

Sunrise Wind New York Cable Project

Appendix 7-A

Town and County Ordinances

Prepared for:

**Sunrise
Wind**

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Chapter 245

UTILITY EASEMENTS

GENERAL REFERENCES

Development of agricultural land — See Ch. 8. **Utility poles on County rights-of-way — See Ch. 808.**
Conservation easements — See Ch. 25.
Open space preservation — See Ch. 633. **Land development — See Ch. 1001.**

ARTICLE I

Easements Upon County-Owned Property
[Adopted 8-14-1990 by L.L. No. 28-1990 (Ch. 180, Art. I, of the 1985 Code)]

§ 245-1. Legislative intent.

- A. This Legislature hereby finds and determines that the County of Suffolk owns thousands of acres of parkland, open space, nature preserve and other environmentally sensitive lands as a result of aggressive acquisition policies instituted by this Legislature over the past decade.
- B. This Legislature further finds and determines that no comprehensive policy exists for the granting of utility easements on lands so acquired by the County of Suffolk.
- C. Therefore, the purpose of this article is to establish a policy for the granting of utility easements on County-owned lands acquired for park, open space, nature preserve and other environmentally sensitive purposes, as authorized by Article XII of the Suffolk County Charter.

§ 245-2. Review body.

The Suffolk County Board of Trustees of Parks, Recreation and Conservation is hereby designated as the initiating unit for State Environmental Quality Review Act (SEQRA) review purposes in connection with the granting of any utility easements on lands acquired by the County for park, open space, nature preserve, farmland, bird sanctuary, historic trust or other environmentally sensitive purposes, as authorized by Article XII of the Suffolk County Charter.

§ 245-3. Procedure.

Prior to granting any utility easement through lands acquired by the County of Suffolk for park, historic trust, nature preserve, farmland, bird sanctuary, open space or other environmentally sensitive purposes, as authorized by Article XII of the Suffolk County Charter, any requests and proposals for such a utility easement shall first be reviewed and approved by the Suffolk County Board of Trustees of Parks, Recreation and Conservation and may be reviewed by such other governmental departments as shall be required by law or by designation of the County Executive or the County Legislature. In addition to other considerations as may be deemed relevant by the Trustees, said Trustees shall give due consideration to any Suffolk County Master Plan; to any local master plans or comprehensive plan developed by the jurisdiction in which such land lies; other relevant plan studies prepared by or on behalf of a pertinent municipality; environmental laws; and state, County and local statutes in considering requests and proposals for utility easements. The determination, conclusion and recommendation of said Board shall then be forwarded to the Suffolk County Legislature for approval or disapproval of any such request or proposal for the granting of a

utility easement through any of the above-described lands upon such terms and conditions as may be approved by the County Legislature.

§ 245-4. Public hearing required.

The Suffolk County Board of Trustees of Parks, Recreation and Conservation shall consider local input regarding local master plans, comprehensive plans or laws as required by § 245-3 of this article by conducting at least one public hearing, on proper legal notice, in the municipality in which the utility easement is sought.

§ 245-5. Applicability.

This article shall apply to the granting of any utility easements by the County on or after the effective date of this article.

Chapter 433

DUMPING AND LITTERING

GENERAL REFERENCES

| | |
|---------------------------------------------------------------------------------|-------------------------------------------------|
| Environmental Bill of Rights — See Charter, Art. I; Admin. Code, Art. I. | Hazardous waste — See Ch. 512. |
| Drinking Water Protection Program — See Charter, Art. XII. | Recycling — See Ch. 692. |
| Conservation easements — See Ch. 25. | Storm sewers — See Ch. 759. |
| Environmental protection — See Ch. 446. | Stormwater management — See Ch. 763. |
| Fertilizer — See Ch. 459. | Water — See Ch. 840. |
| | Surface water protection — See Ch. 1133. |

ARTICLE I

Streets and County Property

[Adopted 11-12-1986 by L.L. No. 3-1987 (Ch. 489, Art. I, of the 1985 Code)]

§ 433-1. Deposit of waste materials prohibited. [Amended 5-15-1995 by L.L. No. 18-1995; 3-28-2017 by L.L. No. 9-2017]

- A. No person shall throw, dump, deposit, place or cause to be thrown, dumped, deposited or placed upon any County highway or within the limits of the right-of-way of such highway or upon any parcel of real estate owned by the County of Suffolk, in whatever capacity and for whatever purpose, any dirt, sand, gravel, clay, loam, stone, building rubbish, sawdust, shavings, light materials of any sort, manufacturing, trade or household waste, refuse, rubbish of any sort or ashes, manure, garbage or other materials described as solid waste in 6 NYCRR 360, construction or demolition debris, as defined in 6 NYCRR 360-1.2, hazardous materials, as defined in New York State Environmental Conservation Law § 37-0103, hazardous waste, as defined in New York State Environmental Conservation Law § 27-0903, or as offensive materials in the Suffolk County Sanitary Code, Article 5, § 760-501A, without the written consent of the County of Suffolk.
- B. No person who is the owner of or in charge of or in control of any vehicle or of any receptacle shall throw, dump, deposit, place or cause to be thrown, dumped, deposited or placed any dirt, sand, gravel, clay, loam, stone or building rubbish, sawdust, shavings or other light materials of any sort or manufacturing, trade or household waste, refuse, rubbish of any sort or ashes, manure, garbage or other organic refuse or other materials described as solid waste in 6 NYCRR 360, construction or demolition debris, as defined in 6 NYCRR 360-1.2, hazardous materials, as defined in New York State Environmental Conservation Law § 37-0103, hazardous waste, as defined in New York State Environmental Conservation Law § 27-0903, or as offensive materials in the Suffolk County Sanitary Code, Article 5, § 760-501A, in or upon any County highway or within the limits of the right-of-way of such highway or upon any parcel of real estate owned by the County of Suffolk, in whatever capacity and for whatever purpose, without the written consent of the County of Suffolk.
- C. It shall be unlawful for any person, his or her agent, employee or any person under his or her control to suffer or permit any dirt, sand, gravel, clay, loam, stone, rocks, rubble, building rubbish, sawdust, shavings or trade or household waste, refuse, ashes, manure, garbage, rubbish or debris of any sort or any other organic or inorganic material or thing or other materials described as solid waste in 6 NYCRR 360, construction or demolition debris, as defined in 6 NYCRR 360-1.2, hazardous materials, as defined in New York State Environmental Conservation Law § 37-0103, hazardous waste, as defined in New York State Environmental Conservation Law § 27-0903, or as offensive

materials in the Suffolk County Sanitary Code, Article 5, § 760-501A, being transported in any vehicle to be dumped, deposited or otherwise disposed of in or upon any County highway or within the limits of the right-of-way of such highway or upon any parcel of real estate owned by the County of Suffolk, in whatever capacity and for whatever purpose, without the written consent of the County of Suffolk.

