

## RESOLUTION OF INTRODUCTION

Supervisor Shannon Harris, seconded by Councilperson Jared Geuss, introduced the following proposed local law, to be known as **Local Law No.10 of 2020**, entitled A LOCAL LAW OF THE TOWN OF ESOPUS, ULSTER COUNTY, NEW YORK TO AMEND CHAPTER 123 "ZONING" OF THE ESOPUS TOWN CODE TO ADD A NEW SECTION 123-18 TO ESTABLISH A MIXED-USED FLOATING ZONE.

BE IT ENACTED by the Town Board of the Town of Esopus that the Town Code is amended to read as follows:

Section 1. Chapter 123 of the Esopus Town Code is amended to add a new Section 123-18 reading as follows:

### § 123-18 Mixed-Use Floating Zone

#### A. Intent and objectives.

(1) Intent. The Mixed-Use Floating Zone (MFZ) regulations provide a procedure for allowing flexible land use and design through creative planning and design practices as it is not always possible to determine in advance the exact location, type, standards and mixture of all uses which may benefit the Town and its residents. The MFZ regulations allow development matched to the unique characteristics of the site and allow development techniques that might not otherwise be possible through strict application of standard use, area, bulk and density specifications. Approved MFZ Districts will enable greater flexibility than conventional zoning while providing a customized regulatory framework that recognizes the unique environmental, physical, and cultural resources of the project area and neighborhood. MFZ District legislation approved by the Town Board in accordance with this section will replace the existing zoning for the parcel or parcels becoming MFZ Districts and will become the basis for detailed design, review and contract of subsequent development.

(2) Objectives. In order to carry out the intent of this section, all approved MFZ Districts shall:

2 (a) Encourage and direct mixed-use development that includes a combination of multifamily, commercial, civic, and other compatible uses to areas currently served by central water and sewer, consistent with the 2019 Comprehensive Plan, and where applicable, the Local Waterfront Revitalization Program (LWRP);

(b) Achieve a compact pattern of development that encourages people to walk, ride a bicycle or use available public transit;

(c) Discourage singular use buildings developed as isolated islands within an expansive parking lot;

(d) To encourage, incentivize, and facilitate the adaptive reuse of older buildings and aging strip developments that may be difficult to redevelop under existing zoning regulations;

(e) Encourage mixed-use, mixed-income, pedestrian-based neighborhoods;

(f) Provide a high level of amenities that creates a comfortable environment for pedestrians, bicyclists, and other users;

(g) Maintain an adequate level of parking appropriate for the uses and integrate uses safely with pedestrians, bicyclists, and other users;

(h) To protect and enhance the existing natural features of the Town; and

(i) Implement applicable goals and recommendations within the 2019 Comprehensive Plan.

#### B. Approvals required.

(1) Application required. Whenever a Mixed-Use Floating Zone (MFZ) project is proposed, before any site plan, building permits or other necessary approvals, the applicant or their authorized agent shall apply for and secure approval of such MFZ project in accordance with this section.

(2) Until all requirements of this section are followed, including MFZ District approval and associated amendment of the Official Zoning Map by the Town Board as contemplated herein, the underlying zoning district(s) and associated regulations pursuant to this chapter remain unchanged.

#### C. Minimum requirements to submit an application. The following minimum requirements must be met in order to submit an application for MFZ District approval. BC MFZ Boundary Figure 1: BC MFZ Boundary 3

(1) Involved base zoning districts. Applications for MFZ approval shall only be accepted for parcel(s) located in the following areas:

(a) The entirety of the Broadway Commercial (BC) District – refer to Figure 1 BC MFZ Boundary.

(b) The General Commercial (GC) District, roughly bounded by River Rd. to the north and Dick Williams Lane to the south -refer to Figure 2 – GC MFZ Boundary.

(2) Central water and sewer required. Properties seeking MFZ District approval must be served by central water and sewer.

(3) Minimum lot sizes. The following minimum lot sizes are required in order to seek approval for a MFZ District. (a) Broadway Commercial (BC) = 20,000 SF. (b) General Commercial (GC) = 1 acre (43,560 SF).

(4) Mixed-use required.

(a) One or more non-residential uses permitted within the involved base zoning districts in accordance with the § 123-10, “Schedule of District Use Regulations,” of this chapter, shall be required as part of the overall mixed-use project in accordance with the following requirements.

(b) During their respective reviews, the Planning Board and Town Board shall consider whether a mixed use development is appropriate in its context with adjacent land uses, the Intent and Objectives of this section, and serves the needs of residents in an attractive and functional manner. The evaluation of

context with adjacent land uses shall take into consideration applicable Comprehensive Plan goals and associated recommendations related to the Town's future land use and zoning.

