties within the Historic district.**

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3A.8. Village Commercial District - Two (VC-2)

~~3A.8.D.6) Floor Area Ratio: 0.40 per lot.~~

~~3A.8.D.8) Open Space: At least 20 % of the total site area shall be devoted to usable open space.~~

**3A.8.D.6) Lot Coverage. Maximum lot coverage of all principal and accessory buildings and structures, parking, and driveways shall be 80 percent of the lot outside street rights-of-way. The remaining 20 percent of the lot shall be in open space, landscaped or natural vegetation.**

~~3A.8.I. Apartments/Lockout Rooms~~

**See Section 3A.7 General Requirements. Accessory Buildings and Accessory Apartments**

~~Apartments/lockout rooms available for nightly, weekly and/or longer period rental are permitted in this zone through Special (Conditional) Use permit review and approval by the Village Planning Board (See Land Use Tables Multi-dwelling structure, apartments, rental of dwellings and lockout units). An apartment shall have a minimum of 550 square feet.~~

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3A.9. *Industrial Zone (I)*

~~3A.9.C.2) Open Space: At least 30% of the total site area shall be devoted to usable open space.~~

~~3A.9.C.7) Floor Area Ratio: 0.30 per lot~~

**3A.9.C.7) Lot Coverage. Maximum lot coverage of all principal and accessory buildings and structures, parking, and driveways shall be 70 percent of the lot outside street rights-of-way. The remaining 30 percent of the lot shall be in open space, landscaped or natural vegetation.**

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3A.12 *Village Commercial District - Three (VC-3)*

~~3A.12.D.2) Open Space: At least 20 % of the total site area shall be devoted to usable open space.~~

**3A.12.D.4) Lot Coverage. Maximum lot coverage of all principal and accessory buildings and structures, parking, and driveways shall be 80 percent of the lot outside street rights-of-way. The remaining 20 percent of the lot shall be in open space, landscaped or natural vegetation.**

3A.12.I. Apartments/Lockout Rooms  
**See Section 3A.7 General Requirements. Accessory Buildings and Accessory Apartments**

~~Apartments/lockout rooms available for nightly, weekly and/or longer period rental are permitted in this zone through Special (Conditional) Use permit review and approval by the Village Planning Board. An apartment shall have a minimum of 450 square feet.~~

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*Proposed Amendments to Article 3B: Schedule of Requirements – Land Use Tables:*

USE – DESCRIPTION                    C   VR   LD   MD   HD   VC-1   VC-2                    I  
RMHD

**Accessory Apartment (1 only)** — NP   S   S   S   S   S   S   S                    NP   NP

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Proposed Amendments to Article 5: Special Use Permits:

5.7.A Upper Floor Dwellings in VC-1 District

- 5.7.A.(6) Rental of upper floor dwellings in the VC-1 District for periods of less than 30 days ~~shall be prohibited~~**may be allowed under a lawful license from the Code Enforcement Officer as issued in conformance with Section 16.15 of this Zoning Law.**

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Proposed Amendments to Article 7: Non-Conforming Buildings, Structures and Uses:

7.7 A non-conforming use shall not be changed or extended within a building or upon the same lot nor **shall** the ~~size of the~~ nonconforming building or structure be expanded, except as provided by the procedures of **Section 19.4.A. (Use Variances)** ~~(Zoning Board of Appeals)~~ of this Local Law. ~~and the intensity of the use is not increased or changed.~~

~~However, t~~**he** extension of a currently lawful use to any portion of a non-conforming building, which **building** existed prior to the enactment of this zoning ordinance shall not be deemed the extension of ~~such a~~ non-conforming use.

**SECTION 4. EFFECTIVE DATE.**

The Provisions of this Local Law shall become effective upon its filing with New York State Secretary of State