§ 433-2. Penalties for offenses. [Amended 8-14-1990 by L.L. No. 29-1990; 5-15-1995 by L.L. No. 18-1995; 3-28-2017 by L.L. No. 9-2017]

- A. A violation of the provision of § 433-1 of this article for materials other than construction or demolition debris, hazardous materials or hazardous waste shall be punishable as a Class A misdemeanor, subject to a fine not to exceed \$1,000 when a violation is committed by an individual and \$15,000 when a violation is committed by a corporation, and/or up to one year's imprisonment.
- B. A violation of the provision of § 433-1 of this article for construction or demolition debris, hazardous materials or hazardous waste shall be punishable as an unclassified misdemeanor, subject to a fine not to exceed \$10,000 when the violation is committed by an individual and \$15,000 when a violation is committed by a corporation and/or up to one year's imprisonment for each offense.
- C. Any individual, other than a police officer, peace officer or any other law enforcement officer or official, who provides information to appropriate law enforcement authorities which shall lead to the detection, arrest and conviction of a person or persons guilty of violating this article shall receive a payment of 25% of the actual fine collected from such convicted individual pursuant to the provisions of this article, said payment to be made after receipt of such fine by the County.
- D. Any person violating the provisions of § 433-1A of this article shall also be liable and responsible for a civil penalty of not less than \$600 nor more than \$5,000 for the first offense and not less than \$1,000 nor more than \$5,000 for each subsequent offense. In addition, every owner of any vehicle shall be liable for a civil penalty of not less than \$600 nor more than \$5,000 for the first offense and not less than \$1,000 nor more than \$7,500 for each subsequent offense of unlawful dumping described in § 433-1 of this article by any person using or operating the same with the permission, express or implied, of such owner. As used in this section, the term "owner" shall mean an owner as defined in §§ 128 and 388, Subdivision 3, of the New York Vehicle and Traffic Law.
- E. Impoundment of vehicles.
 - (1) Any vehicle which has been determined to have been used or is being used for a commercial or business purpose by an owner or his or her employee, agent or person under his or her control to violate the provisions of this article shall be impounded by the

pertinent Police Department and shall not be released until either all removal charges and storage fees and the applicable fine have been paid or a bond has been posted in an amount satisfactory to the pertinent Police Department or as otherwise provided in Subsection D(2) of this section. The pertinent Police Department shall have the power to establish regulations concerning the impounding and release of vehicle and the payment of removal charges and storage fees for such vehicle, including the amounts and rates thereof.

- (2) In addition to any other penalties provided in this section, the interest of any owner as defined in Subsection C of this section in any vehicle impounded pursuant to Subsection D(1) of this section shall be subject to forfeiture upon notice and judicial determination thereof if such owner:
 - (a) Has been convicted of or found liable for a violation of this article in a civil or criminal proceeding three or more times, all of which violations were committed within an eighteen-month period; or
 - (b) Has been convicted of or found liable for a violation of this article in a civil or criminal proceeding and the material unlawfully dumped contains toxic or hazardous materials as defined in the Suffolk County Sanitary Code, Article 12, § 760-1203.
- (3) Except as hereinafter provided, the agency having custody of a vehicle, after judicial determination of forfeiture, shall, no sooner than 30 days after such determination upon a notice of at least five days, sell such forfeited vehicle at public sale. Any person, other than an owner whose interest is forfeited pursuant to this subsection, who establishes a right of ownership in a vehicle, including a part ownership or security interest, shall be entitled to delivery of the vehicle if such person:
 - (a) Redeems the ownership interest which was subject to forfeiture by payment of the value thereof.
 - (b) Pays the reasonable expenses of the safekeeping of the vehicle between the time of seizure and such redemption.
 - (c) Asserts a claim within 30 days after judicial determination of forfeiture.
- (4) Notwithstanding the foregoing provisions, establishment of a claim shall not entitle such person to delivery of the vehicle if the pertinent agency establishes that the unlawful dumping for which the vehicle was seized was expressly or implicitly permitted by such person.

- F. In addition to the foregoing penalties, the offender shall be required to clear and clean the area upon which the offender dumped unlawfully within 10 days after conviction thereof. In the event that the offender fails to clear and clean the area within such time, such clearing and cleaning may be done by the County Department of Public Works or under its direction by a private contractor, and the cost of the same shall be billed to the offender. In the event that the County Department of Public Works has cleaned or cleared the area or has caused the area to be cleaned or cleared by a private contractor prior to the offender's conviction, the offender shall be responsible for the cost of such clearing and/or cleaning. Payment by such offender, when required by this subsection, shall be made within 10 days of demand by the Department of Public Works.

§ 433-3. Applicability.

- A. Nothing contained in this article shall be construed as prohibiting the use of any County highway or right-of-way of such highway for the transport or transit of agricultural trucks, machines or implements or dairy or domestic animals or agricultural stock with any accompanying reasonable or unavoidable deposit of such materials.
- B. Nothing contained in this article shall be construed as prohibiting any town within the County of Suffolk from enforcing the provisions of anti-litter ordinances on public property if such ordinances were enacted and in effect prior to the effective date of this article.

ARTICLE II

Dumping in Pine Barrens

[Adopted 11-23-1999 by L.L. No. 40-1999 (Ch. 490 of the 1985 Code)]

§ 433-4. Legislative intent.

- A. This Legislature hereby finds and determines that ensuring an adequate supply of pure drinking water is a significant public health issue of critical importance to the future of Suffolk County and the well-being of its citizens.
- B. This Legislature further finds that the Suffolk County Pine Barrens overlies the largest source of pure groundwater in New York State.
- C. This Legislature further finds that Suffolk County has, by prior legislative action, and with the overwhelming support of its citizens, made a significant investment of public funds in the protection of sensitive watershed areas in the Suffolk County Pine Barrens through acquisition of fee title and transfer of development rights.
- D. This Legislature further finds that protection of this investment and the groundwater resource which lies below these watershed areas through the enactment of pertinent laws and regulations is prudent and necessary.
- E. This Legislature further finds and determines that the property constituting the Pine Barrens is largely owned and managed by the County, the state, the federal government and the towns and, therefore, the prosecution of laws regarding the use and protection of this land is of paramount importance.
- F. This Legislature further finds and determines that current laws regarding dumping on County streets and property do not provide adequate protection for these watershed areas because they do not recognize the Pine Barrens as deserving of special protection or provide specific penalties for dumping offenses in watershed areas.
- G. Therefore, the purpose of this article is to add new provisions to the Suffolk County Code which will expressly prohibit dumping within the Pine Barrens and provide for criminal penalties to enhance protection of the Pine Barrens watershed in order to ensure a plentiful future supply of pure drinking water.