(c) The project shall include no more than two separate buildings with a minimum of one building incorporating a mix of allowed residential and non-residential uses. This limitation does not extend to accessory buildings.

D. Permitted residential density and bonuses. The following process for calculating permitted residential density and increased density through one or more bonuses shall apply only to projects seeking MFZ District approval.

(1) Base residential density. Applicants seeking MFZ District approval shall begin with the following base residential densities. GC MFZ Boundary Figure 2: GC MFZ Boundary 4

(a) BC Zoning District. 8 units per acre (1 unit for every 5,445 SF of lot area).

(b) GC Zoning District. 6 units per acre (1 unit for every 7,260 SF of lot area).

(2) Removal of constrained lands not required. Projects seeking MFZ approval shall not be required to remove constrained lands to calculate permitted residential density.

(3) Density bonuses. Applicants proposing to exceed the base density set forth in this section may seek approval for density bonuses with the incorporation of one or more of the following project elements.

(a) 20% for repurposing an existing vacant or underutilized building(s).

(b) 20% for projects that incorporate a minimum of two high quality pedestrian-scaled design elements. The applicant may choose two or more from the list below and/or propose additional high quality pedestrian-scaled design elements: Placement of parking lots behind buildings; provision for pedestrian connections between public sidewalks and parking areas; widened sidewalks in front of the development; and publicly-available outdoor space adjacent to public sidewalks that include opportunities for art installations, seating, landscaped areas/gardens, and other unique and attractive elements.

(c) 20% for providing one or more workforce dwelling units that are reserved for renters that meet the eligibility requirements in accordance with § 123-18D(6) below.

(d) 10% for inclusion of a pocket park or similar outdoor gathering space (separate from a publicly-available outdoor space adjacent to public sidewalks as noted above) available for the project's tenants and/or available to the public.

(e) 10% increase for providing two or more EV charging stations.

(f) 5% for incorporating solar energy systems to supplement the energy needs of the project.

(4) Maximum residential density allowed. The approval of density bonuses shall not result in dwelling units that exceed the following.

(a) BC = 12 units per acre.

(b) GC = 8 units per acre.

(5) No project seeking MFZ approval shall result in more than 20 residential units.

(6) Determining applicant eligibility for workforce dwelling units. Applicant eligibility shall be determined by the Town Board as follows:

(a) To be eligible to purchase a workforce dwelling unit, the household's aggregate annual income shall not exceed 80% of the Kingston Metropolitan Statistical Area median family income, as established and defined in the annual schedule published by the Secretary of the U.S. Department of Housing and Urban Development (HUD), and adjusted for the household size.

(b) To be eligible to rent a workforce dwelling unit, the household's aggregate annual income shall not exceed 65% of the Kingston Metropolitan Statistical Area median family income, as established and defined in the annual schedule published by the Secretary of the U.S. Department of Housing and Urban Development (HUD), and adjusted for the household size.

(c) The Town Board shall annually revise the standard of eligibility, which shall specify income levels for varying sizes of households and shall include different income eligibility standards for buyers and renter.

(d) The Town Board shall separately prepare and update annually, regulations pertaining to the sales price and permissible rent and resale of, improvements to, and related requirements for the long-term administration and enforcement of workforce housing units approved under this section.

(e) Period of affordability. Workforce dwelling units shall be resold or rented to moderate-income households in perpetuity. At the time of site plan approval, the applicant, owner, and or the developer, as applicable, shall execute and record restrictive covenants to restrict the future sales price and/or rental terms of the workforce housing units in accordance with the provisions of this section. The restrictive covenants shall assure that:

[1] The restrictions of this section run with the land in perpetuity.

[2] The covenants shall bind the applicant, and heir, assignee, mortgage or buyer, and all other parties that receive title to the property. The covenants shall be subordinate only to the first mortgage lien held by an institutional lender on the workforce dwelling unit and in no way shall impair the institutional first mortgagee's ability to exercise all remedies available to it in the event of any default of such mortgage.

[3] The covenants shall include a provision requiring that every deed conveying title to an affordable dwelling unit shall include the following paragraph, subscribed to in the instrument by both seller and buyer, to inform all future sellers and buyers that this unit is a workforce dwelling unit subject to the provision of this section: "This dwelling has been constructed for use by moderate-income families in accordance Chapter 123-18 of the Town of Esopus Code. Its future sale (including resale) or rent must be to persons who qualify under that section's income requirements at a price in accordance with the

Esopus Town Code. The Town of Esopus shall have the power to enforce this clause and to recover reasonable 6 attorney's fees and other costs incurred in successful efforts to remedy breaches of said provision of local law."

