

LOCAL LAW NO. ____ OF 2019

**TOWN BOARD
TOWN OF NEW CASTLE
LOCAL LAW TO AMEND
CHAPTER 90, SECTION 8, OF THE
CODE OF THE TOWN OF NEW CASTLE**

A LOCAL LAW to amend Chapter 90, Section 8, of the Town Code of the Town of New Castle concerning exception to the public hearing requirement when requesting a variance to permit noise regulated by the chapter.

BE IT ENACTED by the Town Board of the Town of New Castle as follows:

Section 1. Chapter 90, Section 8, of the Code of the Town of New Castle entitled “Variances” is hereby amended as follows:

§ 90-8. Variances.

- A.** Where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of this chapter, the Town Board shall have the power in passing upon a petition for a variance duly made pursuant to Subsection **E** by owners of properties with nonresidential uses which would be in violation of other subsections of this chapter to vary or modify the application of any of the regulations or provisions of this chapter so that the spirit of this chapter shall be observed, public health, safety and welfare secured and substantial justice done.
- B.** No variation or adjustment in the strict application of any regulations or provisions of this chapter shall be granted by the Town Board unless it finds that:
 - (1)** The applicant has demonstrated good and sufficient cause for the granting of a variance. Such demonstration shall be founded upon a fair consideration of the circumstances present pertinent to the petition, including but not limited to:
 - (a)** The social utility of the use or activity for which a variance is sought.

- F. Notice of hearing. Notice of any hearing shall be published by the Town Board in the official paper at least five days prior to the date of said hearing. Notice of the hearing shall also be mailed by the Town Board to the parties at least five days before such hearing. The applicant shall mail, by certified mail, notice of the hearing to all abutting property owners and to all owners of property situated directly across a street from the property affected by such appeal. Proof of such mailing shall be submitted to the Town Board by the applicant prior to the hearing. The applicant shall be responsible for the cost of publication and mailing of such notice. **For any application for which a hearing is not required, the applicant shall be required to provide a copy of its application to the Town Board at the time it is submitted to the Town with notice to the residents so that if they have any comments or objections they can advise the town board within 7 days of the application.**
- G. Hearing. The Town Board shall conduct a public hearing on any application made pursuant to this chapter, **except for an application for events that will last no longer than 24 hours. The Town Board may require a public hearing for such events if it finds within its discretion that a public hearing should be held.** At such public hearings all those present and wishing to be heard shall be given an opportunity to be heard.
- H. For a period of 180 days after this chapter becomes effective, a properly filed application for a variance shall exempt the applicant from the specific provisions of this chapter from which a variance is being sought, from the date of filing of the application until the Town Board has ruled on the application.

Section 2. Ratification, Readoption and Confirmation

Except as specifically modified by the amendments contained herein, Chapter 90 of the Town Code of the Town of New Castle is otherwise to remain in full force and effect and is otherwise ratified, readopted and confirmed.

Section 3. Numbering for Codification

It is the intention of the Town of New Castle and it is hereby enacted that the provisions of this Local Law shall be included in the Code of the Town of New Castle; that the sections and subsections of this Local Law may be re-numbered or re-lettered by the Codifier to accomplish such intention; that the Codifier shall make no substantive changes to this Local Law; that the word "Local Law" shall be changed to "Chapter," "Section" or other appropriate word as required for codification; and that any such rearranging of the numbering and editing shall not affect the validity of this Local Law or the provisions of the Code affected thereby.

Section 4. Severability

The provisions of this Local Law are separable and if any provision, clause, sentence, subsection, word or part thereof is held illegal, invalid or unconstitutional, or inapplicable to any person or circumstance, such illegality, invalidity or unconstitutionality, or inapplicability shall not affect or impair any of the remaining provisions, clauses, sentences, subsections, words or parts of this Local Law or their petition to other persons or circumstances. It is hereby declared to be the legislative intent that this Local law would have been adopted if such illegal, invalid or unconstitutional provision, clause, sentence, subsection, word or part had not been included therein, and if such person or circumstance to which the Local Law or part hereof is held inapplicable had been specifically exempt there from.

Section 5. This local law shall take effect immediately upon filing with the Office of the Secretary of State.