§ 433-5. Definitions.

As used in this article, the following terms shall have the meanings indicated:

DUMP — Any spilling, leaking, pumping, pouring, emitting, emptying, abandoning, discharging, injecting, escaping, leaching, releasing or disposing. In addition, the term "dump" shall include the abandonment

or discarding of barrels, containers and other closed receptacles of any materials listed, described or identified in this article.

HAZARDOUS SUBSTANCES — Those substances identified or listed in regulations promulgated pursuant to § 37-0103 of the New York State Environmental Conservation Law and all amendments thereto.

HAZARDOUS WASTES — Those wastes identified or listed in regulations promulgated pursuant to § 27-0903 of the New York State Environmental Conservation Law and all amendments thereto.

INDUSTRIAL WASTE — Any liquid, gaseous, solid or waste substance or a combination thereof resulting from any process of industry, manufacturing, trade or business or from the development or recovery of any natural resources which may cause or might reasonably be expected to cause pollution of the waters of the state.

OFFENSIVE MATERIALS — Those materials identified or listed in Article 5, § 760-501A, of the Suffolk County Sanitary Code.

PINE BARRENS — Those lands described in Article 57 of the New York State Environmental Conservation Law, as may be amended from time to time, as the Long Island Pine Barrens Preserve, Central Pine Barrens Area, Core Preservation Area or Compatible Growth Area.

SEWAGE — The water-carried human or animal wastes from residences, buildings, industrial establishments or other places, together with such groundwater infiltration and surface water as may be present. The admixture with sewage, as above defined, of industrial waste or other wastes as hereafter defined shall also be considered sewage.

SOLID WASTE — Those wastes identified or listed in 6 NYCRR 360.

TOXIC CHEMICAL — A substance on the list described in 42 U.S.C. § 11023(c).

§ 433-6. Prohibited conduct.

No person shall knowingly dump any dirt, sand, gravel, clay, loam, stone, building rubbish, sawdust, shavings, other light materials or manufacturing, trade or household waste, commercial waste, manufactured items or materials, refuse, rubbish, ashes of any sort, manure, garbage, other organic material, hazardous wastes, hazardous substances, industrial waste, sewage, toxic chemicals, solid wastes, offensive materials or conveyances (including but not limited to aircraft, vehicles, vessels or the parts thereof) in the Suffolk County Pine Barrens.

§ 433-7. Penalties for offenses.

- A. Any person who violates any of the provisions of § 433-6 of this article shall be guilty of an unclassified misdemeanor and be subject to a fine of up to \$10,000 for each offense and/or up to one year's imprisonment.

- B. Any corporation which violates any of the provisions of § 433-6 of this article shall be guilty of an unclassified misdemeanor and be subject to a fine of up to \$10,000 for each offense.
- C. Any individual, other than a police officer, peace officer or any other law enforcement officer or public official, who provides information to appropriate law enforcement authorities which shall lead to the detection, arrest and conviction of a person or persons guilty of violating this article shall receive a payment of 25% of the actual fine collected from such convicted individual pursuant to the provisions of this article, said payment to be made after receipt of such fine by the County.
- D. In addition to the foregoing penalties, the offender shall be required to clear, clean and/or remediate the area upon which the offender dumped unlawfully within 10 days after conviction thereof, as required by the Suffolk County Departments of Public Works, Health and/or Parks, Recreation and Conservation and/or the New York State Department of Environmental Conservation. In the event that the offender fails to clear, clean and/or remediate the area within such time, such clearing, cleaning and/or remediating may be done by the aforesaid governmental departments or under their direction by a private contractor, and the cost of the same shall be billed to the offender. In the event that the County Department of Public Works has cleaned, cleared and/or remediated the area or has caused the area to be cleaned, cleared and/or remediated by a private contractor prior to the offender's conviction, the offender shall be responsible for the cost of such clearing, cleaning and/or remediating. Payment by such offender when required by this subsection shall be made within 10 days of demand.

§ 433-8. Applicability.

The prohibitions set forth in § 433-6 shall not apply under the following circumstances:

- A. When the person engaging in the conduct is doing so pursuant to a license or permit issued by the federal government, the State of New York, or a political subdivision thereof, and the conduct is in compliance with that license or permit.
- B. When the conduct engaged in is done for the purpose of landscaping or improving real property, with the permission of the owner, and the conduct is in compliance with all necessary licenses, permits and County and local laws.

Chapter 446

ENVIRONMENTAL PROTECTION

GENERAL REFERENCES

| | |
|---------------------------------------------------------------------------------|--------------------------------------------------------|
| Environmental Bill of Rights — See Charter, Art. I; Admin. Code, Art. I. | Dumping in Pine Barrens — See Ch. 433, Art. II. |
| Conservation easements — See Ch. 25. | Fertilizer — See Ch. 459. |
| Helium balloons — See Ch. 310. | Open space preservation — See Ch. 633. |
| Carbon dioxide emissions — See Ch. 357. | Environmental protection — See Ch. 943. |
| | Vector control — See Ch. 1162. |

ARTICLE I

**Waste Containing Invasive Nonnative Aquatic Plants and Animals
[Adopted 11-22-2005 by L.L. No. 34-2005 (Ch. 278A, Art. I, of the
1985 Code)]****§ 446-1. Legislative intent.**

- A. This Legislature hereby finds and determines that invasive nonnative aquatic plants and animals can displace native species and alter natural ecosystems and are considered to be the second leading cause of species extinction and endangerment worldwide.
- B. This Legislature also finds and determines that these invasive plants and animals can negatively impact agriculture, industry and human health.
- C. This Legislature further finds and determines that during the 20th Century, invasive species were responsible for documented losses of \$97,000,000,000 to the United States economy.
- D. This Legislature finds that in Suffolk County, the invasive, nonnative species *Cabomba caroliniana* (fanwort), used extensively in aquariums, has already caused severe damage to Yaphank Lake, interfering with the recreational and aesthetic uses of that lake.
- E. This Legislature determines that action must be taken to prevent other invasive nonnative aquatic plant and animal species from causing damage to any other bodies of water or wetlands in Suffolk County.
- F. Therefore, the purpose of this article is to protect the ecology of Suffolk County by preventing the introduction of any waste containing invasive nonnative aquatic plants and animals in any ecosystem in Suffolk County.