E. Mix of residential and non-residential uses and square feet. Providing for a healthy mix of residential and non-residential uses is a primary goal of this section. This requires a balancing of a variety of uses on a scale and design so that the various uses cannot only coexist but complement each other to create a vital and active community of shopping, service, social and residential opportunities. Therefore, the following guidance is being provided to assist in achieving an optimal mix of residential and non-residential uses.

(1) For every one dwelling unit, the proposed MFZ project should incorporate between 200 SF to 400 SF of non-residential space.

(2) At no time should the total non-residential space associated with a mixed-use project exceed the following:

(a) Broadway Commercial (BC): 7,500 SF

(b) General Commercial (GC): 4,500 SF.

F. Town Board final determination of allowed dwelling units and non-residential space. The final authorized number of dwelling units and square feet of non-residential space by the Town Board will be based, at a minimum, on the sites ability to adequately accommodate the proposed project and required parking and stormwater, the projects compatibility with the surrounding neighborhood and compatibility with the Comprehensive Plan's recommendations on future land use and zoning, the capacity of water and sewer infrastructure to handle the requested density, and local traffic implications.

G. Dimensional requirements. The following dimensional requirements shall apply to projects seeking MFZ approval.

(1) Front setbacks. Projects seeking MFZ District approval shall propose front setbacks within the following ranges.

(a) Broadway Commercial (BC): 0 ft. to 10 ft.

(b) General Commercial (GC): 10 ft. to 30 ft.

(2) Side setbacks. The following side yard setback requirements shall apply to both the Broadway Commercial (BC) and General Commercial (GC) Districts.

(a) Side and rear yard setbacks may be reduced to 5 ft., except when abutting a parcel or parcels within a Residential (R-12) District.

(b) When abutting a parcel or parcels within a Residential (R-12) District, the minimum setbacks shall be 10 ft. The Planning Board reserves the right to increase the side and/or rear setbacks as the project and adjoining uses dictates to ensure compatibility.

(3) Lot coverage. Projects seeking MFZ District approval shall not exceed the following percentages.

(a) Broadway Commercial (BC): 80%.

(b) General Commercial (GC): 50%.

(4) Height.

(a) All buildings (except accessory) shall be a minimum of two stories.

(b) The existing height restrictions set forth in the Schedule of District Area and Bulk Regulations shall apply to projects seeking MFZ District approval.

H. Design Standards. Projects seeking MFZ District approval shall incorporate the following site and architectural designs to the satisfaction of the Town Board and Planning Board. Key elements to consider are: existing attractive architectural character of the neighborhood/district; continuity of building scale and architectural massing; transition to adjacent developments; treatment of the street-level and upper-level architecture detailing; roof forms; rhythm of windows and doors; and, relationship of buildings to public spaces such as streets, plazas, other open space, and public parking, including the following:

(1) General design criteria.

(a) Encourage compatibility between residential and commercial uses where existing residential zones abut commercial zones.

(b) The variety of active uses should be complemented with facades that are “animated” along the pedestrian ways.

(c) Create a network of continuity of active spaces and avoid disconnected spaces.

(d) Design rooftops for visual interest and avoid a lack of design attention.

(e) Achieve compatible building styles and designs and avoid incompatible elements.

(f) Provide upgraded streetscapes including appropriate unified site furniture to encourage pedestrian activity, avoiding dull/bleak streetscapes that discourage walking.

(g) Incorporate street trees and pedestrian scale lighting (in addition to vehicle area lighting) to enhance the area.

(h) Provide pedestrian crosswalks to enhance connections across streets and access driveways.

(i) The design treatments for the area should be rich with detail and high-quality materials to promote interest for users and visitors.

(2) Specific design standards

(a) Unless otherwise stated, the following design standards are mandatory. Each applicant for a MFZ District shall comply with the required standards to the maximum extent practicable to achieve the goals and specific recommendations as set forth in the Comprehensive Plan and in accordance with the purpose and intent of the regulations set forth in this section. Where the following standards are stated as not mandatory, compliance is strongly encouraged. The term “shall” is interpreted as mandatory. The term “should” or “may” is interpreted as optional.

(b) Building design and orientation.

[1] Buildings must present their main façade and entrance toward the primary street. Buildings should be oriented parallel or perpendicular to public sidewalks and allow for parking in the rear or side of the proposed structure.

[2] Building scale and architectural massing shall incorporate elements for a reasonable transition to adjacent existing (or future) developments and the proposed project.

[3] All new buildings shall be a minimum of two functional stories.