§ 446-2. Definitions.

As used in this article, the following terms shall have the meanings indicated:

INVASIVE NONNATIVE AQUATIC ANIMAL — Any animal that is not native to Long Island or the northeastern United States, including, but not limited to, the species *Chann argus* (northern snakehead) or *Dreissena polymorpha* (zebra mussel).

INVASIVE NONNATIVE AQUATIC PLANT — Any aquatic plant that is not native to Long Island or the northeastern United States, including, but not limited to, the species *Cabomba caroliniana* (fanwort), *Egeria densa* (Brazilian waterweed), *Eichornia azurea* (water hyacinth), *Hydrilla verticillata* (hydrilla), *Hydrocharis morsus-ranae* (European frogbit), *Myriophyllum aquaticum* (parrot feather), *Myriophyllum spicatum* (Eurasian watermilfoil), *Nymphoides peltata* (yellow floating heart),

Potamogeton crispus (curlyleaf pondweed) or Trapa natans (water chestnut).

§ 446-3. Prohibitions.

No person shall introduce, throw, dump, deposit, place or cause to be introduced, thrown, dumped, deposited or placed in any river, stream, lake, pond, wetland or stormwater drain, in whatever capacity and for whatever purpose, anything containing an invasive nonnative aquatic animal or an invasive nonnative aquatic plant as defined herein.

§ 446-4. Penalties for offenses.

Any person who knowingly violates any provision of this article shall be guilty of an unclassified misdemeanor punishable by a fine of up to \$1,000 for each offense.

§ 446-5. Enforcement.

This article shall be enforced by the Suffolk County Department of Health Services in accordance with the provisions of Article II of the Suffolk County Sanitary Code.

§ 446-6. Rules and regulations.

The Suffolk County Department of Health Services is hereby authorized and empowered to issue and promulgate such rules and regulations as it deems necessary to implement and carry out the provisions of this article.

§ 446-7. Applicability.

This article shall apply to all actions occurring on or after the effective date of this article.

§ 446-8. Reverse preemption.

This article shall be null and void on the day that statewide or federal legislation goes into effect, incorporating either the same or substantially similar provisions as are contained in this article, or in the event that a pertinent state or federal administrative agency issues and promulgates regulations preempting such action by the County of Suffolk. The County Legislature may determine via mere resolution whether or not identical or substantially similar statewide legislation has been enacted for the purposes of triggering the provisions of this section.

ARTICLE II

Sale or Propagation of Invasive Nonnative Plants
[Adopted 6-26-2007 by L.L. No. 22-2007 (Ch. 278A, Art. II, of the
1985 Code)]

§ 446-9. Legislative intent.

- A. This Legislature hereby finds that Resolution No. 985-2005 established the Suffolk County Water and Land Invasives Control Task Force in order to develop a long-term plan for controlling invasive species in Suffolk County.
- B. This Legislature determines that the Suffolk County Water and Land Invasives Control Task Force recommended that certain invasive species be prohibited from being sold in Suffolk County as a first step in preventing these species from being introduced in Suffolk County through a "Do Not Sell" list.
- C. This Legislature further determines that the Suffolk County Water and Land Invasives Control Task Force recommended the establishment of a Suffolk County Water and Land Invasives Advisory Board.
- D. This Legislature hereby finds and determines that invasive nonnative aquatic plants can displace native species and alter natural ecosystems and are considered to be the second leading cause of species extinction and endangerment worldwide.
- E. This Legislature also finds and determines that these invasive plants can negatively impact agriculture, industry and human health.
- F. This Legislature further finds and determines that, during the 20th Century, invasive species were responsible for documented losses of \$97,000,000,000 to the United States economy.
- G. Therefore, the purpose of this article is to protect the ecology of Suffolk County by prohibiting the sale of invasive plants in Suffolk County.

§ 446-10. Definitions.

As used in this article, the following terms shall have the meanings indicated:

INVASIVE SPECIES — A plant species:

- A. That is nonnative to the ecosystem under consideration; and
- B. The introduction of which causes or is likely to cause economic or environmental harm or harm to human health, including their cultivars and varieties, which harm must significantly outweigh any benefits.

NONNATIVE — With respect to a particular ecosystem, a species that has not historically occurred in that ecosystem, and which is not listed in the New York Flora Atlas as being native to New York.

PERSON — Any individual, firm, partnership, corporation, company, society, association, or any organized group of persons, whether incorporated or not.

PROPAGATE — Purposefully increasing the population of a species by means of manipulating its sexual and/or asexual reproduction process.

§ 446-11. Sale or distribution prohibited. [Amended 8-4-2009 by L.L. No. 27-2009; 8-2-2011 by L.L. No. 35-2011; 10-6-2015 by L.L. No. 30-2015]

- A. No person shall knowingly sell, transport, distribute, propagate or knowingly cause to be sold, transported, distributed or propagated to any person located within the County of Suffolk, or to any person making the purchase from within the County of Suffolk, any invasive species as listed on Exhibit I, Do No Sell List, as said exhibit may be amended by law from time to time, with the advice of the Water and Land Invasives Advisory Board.¹
- B. This prohibition shall not apply to any invasive species that is exempted by New York State as a cultivar that is sterile or lacks reproductive parts, pursuant to 6 NYCRR 575.8.

§ 446-12. Water and Land Invasives Advisory Board. [Amended 5-13-2008 by L.L. No. 18-2008]

- A. There is hereby created a Suffolk County Water and Land Invasives Advisory Board, which shall consist of the following 10 members:
 - (1) The Chairperson of the Suffolk County Legislature's Environment, Planning and Agriculture Committee, or his/her designee, who shall serve as Chair;
 - (2) The Commissioner of the Suffolk County Department of Environment and Energy, or his/her designee;
 - (3) The Suffolk County Executive, or his/her designee;
 - (4) The Presiding Officer of the Suffolk County Legislature, or his/her designee;
 - (5) The Commissioner of the Suffolk County Department of Parks, Recreation and Conservation, or his/her designee;
 - (6) A member of an environmental group chosen by the Chairperson of the Suffolk County Legislature's Environment, Planning and Agriculture Committee;
 - (7) A representative chosen by the Long Island Farm Bureau;

1. Editor's Note: Exhibit I is included as an attachment to this chapter.

- (8) A representative chosen by the Long Island Nursery and Landscape Association;
 - (9) A member of the Long Island Invasive Species Management Area (LIISMA); and
 - (10) A representative of the Suffolk County Soil and Water Conservation District.
- B. The Suffolk County Water and Land Invasives Advisory Board shall advise the Commissioner of the Suffolk County Department of Environment and Energy and the Suffolk County Legislature on matters relating to invasive species in the County, and shall recommend to the Suffolk County Legislature appropriate revisions to the "Do Not Sell" list established pursuant to § 446-11 of this article, on no less than an annual basis.
 - C. The Suffolk County Water and Land Invasives Advisory Board shall hold its first meeting no later than 30 days after the oaths of office of all members have been filed.
 - D. The members of the Suffolk County Water and Land Invasives Advisory Board shall serve without compensation, and members number 6 through 10 listed in Subsection A above shall be appointed to serve initial terms ending on December 31, 2008, and shall be appointed to serve a term of two years thereafter.
 - E. Six members of the Suffolk County Water and Land Invasives Advisory Board shall constitute a quorum for the purposes of conducting the business of the Board.
 - F. The Suffolk County Water and Land Invasives Advisory Board shall hold regular meetings, keep a record of all of its proceedings and determine the rules of its own proceedings, with special meetings to be called by the Chairperson upon his or her own initiative or upon receipt of a written request thereof signed by at least five members of the Suffolk County Water and Land Invasives Advisory Board. Written notice of the time and place of such special meetings shall be given to each member at least four days before the date fixed by the notice for such special meeting.
 - G. All clerical services involving the month-to-month operation of the Suffolk County Water and Land Invasives Advisory Board, as well as supplies and postage as necessary, shall be provided by the staff of the Clerk of the County Legislature. The Suffolk County Water and Land Invasives Advisory Board may request, receive, and utilize such facilities, resources, and data of any department, office, or agency of Suffolk County as it may reasonably request to properly carry out its powers and duties.
 - H. The Suffolk County Water and Land Invasives Advisory Board shall hold no fewer than four meetings annually, and shall conduct at least two

public hearings within the County of Suffolk for the purpose of obtaining necessary information or other data from the public. The time and place of each public hearing shall be published in the official County newspapers.

- I. All vacancies in the membership of the Suffolk County Water and Land Invasives Advisory Board shall be filled in the manner provided for their original appointment.

§ 446-13. Exemptions.

- A. The prohibitions contained in this article shall not apply to bona fide scientific experiments or for educational purposes, provided that no invasive species used in such bona fide scientific experiments or for educational purposes shall be permitted to be sold or distributed.
- B. Any person desiring to use any invasive species for bona fide scientific experiments or for educational purposes shall be required to apply for a written waiver of the provisions of this article from the Suffolk County Department of Environmental and Energy, on a form to be prescribed in Exhibit II, Variance Request.² **[Amended 8-4-2009 by L.L. No. 27-2009; 8-2-2011 by L.L. No. 35-2011]**
- C. A cultivar of a do-not-sell listed invasive species may be exempted from do-not-sell status if: **[Added 8-4-2009 by L.L. No. 27-2009]**
 - (1) Its primary means of reproduction is sexual; and
 - (2) Scientific, peer-reviewed criteria verify that a cultivar is effectively 100% male and female sterile; and
 - (3) The cultivar is guaranteed by the producer to be sterile; and
 - (4) There is enabling enforcement through appropriate safeguards to document the identity of the cultivar and source of the cultivar, including tagging individual plants and shipping and nursery invoices; and
 - (5) It is deemed appropriate for exemption by the Advisory Board and LIISMA SRC.
- D. The prohibitions contained in this article shall not apply to invasive species control, management or disposal activities, provided the activities follow best management practices for the species' control, management or disposal and do not result in the invasive species being further distributed. **[Added 8-2-2011 by L.L. No. 35-2011]**

§ 446-14. Penalties for offenses.

Any person who violates § 446-11 of this article shall be guilty of a violation, punishable by a fine of \$1,000 for a first and second offense; and shall

2. Editor's Note: Exhibit II is included at the end of this chapter.

be guilty of an unclassified misdemeanor for a third and each subsequent offense, punishable by a fine of \$2,000 and/or no more than 30 days in jail.

§ 446-15. Rules and regulations. [Amended 8-4-2009 by L.L. No. 27-2009]

The Suffolk County Department of Consumer Affairs shall issue and promulgate such rules and regulations as it deems necessary and appropriate to carry out the provisions of this article.

§ 446-16. Applicability. [Amended 8-4-2009 by L.L. No. 27-2009; 8-2-2011 by L.L. No. 35-2011]

The prohibition described in § 446-11 of this article shall apply as of the dates enumerated for each individual species or cultivar as established in Exhibit I, Do Not Sell List.

ARTICLE III

**Sale and Use of Hydraulic Fracturing By-Products
[Adopted 4-29-2014 by L.L. No. 13-2014]****§ 446-17. Legislative intent.**

- A. This Legislature hereby finds and determines that hydraulic fracturing is a technology used to extract fossil fuels that have collected in layers of porous rock. This Legislature also finds that this technology, commonly referred to as "hydrofracking," involves the high-pressure injection of fresh water mixed with chemicals and sand through a well into a rock formation, which causes fractures in the rock and the release of natural gas which is captured for further processing and use. This Legislature determines that a certain percentage of the highly toxic fracturing fluid mixture, commonly referred to as "flowback water," returns to the surface with the gas and additional contaminants, including volatile organic compounds, heavy metals, high-salinity brine and radioactive elements.
- B. This Legislature also finds that the County of Suffolk previously recognized the environmental and public health concerns associated with the by products of hydrofracking, prohibiting the County's sewage treatment facilities from accepting the byproducts of hydraulic fracturing (Resolution No. 244-2012) and prohibiting the use of hydraulic fracturing brine on County property or roadways (Resolution No. 1006-2012). This Legislature further finds that several states and municipalities, including the Counties of Westchester and Rockland, have enacted laws to prohibit the use or sale of hydrofracking byproducts within their jurisdictions. This Legislature concludes that the County of Suffolk must take additional steps at this time to ensure that the waste products generated by hydrofracking do not threaten the environment of Suffolk County or the health of its citizens. Therefore, the purpose of this article is to prohibit the sale of hydrofracking byproducts in Suffolk County, to bar the introduction of these byproducts into the County's wastewater treatment facilities and to prohibit the use of these byproducts on any roads within the County's boundaries.

§ 446-18. Definitions.

As used in this article, the following terms shall have the meanings indicated:

APPLICATION — The physical act of placing or spreading natural gas waste on any road or real property located within the County of Suffolk.