[4] The first floor of new buildings shall be a minimum of 12 feet measured floor to floor.

[5] Buildings shall incorporate varying heights and/or other designs to create visual interest from the street. The ground level façade should have a distinct look from the stories above (e.g., using different architectural elements, such as building material or trim accent, lighting, cornice lines, awnings, projections, window treatments and sizes, and/or paint colors).

[6] The vertical plane of the building façade shall be broken up with a high level of articulation (e.g., projecting entry or window features, recessed elements, transparent storefronts, identifiable retail spaces and, awning/entrance canopies) especially at ground level.

[7] Build to line. To define street frontage and pedestrian areas, buildings are strongly encouraged to be placed at the closest permitted front setback line (10 ft. in the GC District and 0 ft. or the back edge of the sidewalk in the BC District).

(c) Roof designs.

[1] Pitched, hip (gable), and flat roofs are encouraged.

[2] All roofs shall incorporate a parapet with cornice details along facades facing public streets.

[3] Plain parapets are discouraged.

[4] Should complement the overall style of the building. 9

[5] Materials should not be reflective.

[6] Should incorporate measures to prevent falling snow and ice onto the sidewalk.

(d) Pedestrian-oriented design criteria. The following criteria are intended to encourage buildings to be designed to a human scale for pedestrian access, safety and comfort and to promote a design which would provide direct and safe access between the site and adjacent land uses that is convenient and pleasant for the pedestrian.

[1] The site layout shall cluster buildings and other project elements on the site to promote linked trips via interconnected pedestrian promenades such that a pedestrian need not cross more than 64 linear feet of parking or driveway area, or one double loaded row of parking (not inclusive of sidewalks, pathways, landscaping, plazas, and other pedestrian facilities), whichever is less, between buildings.

[2] The development should be designed to be well integrated with adjacent land uses. "Integrated" means that uses are within a comfortable walking distance (i.e., ¼ mile radius) and are connected to each other with direct, convenient and attractive sidewalks and/or pathways.

[3] The development should provide internal and/or public pedestrian connections that are direct, convenient and pleasant with appropriate landscaping and other amenities (e.g., attractive sidewalks, plantings, trash/recycle containers, and benches); and

[4] The development shall incorporate the following criteria where applicable: [a] The building(s) have at least one primary entrance facing a street, or is directly accessible by a sidewalk or plaza within twenty feet of the primary entrance.

[b] The main building entrances open directly to the outside.

[c] Every building has at least one entrance that does not require passage through a parking lot or garage to gain access.

[d] Corner buildings have corner entrances whenever possible.

[e] Ground floor windows of non-residential space facing Broadway (US Rte. 9W) have a minimum of 50% to 75% of transparent glass that is oriented vertically.

[f] Include pedestrian facilities that connect the development to adjacent land uses and provide connections through the development to the public street right-of-way.

[g] Sidewalks and/or plazas are provided with weather protection (e.g., awnings/canopies) and appropriate pedestrian amenities (e.g., street tree 10 grates, plantings, outdoor seating, bus waiting areas, trash/recycle containers, sidewalk displays, public art, etc.).

(3) On-site parking areas. Whenever feasible, parking shall comply with the following criteria:

(a) Surface parking shall be oriented behind or to the side of a building when possible and shall not exceed a maximum depth of sixty-two feet (e.g., two-way aisle with parking on both sides) not counting any required landscaping.

(b) If surface parking is located at the side of a building there shall be a minimum five-foot landscaped buffer between the parking area and edge of the sidewalk.

(c) Landscape features shall include trees, hedges, shrubs or low walls of brick, wood, wrought iron, or another acceptable structure/material.

(d) Surface parking shall not be located on street corners.

(e) Shared access points are required to reduce curb cuts, where appropriate.

(f) Easements should be used to formalize shared access arrangements between business sites.

(g) Peak period (spillover) parking areas with alternate pervious paving materials are strongly encouraged and could include grass pavers and gravel surfaces.

(h) Parking requirements shall be governed by § 123-24, "Off-street parking and loading standards" of this chapter, except as modified by this section.

(i) Joint parking use. Where parking demands peak during different times of the day, parking should be shared. Parking areas should be developed as joint use parking areas under the provisions of § 123-24.

(j) Parking and vehicle drives should be located away from building entrances and not between a building entrance and the street, except as may be allowed when a direct pedestrian connection is provided from the sidewalk to the building entrance.

(4) Site lighting.

(a) Pedestrian scale and area lighting are required.

(b) Maximum height for pedestrian lighting shall be ten to twelve feet.

(c) Area lighting shall be 18 feet or two feet lower than the adjacent building height, whichever is less.