HYDRAULIC FRACTURING — The fracturing of shale formations by man-made fluid-driven techniques for the purpose of stimulating natural gas or other subsurface hydrocarbon production.

NATURAL GAS EXTRACTION ACTIVITIES — All geologic or geophysical activities related to the exploration for or extraction of natural gas or other subsurface hydrocarbon deposits, including, but not limited to, core and rotary drilling and hydraulic fracturing.

NATURAL GAS WASTE — Any waste that is generated as a result of natural gas extraction activities, which may consist of water, chemical additives, or naturally occurring radioactive materials ("NORMS") and heavy metals. Natural gas waste includes, but is not limited to, leachate from solid wastes associated with natural gas extraction activities.

§ 446-19. Prohibitions.

- A. The introduction of natural gas waste into any wastewater treatment facility, within the County of Suffolk or operated by the County of Suffolk, is prohibited.
- B. The sale of natural gas waste within the County of Suffolk is prohibited.
- C. The application of natural gas waste on any road or real property located within the County of Suffolk is prohibited.

§ 446-20. Applicability.

This article shall apply to actions occurring on or after the effective date of this article.

§ 446-21. Penalties for offenses. [Amended 12-2-2014 by L.L. No. 5-2015]

Any violation of § 446-19 of this article shall constitute an unclassified misdemeanor, punishable by a fine not to exceed \$25,000 per violation and/or up to 30 days' imprisonment. Each sale and/or application of natural gas waste shall constitute a separate and distinct violation.

§ 446-22. When effective.

This article shall take effect immediately 60 days after its filing in the office of the Secretary of State.

ARTICLE IV

**Personal Care Products Containing Microbeads
[Adopted 10-6-2015 by L.L. No. 32-2015]****§ 446-23. Legislative intent.**

This Legislature hereby finds and determines that the County of Suffolk is a leader in preserving the environment and clean water for the health, safety and enjoyment of its residents and visitors. This Legislature also finds and determines that over the past 10 years, manufacturers of a variety of personal care products added small plastic beads, commonly known as "microbeads," to their products. This Legislature further finds and determines that microbeads are made of materials including, but not limited to, polyethylene, polypropylene plastic, polyethylene terephthalate, or nylon or poly (methyl) methacrylate. This Legislature finds that microbeads can be found in facial scrubs, body wash, toothpaste, soaps and shampoos. This Legislature determines that microbeads are very small, with many measuring less than one millimeter. This Legislature also finds that microbeads enter the wastewater system when a product is used and washed off the body. Due to their small size, microbeads are not filtered out by wastewater treatment systems. This Legislature further finds that microbeads can become coated with toxic chemicals like PCBs, DDT, flame retardants and other industrial chemicals. This Legislature also determines that the microbeads are similar in size to the food sources for a number of fish, leading fish to ingest them and the toxins that cling to the microbeads, contaminating the food chain. This Legislature further determines that microbead pollution has been found in the Great Lakes, the Hudson and Mohawk Rivers, the Erie Canal, as well as the Los Angeles River and the Pacific Ocean. This Legislature finds that Suffolk County would be directly impacted by the health hazards associated with contaminated seafood, should local waterways be polluted with microbeads. This Legislature also finds that microbeads can be easily replaced in personal care products by natural exfoliates such as pumice, oatmeal, apricot and ground walnut husks. This Legislature further determines that the sale of personal care products containing microbeads has been banned in the State of Illinois. This Legislature also finds that Suffolk County should bar products containing microbeads to protect the Atlantic Ocean, Long Island Sound, and the many surface waters within the County. Therefore, the purpose of this law is to ban the sale of personal care products containing microbeads in Suffolk County.

§ 446-24. Definitions.

As used in this article, the following terms shall have the meanings indicated:

BIOPOLYMER — An alternative to a synthetic polymer that is derived from a living organism.

MICROBEADS — Intentionally added plastic particles used to exfoliate or cleanse in a rinse-off personal care product that are made of synthetic

polymers or biopolymers, are either entirely solid or hollow, and measure less than five millimeters in diameter.

PERSON — Any natural person, individual, corporation, unincorporated association, proprietorship, firm, partnership, joint venture, joint stock association or any other entity or business organization of any kind.

PERSONAL CARE PRODUCT — Any consumer product manufactured for use in personal hygiene and beautification. Personal care products shall include, but not be limited to, the following: antibacterial soaps; hand soaps; bar soaps; liquid soaps; facial and body washes; facial and body cleansers; facial masks; exfoliating products; face, foot and body scrubs; body, skin and foot polishes; body, skin and foot buffers; body, skin and foot foams; microtechnology items; acne treatment products; shampoos; conditioners; toothpaste; shaving creams or gels; and foot care products. This term shall not apply to any product for which a prescription is required for distribution or dispensation as provided in NYS Public Health Law § 281 or NYS Education Law § 6810.

PLASTIC — Any synthetic material made from linking monomers through a chemical reaction to create an organic polymer chain that can be molded or extruded at high heat into various solid forms, retaining their defined shapes during the material's life cycle and after disposal.

§ 446-25. Prohibitions.

Effective January 1, 2018, no person shall sell or offer for sale any personal care product which contains microbeads within the County of Suffolk, except that this prohibition shall not apply to any personal care product that is regulated by the United States Food and Drug Administration until December 31, 2018, or in the case of over-the-counter drugs until December 31, 2019.

§ 446-26. Enforcement.

- A. This article shall be enforced by the Department of Health Services.
- B. Beginning on July 1, 2017, the Department of Health Services will inform retailers selling personal care products of the requirements of this article.
- C. Enforcement of this article through the random inspection of at least 10 retailers per quarter shall commence on January 1, 2018.
 - (1) At each retailer inspected, the Department will select no more than 10 personal care products for inspection to determine which contain microbeads that are composed of the following ingredients: polyethylene, polypropylene, polyethylene terephthalate, or nylon or poly (methyl) methacrylate plastic, or any similar plastic ingredient.
 - (2) The Department shall inform the retailer of products screened that contain impermissible microbeads in this article. A retailer that

continues to offer for sale a personal care product found by the Department to violate this article shall be issued a notice of violation.

- D. Enforcement of this article shall also be done upon complaint in the manner set forth in Subsection C of this section, with the inspection of at least five retailers associated with complaints per quarter, provided a minimum of five complaints have been received, beginning January 1, 2018. A record of complaints shall be retained by the Department of Health Services for the purposes of effectuating these quarterly inspections. Investigation upon complaint does not have to be completed during the quarter in which the complaint was originally filed.