(5) Public plazas.

(a) Plazas are strongly encouraged. A plaza is an open space that is continuously accessible to the public and may be landscaped or paved and is typically surrounded by buildings 11 or streets and open to the sky. A plaza usually provides amenities such as seating, ornamental fountains, lighting, and landscaping for use by pedestrians.

(b) Incorporation of works of art into the public spaces, exterior façade or entrance lobbies is strongly encouraged.

(c) The area should be landscaped with trees, perennials, annuals, herbaceous shrubbery, ornamental lighting, and benches.

(d) The area should be constructed on the side of the building that receives the most sunlight, when possible.

(6) Outdoor dining. Opportunities for outdoor dining are strongly encouraged. Outdoor dining is an area of a designated size with seating and/or tables located outdoors of a restaurant, coffee shop, or other food service establishment, which is a) located entirely outside the walls of the subject building; b) enclosed on two sides or fewer by the walls of the building with or without a solid roof cover; or c) enclosed on three sides by the walls of the building without a solid roof cover. The seating may be in addition to the indoor seating or it may be the only seating available for the establishment. The outdoor dining area must be visually and architecturally integrated pursuant to the design standards.

(a) Outdoor dining areas should be temporary structures and dismantled during winter months.

(b) No outdoor dining areas shall obstruct safe passage of pedestrians on sidewalks and a minimum five-foot wide unobstructed path shall be maintained at all times on sidewalks.

(c) In no case should the fence/railing combination prohibit views from the sidewalk into the outdoor dining area.

#### I. Procedures.

(1) Sketch plan conference required.

(a) A sketch plan conference with the Town Board shall be required prior to the submission of a formal MFZ District application. In order for a sketch plan conference to be scheduled, a sketch plan application shall be made by the owner(s) of the land(s) to be included in the district or by a person or persons possessing a written contract or option rights to purchase the lands. The application shall be accompanied by a statement signed by all owners of such land indicating concurrence.

(2) Sketch plan requirements. To assist the Town Board in making an initial determination on merit and to establish basic design principals, a sketch plan application consisting of the following shall be submitted to the Town Board: 12

(a) Required data for maps and plans as applicable:

[1] Lot, block and section number of the property, taken from the latest property record of the parcel(s) proposed for a MFZ.

[2] Name and address of the owner of record.

[3] Name and address of the applicant if different than the owner.

[4] Name and address of the person, firm or organization preparing the application materials.

[5] Date, North point and written graphic scale.

[6] Sufficient description or information to define precisely the boundaries of the property.

[7] The locations and owners of all adjoining lands as shown on the latest tax records.

[8] The location, width and purpose of all existing easements, reservation and areas dedicated to public uses within or adjoining the property.

[9] A complete outline of existing deed restrictions or covenants applying to the property.

[10] The subject property's Existing Zoning District(s).

(b) Natural features.

[1] Existing contours with intervals of five feet or less, based on a reference system satisfactory to the Town Board.

[2] Approximate boundaries of any areas subject to flooding or stormwater overflows.

[3] Location of existing watercourses, wetlands, wooded areas and other vegetation, rock outcrops and other significant features.

(c) Existing structures and utilities.

[1] Location of all existing uses and outline of structures.

[2] Paved areas, sidewalks and other impervious surfaces.

[3] Vehicular access points between the site and public streets.

[4] Approximate locations and flow direction of existing sewers, culverts, waterlines, as well as other underground and aboveground utilities within and adjacent to the property.

(d) A conceptual development plan including:

[1] Succinct narrative describing the entire proposed project, including, but not limited to the number and type of proposed residential dwelling units, the type and square 13 feet of proposed non-residential uses, pedestrian and bicycle infrastructure amenities, architecture and other interesting design elements, how the project meets the Intent and Objectives, and requirements of this section, how the project is consistent with the vision and applicable goals and recommendations of Comprehensive Plan, and how the project meets local and regional housing and economic needs.

[2] The existing base residential density of the project site in accordance with the calculation method set forth in this section.

[3] Maximum requested number of dwelling units, including the number of units being requested through one or more density bonus. The required narrative shall identify and describe in adequate detail the project elements being proposed to obtain requested density bonuses in accordance with this section.

[4] Location and dimensions of proposed buildings and/or structural improvements.

[5] Front, side and rear setbacks for all proposed structures.

[6] Location and dimensions of proposed sidewalks and other pedestrian amenities.

[7] Location and dimensions of proposed off-street parking, number of spaces and proposed plans to incorporate shared parking arrangements to reduce the amount of off-street parking required.

[8] Proposed lot coverage, impervious and pervious surfaces.

[9] Anticipated utility improvements and approach to address stormwater requirements.

[10] Anticipated changes in the existing topography and other natural features.

(e) Completed Environmental Assessment Form Part I.

(f) Accompanied by a fee established by the Town Board in accordance with § 123-29 of this chapter.

(g) Escrow required. The applicant shall deposit funds into an escrow account in accordance with § 123-29, "Fees" of this chapter for the purposes of covering costs associated with the Town's technical review of the project.

(3) Sketch plan review by Town Board.

(a) The Town Board will review the MFZ sketch plan application at the next regularly scheduled Town Board meeting and determine if sufficient information has been provided to determine whether or not the application has merit for further consideration. 14

(b) Within 45 days of receiving a MFZ sketch plan application deemed complete, the Town Board shall determine whether or not the application has merit for further consideration.

(c) The Town Board shall review the sketch plan application and make a determination of merit according to the following criteria:

[1] The proposal meets the Intent and Objectives and requirements of this section.

[2] The proposal conforms to the Comprehensive Plan, and if applicable, the Local Waterfront Revitalization Program.

[3] The proposal meets local and regional needs.

[4] The proposal meets any additional criteria the Town Board considers relevant.

(d) The Town Board retains absolute discretion to approve a MFZ District, and reserves the right to refuse to entertain an application for any reason. If the Town Board determines that the application does not merit review, it shall provide said determination in writing to the applicant and no further action on the application shall be taken. The Applicant may submit a revised sketch plan application for consideration.

(4) Planning Board referral.

(a) Application referral. If the Town Board determines that the application does merit Planning Board review, the Town Board shall provide their decision in writing to the applicant and shall immediately refer the sketch plan application to the Planning Board.

(b) Escrow required. Upon referral of the application to the Planning Board, the escrow established as part of the Sketch Plan submission shall remain in effect be replenished as necessary in accordance with § 123-29, "Fees" of this chapter.

(5) Preliminary Site Plan.

(a) The Planning Board shall review the sketch plan and its related documents and shall request any additional information it considers necessary to render a decision on favorability. The Planning Board review of the referral and any additional materials requested shall constitute preliminary site plan review.

(b) The Planning Board shall render either a favorable or unfavorable report to the Town Board and application within 90 days of receipt of all necessary application materials. The Planning Board may, at its option, hold a public hearing prior to its action.

(c) A favorable report shall be based on the following findings, which shall be included as part of the report:

[1] The proposal is consistent with the goals and policies contained in the Town's Comprehensive Plan and, if applicable, the Local Waterfront Revitalization Program.

[2] The proposal meets the Intent and Objectives of this section.

[3] The proposal meets the standards and requirements of this section.

[4] The proposal is conceptually sound in that it meets local and area-wide needs and it conforms to accepted design principals in the proposed pedestrian system, land use configuration and design, drainage system and project scale.

[5] There are adequate services and utilities available or proposed to be made available in the construction of the development.

(d) Preliminary site plan approval. For the purposes of this section, the issuance of a favorable report by the Planning Board shall constitute an approved preliminary site plan. Preliminary site plan approval does not authorize earthwork, land clearing or construction of any kind until all approvals required by this chapter are obtained

(e) An unfavorable report shall state clearly the reasons therefor and, if appropriate, point out to the applicant what modification might be considered in order to receive a favorable report. The applicant may appeal an unfavorable report to the Town Board. The Town Board may, upon a vote of a majority plus one additional vote, proceed to hold a public hearing on its own initiative.

(6) Application to the Town Board.

(a) Upon issuance of a favorable report from the Planning Board, the Town Board shall initiate the procedures for the purpose of considering designation of a MFZ District for the applicant's

plan in accordance with the procedures established under § 123-50, "Procedures," of this chapter.

(b) Type 1 Action. Any application for the creation of a MFZ District to accommodate a mixed-use project shall be a Type 1 Action under the State Environmental Quality Review (SEQR) Act.

(c) Prior to holding a public hearing, the Town Board shall render a determination of environmental significance in accord with the procedures of the SEQR. If such determination requires that a draft environmental impact statement (DEIS) be submitted and circulated, said DEIS shall be prepared in accord with the standards and procedures of SEQR. All procedures under SEQR shall be completed prior to the Town Board's action on the application.

(d) The Town Board shall refer the application to the County Planning Board and adjacent municipalities, where applicable, pursuant to § 123-51, "Referrals," of this chapter.

(7) Action by the Town Board.