§ 446-27. Penalties for offenses.

- A. Any person who violates any portion of this article shall be subject to a civil fine of up to \$500 for a first offense, a fine of up to \$750 for a second offense and a fine of up to \$1,000 for all subsequent violations. Each act in violation of this article shall be considered a separate and distinct violation.
- B. No penalties shall be imposed by the Department of Health Services until a hearing is held by the Commissioner or his or her designee and the alleged violator is given an opportunity to be heard.

§ 446-28. Rules and regulations.

The Commissioner of the Suffolk County Department of Health Services is hereby authorized and empowered to promulgate such rules and regulations as he or she deems necessary to implement this article.

§ 446-29. Applicability.

This article shall apply to all sales of personal care products occurring on or after the effective date of this article.

§ 446-30. Reverse preemption.

This article shall be null and void on the day that federal and statewide legislation goes into effect, incorporating either the same or substantially similar provisions as are contained in this article, or in the event that a pertinent state or federal administrative agency issues and promulgates regulations preempting such action by the County of Suffolk. The County Legislature may determine via duly enacted resolution whether or not identical or substantially similar federal or statewide legislation or pertinent preempting state or federal regulations have been enacted for the purpose of triggering the provisions of this section.

ARTICLE V

Polystyrene Foam Containers
[Adopted 4-9-2019 by L.L. No. 14-2019]**§ 446-31. Legislative intent.**

This Legislature hereby finds and determines that polystyrene foam is a petroleum-based plastic made from a styrene monomer. Styrene has been classified as a probable human carcinogen by the International Agency for Research on Cancer (IARC), a nongovernmental body of the World Health Organization, and a potential human carcinogen by the United States Department of Health and Human Services. This Legislature finds that the Environmental Protection Agency has determined that the polystyrene manufacturing process is the fifth largest creator of hazardous waste in the United States. This Legislature also finds and determines that polystyrene foam is a common environmental pollutant and nonbiodegradable substance commonly used in food service items. There exists no practical method to recycle polystyrene, and incineration of polystyrene releases toxic fumes. This Legislature further determines that alternative biodegradable food service items are readily available to meet the vast majority of food service needs. This Legislature finds that the use of biodegradable and/or compostable food service products will reduce the waste stream in Suffolk County and provide a commensurate reduction in waste disposal costs. This Legislature determines that the County should encourage the use of biodegradable food service containers by all food service businesses and should restrict the use of polystyrene containers. This Legislature also finds that polystyrene foam is also used frequently in packaging that is being transported in order to protect fragile items. This Legislature further finds that there are many environmentally friendly alternatives that can be used when shipping delicate items. This Legislature also determines that to further protect the County from polystyrene pollution, certain types of polystyrene items should be banned from use. Therefore, the purpose of this article is to ban the use of certain polystyrene items in Suffolk County.

§ 446-32. Definitions.

As used in this article, the following terms shall have the meanings indicated:

DISPOSABLE FOOD SERVICE ITEM — Cups, containers, lids, closures, trays, plates, knives, forks, spoons, stoppers, paddles, straws, place mats, napkins, doilies, wrapping materials, tooth picks and all similar articles that are intended by the manufacturer to be used once for the purposes of eating or drinking or that are generally recognized by the public as items to be discarded after one use.

FOOD SERVICE ESTABLISHMENT — A premises or part of a premises where food is prepared and served or given directly to the consumer, whether such food is provided free of charge or sold, and whether consumption occurs on or off the premises or is provided from a pushcart,

stand or vehicle. This definition shall include, but not be limited to, full-service restaurants, fast-food restaurants, cafes, delicatessens, coffee shops, grocery stores, vending trucks, vending carts and cafeterias.

MANUFACTURER — Any natural person, firm or corporation that produces or imports either polystyrene foam or loose fill packaging.

MOBILE FOOD COMMISSARY — Any facility which provides services to food service establishments that are located in or is a pushcart, stand or vehicle, including, but not limited to: access to potable water, wastewater and refuse disposal, the provision of supplies for food service, storage for food and supplies, or commercial cooking facilities.

POLYSTYRENE FOAM — Any blown polystyrene foam, including expanded or extruded foams (commonly referred to as "Styrofoam") which are thermoplastic petrochemical materials which utilize a styrene monomer and are processed by any number of techniques, including, but not limited to: fusion of polymer spheres (expandable bead polystyrene), injection molding, foam molding, and extrusion blow molding. This definition shall not include products composed of rigid polystyrene.

POLYSTYRENE LOOSE FILL PACKAGING — A void-filling packaging product made of expanded polystyrene foam that is used as a packaging fill, commonly referred to as "packing peanuts."

RIGID POLYSTYRENE — Thermoplastic petrochemical materials which utilize a styrene monomer but are not blown polystyrene foam.

STORE — A retail or wholesale establishment other than a food service establishment.

§ 446-33. Prohibition.

- A. No food service establishment, mobile food commissary or store shall possess, sell or offer for use any disposable food service item that consists of polystyrene foam. This prohibition shall not apply to packaging that is used for prepackaged foods that have been filled and sealed prior to receipt by the food service establishment, mobile food commissary, or store or to containers used to store uncooked eggs, raw meat, pork, fish, seafood or poultry sold from a butcher case or similar retail use.
- B. No manufacturer or store shall sell or offer for sale polystyrene loose fill packaging. This prohibition shall not apply to the retail sale of electronics that are packaged in polystyrene loose fill packaging prior to entering the store.

§ 446-34. Enforcement.

- A. This article shall be enforced by the Department of Health Services.
- B. Enforcement shall be done upon inspection by the Department of Health Services, where applicable, or upon complaint.

§ 446-35. Penalties for offenses.

- A. Violation of this article shall be punishable by a civil fine. First offenses shall be punishable by a fine of up to \$500. Second offenses shall be punishable by a fine of up to \$1,000. Third and subsequent offenses shall be punishable by a fine of up to \$2,500. Each violation of this article shall be considered separate and distinct.
- B. No fine shall be imposed until an alleged violator has had a hearing and opportunity to be heard by the Commissioner of the Department of Health Services.

§ 446-36. Rules and regulations.

The Commissioner of the Department of Health Services is hereby authorized to promulgate rules and regulations necessary to implement and enforce this article.

§ 446-37. Applicability.

This article shall apply to all actions occurring on or after the effective date of this article.

§ 446-38. Reverse preemption.