(a) The Town Board may grant approval of the application and designate the MFZ District, as requested, upon demonstration that the Intent that Objectives set forth in § 123- 16 18A(1), of this section, will be achieved and that, based on review of potential environmental effects, the proposal minimizes or avoids adverse environmental impacts to the maximum extent practicable.

(b) The Town Board shall disapprove the application if it finds that, in its opinion, the Intent and Objectives § 123-18A(1), of this section will not be achieved or that adverse environmental impacts are not minimized or avoided to the maximum extent practicable.

(c) If the Town Board grants the application for a MFZ District, the Zoning Map shall be so notated. The Town Board may, if it feels it necessary in order to fully protect the public health, safety and welfare of the community, attach to its zoning resolution any additional conditions or requirements upon with the approval shall be contingent. Such requirements may include, but are not confined to, visual and acoustical screening, availability of sites within the area for necessary public services, protection of natural and/or historic sites, other such physical or social demands, provision of satisfactory surety to guarantee that essential public and private utilities and facilities are completed in accord with the approved plan and time limits for various phases of development. The Town Board shall state at this time its findings with respect to the mix of residential and non-residential uses and the maximum residential density in accordance with § 123- 18D through § 123-18F above.

(8) Site plan approval process for Town Board designated MFZ Districts.

(a) Upon Town Board granting of a MFZ District, the applicant shall proceed to site plan approval in accordance with § 123-55, "Site plan approval process for Town Board designated District," of this chapter.

(b) No earthwork, land clearing or construction of any kind shall take place within the limits of a MFZ District until a site plan for such development or the appropriate section thereof has been reviewed and approved, all in accordance with the procedures outlined in § 123-55.

(c) Substantial conformance. The Planning Board shall not approve any site plan within a MFZ District unless said Board finds the site plan is in substantial performance with the approved preliminary site plan.

(d) Upon receipt of the site plan application in accordance with § 123-55, the Planning Board shall provide one copy to the Town Engineer, One Copy to the Town Planner, one copy to the Town Attorney, one copy to the involved Fire District(s) and one copy to the Superintendent of Highways, all for review and report. 17

#### J. Additional regulations.

(1) Regulation after initial construction and occupancy. For the purpose of regulating development and use of property after initial construction and occupancy, any changes other than use changes shall be processed as a special permit request to the Planning Board. Use changes shall also be in the form of a request for special permit except that Town Board approval shall be required. It shall be noted, however, that properties lying in an approved MFZ Districts are unique and shall be so considered by the Planning Board or Town Board when evaluating these requests; and maintenance of the intent and function of the mixed use shall be of primary importance.

(2) Performance guaranties. As a condition of final approval of a request for MFZ District, the Town Board may require the posting of such performance guaranties as it deems necessary to insure the installation of necessary improvements. Said performance guaranty shall be for a period to be determined by the Town Board. The amount of the performance guaranty may be reduced by the Town as portions of the required improvements have been completed.

(3) Fees. Fees for applications for MFZ Districting and site plan approval shall be in accord with a schedule for fees adopted by the Town Board as set forth in § 123-29, "Fees and costs," of this chapter. Such fees shall be based on the size and complexity of the proposed development and shall be sufficient to cover costs of all required reviews, including those related to the review of environmental impacts, and the retention of professional assistance, if necessary.

(4) As condition of the MFZ District approval, the applicant/owner shall consent to periodic inspections by the Building Inspector on notice to confirm compliance with requirements of the approval and shall be responsible for associated inspection fees to monitor compliance in accordance with the fee schedule adopted by the Town Board, as amended.

#### K. Reversion.

- (1) In the event that a building permit has not been issued for any building construction within a designated MFZ within a period of five years and a day following the grant of final site plan approval, as set forth in §123-18I(8), of this section, or any extension of site plan approval, the MFZ District zoning designation shall be rendered null and void. In such event, the lands within the MFZ District shall revert to the original zoning districts that existed prior to the MFZ District designation, and this reversion shall be noted on the Official Zoning Map of the Town. 18
- (2) Section 2. If any section of this local law shall be held unconstitutional, invalid, or ineffective, in whole or in part, such determination shall not be deemed to affect, impair, or invalidate the remainder of this local law.
- (3) Section 3. This local law shall take effect ten (10) days following publication and posting in accordance with Town Code Section 123-50(D) and filing of the local law with the Secretary of State in accord with Article 3 of the Municipal Home Rule Law.

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law and Part 617 of Title 6 of the Official Compilation of Codes, Rules, and Regulations of New York (State Environmental Quality Review Act) (“SEQRA”), the Town Board, as lead agency has classified this Action as a Type I Action as defined under 6 NYCRR §617.4(b)(2); and

WHEREAS, pursuant to General Municipal Law §239-m and Esopus Town Code §123-51, the matter must be referred to the Ulster County Planning Board and to the Town of Esopus Planning Board for review and recommendation.

Supervisor Harris advised the Town Board that, pursuant to (a) Municipal Home Rule Law of the State of New York, it will be necessary to hold a public hearing upon this law; and (b) Town Code Section 123-51(A) and (B), it will be necessary to refer this Zoning Code amendment to the Town of Esopus Planning Board and the Ulster County Planning Board. She offered the following resolution which was **seconded by Councilperson Jared Geuss**, who moved its adoption:

WHEREAS, on September 15, 2020, Supervisor Shannon Harris has introduced this local law for the Town of Esopus, to be known as “**Town of Esopus Local Law No. 10** of the Year **2020**, entitled A LOCAL LAW OF THE TOWN OF ESOPUS, ULSTER COUNTY, NEW YORK TO AMEND CHAPTER 123 “ZONING” OF THE ESOPUS TOWN CODE TO ADD A NEW SECTION 123-18 TO ESTABLISH A MIXED-USED FLOATING ZONE.

**RESOLVED**, that a public hearing be held in relation to the proposed changes as set forth in the form of notice, hereinafter provided, at which hearing parties of interest and citizens shall have an opportunity to be heard, to be held at the Town Hall, 1 Town Hall Way, Ulster

Park, New York, on **October 20, 2020, at 7:30 o'clock** p.m., Prevailing Time, and that notice of said meeting shall be published in the official newspaper of general circulation in the Town of Esopus, by the Town Clerk, at least ten (10) days before such hearing and that notice shall be in the following form:

NOTICE OF PUBLIC HEARING

TAKE NOTICE, that the Town Board of the Town of Esopus will hold a public hearing at the Town Hall, 1 Town Hall Way, Ulster Park, New York on **October 20, 2020 at 7:30 o'clock, p.m., on Local Law No. 10** of the Year 2020, A LOCAL LAW OF THE TOWN OF ESOPUS, ULSTER COUNTY, NEW YORK TO AMEND CHAPTER 123 "ZONING" OF THE ESOPUS TOWN CODE TO ADD A NEW SECTION 123-18 TO ESTABLISH A MIXED-USED FLOATING ZONE.

TAKE FURTHER NOTICE, that copies of the aforesaid proposed local law will be available for examination at the office of the Clerk of the Town of Esopus, at the Town Hall, 1 Town Hall Way, Ulster Park, New York between the hours of 9:00 a.m. and 4:00 p.m. by appointment and online at the Town of Esopus Website: <https://www.esopus.com/> on all business days between the date of this notice and the date of the public hearing.

TAKE FURTHER NOTICE, that all persons interested and citizens shall have an opportunity to be heard on said proposal at the time and place aforesaid.

PLEASE TAKE FURTHER NOTICE THAT, given the global COVID-19 pandemic, and in accordance with the provisions of the Governor's Executive Order 202.1, the Public Hearing meeting will be open to the public, but with very limited space and with special requirements (masks, social distancing, sign in and temperatures taken) for public attendance. The Town Board meeting, inclusive of this public hearing, will be accessible to the public through the media platform called Zoom. Members of the community can access the Town Board meeting through Zoom by going directly to the Zoom website ([www.zoom.us](http://www.zoom.us)) or application ("app") at the meeting start time, 7:00pm, and selecting JOIN A MEETING link then entering the Meeting ID# 829 9643 5946 and Password: 172320. Through Zoom members of the community will be able to participate in the Town Board meeting via computer. Members of the community may submit comments prior to 4:00pm on October 20th in the form of a voicemail message by calling (845) 328-0483, and by submitting written comments electronically to [outreach@esopus.com](mailto:outreach@esopus.com). The meeting will be broadcast live on Public Access TV Channel 23 and Facebook. Please check the meeting Agenda posted on the website for further instructions to access the virtual meeting and for updated information.

DATED: September 15, 2020  
Ulster Park, New York  
HOLLY A. NETTER,  
TOWN CLERK,RMC

The foregoing resolution was voted upon with all councilmen voting as follows:

<b>Councilperson Evelyn Clarke</b>	<b>AYE</b>
<b>Councilperson Jared Geuss</b>	<b>AYE</b>
<b>Councilperson Kathie Quick</b>	<b>AYE</b>
<b>Councilperson Chris Farrell</b>	<b>AYE</b>
<b>Supervisor Shannon Harris</b>	<b>AYE</b>

DATED: September 15, 2020  
Ulster Park, New York  
HOLLY A. NETTER, TOWN CLERK,RMC