This article shall be null and void on the day that federal and statewide legislation goes into effect, incorporating either the same or substantially similar provisions as are contained in this article, or in the event that a pertinent state or federal administrative agency issues and promulgates regulations preempting such action by the County of Suffolk. The County Legislature may determine via duly enacted resolution whether or not identical or substantially similar federal or statewide legislation, or pertinent preempting state or federal regulations have been enacted for the purpose of triggering the provision of this section.

§ 446-39. Severability.

If any clause, sentence, paragraph, subdivision, section, or part of this article or the application thereof to any person, individual, corporation, firm, partnership, entity, or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section, or part of this article, or in its application to the person, individual, corporation, firm, partnership, entity, or circumstance directly involved in the controversy in which such order or judgment shall be rendered.

§ 446-40. Effective date.

This article shall take effect on January 1, 2020.

Chapter 618

NOISE

GENERAL REFERENCES

Light pollution — See Ch. 149.

Demonstrations — See Ch. 404.

Agricultural operations — See Ch. 274.

Parks and park facilities — See Ch. 643.

Alarms — See Ch. 290.

§ 618-1. Legislative intent.

- A. This Legislature hereby finds and determines that excessive noise can endanger the general health of individuals exposed to it and can actually cause hearing loss.
- B. This Legislature further finds that many persons cause excessive noise through the use of radios and amplifiers and other devices that play music, including boom boxes, which can be deleterious to the health, safety and general well being of the public.
- C. Therefore, the purpose of this chapter is to limit noise on County-owned properties.

§ 618-2. Definitions. [Amended 5-13-2003 by L.L. No. 18-2003]

As used in this chapter, the following terms shall have the meanings indicated:

AMBIENT SOUND — An all-encompassing composite of sounds from many sources associated with a given environment.

A-WEIGHTED SOUND LEVEL — The sound pressure level in decibels, as measured on a sound level meter using the A-weighting network slow response (dBA).

CONTINUOUS SOUND — Any sound that is not an impulsive sound.

DECIBEL — A unit for measuring the pressure level of a sound, equal to 1/10 of a bel.

IMPULSIVE SOUND — A sound characterized by brief excursions of peak sound pressure which significantly exceed the ambient sound.

NOISE DISTURBANCE — Any sound that:

- A. Endangers the safety or health of any person;
- B. Disturbs a reasonable person of normal sensitivities; and/or
- C. Endangers personal or real property.

PEAK SOUND PRESSURE — The maximum absolute value of the instantaneous sound pressure level during a specified time interval.

PERSON — Any natural person, individual, corporation, unincorporated association, proprietorship, firm, partnership, joint venture, joint-stock association or other entity or business organization of any kind.

SHOOTING RANGE — An outdoor range equipped with targets for use with firearms and shall include, but not be limited to, all rifle, pistol, and shotgun ranges.

SOUND — Any variation in ambient barometric pressure.

SOUND DEVICE OR APPARATUS — Any radio device or apparatus or any device or apparatus for the amplification of sounds from any radio, phonograph or other sound-making or sound-producing device or apparatus for the reproduction or amplification of the human voice or other sounds.

SOUND PRESSURE LEVEL — When measured in decibels, equal to 20 times the logarithm to the base 10 of the ratio of the effective pressure of the sound measured to the standard reference pressure of a sound.

STANDARD REFERENCE PRESSURE OF A SOUND — Twenty micronewtons per square foot.

§ 618-3. Prohibitions.

- A. No person shall cause, suffer, allow or permit to be made mechanically any noise disturbance on any County highway or within the limits of the right-of-way of such highway or upon any parcel of real estate owned by the County of Suffolk, in whatever capacity and for whatever purpose, or upon buses owned, leased or operated by the County of Suffolk.
- B. No person shall cause, suffer, allow or permit the operation or playing of any noise device or apparatus on any County highway or within the limits of the right-of-way of such highway, in whatever capacity or for whatever purpose, or upon any parcel of real estate owned by the County of Suffolk or upon buses owned, leased or operated by the County of Suffolk in such a manner as to create a noise disturbance.

§ 618-4. Restrictions.

No person shall cause, suffer, allow or permit the operation of any source of sound on any County highway or within the limits of the right-of-way of such highway or upon any parcel of real estate owned by the County of Suffolk or upon buses owned, leased or operated by the County of Suffolk in such a manner as to create a sound level that exceeds the particular sound level limits set forth in Table I of this section, when measured at or within the real property line of the County-owned property, except those acts specifically prohibited in § 618-3 of this chapter for which no measurement of sound is required.

Table I
Maximum Permissible A-Weighted Sound Pressure Levels by
Receiving Property Category, in dBA

| Sound Source Property Category | Receiving Property Category | | | |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------|-----------------------------------------------------|----------------------------------|----------------------------------|
| | Residential, 7:00 a.m. to 10:00 p.m. | Residential, 10:00 p.m. to 7:00 a.m. | Commercial, all times | Industrial, all times |
| County highways or within the limits of the right-of-way of such highway or upon any parcel of real estate owned by the County of Suffolk or upon buses owned, leased or operated by the County of Suffolk | 65 | 50 | 65 | 70 |

§ 618-5. Applicability.

- A. This chapter shall apply to all actions occurring on or after the effective date of this chapter.
- B. Section 618-3 of this chapter shall not apply to the following activities:
 - (1) The noise from domestic power tools, lawn mowers and agricultural equipment, when operated with a muffler, between the hours of 8:00 a.m. and 8:00 p.m. on weekdays and 9:00 a.m. and 8:00 p.m. on weekends and legal holidays, provided that they produce less than 85 dBA at any real property line of County-owned property.
 - (2) The sound from church bells and church chimes when a part of a religious observance or service.
 - (3) The noise from construction activity, except for operating or permitting the operation of any tools or equipment used in construction, drilling, earth-moving, excavating or demolition work between the hours of 6:00 p.m. and 7:00 a.m. the following day on weekdays or at any time on weekends or legal holidays, except:
 - (a) Emergency work.
 - (b) When the sound level does not exceed any applicable limit specified in Table I of § 618-4.
 - (c) When it is the result of the operation of any said equipment by or for any municipal entity.

- (4) Noise from snowblowers, snow throwers and snowplows, when operated with a muffler, for the purpose of snow removal.
 - (5) Noise from stationary emergency signaling devices owned and operated by any public utility, municipal subdivision, fire department or ambulance corps when used in connection with an emergency or for testing purposes.
 - (6) Noise from a burglar alarm of any building or motor vehicle, provided that such burglar alarm shall terminate its operation within 15 minutes after it has been activated and shall not operate more than 15 minutes in any one-hour period.
- C. This chapter shall not apply to: **[Amended 5-13-2003 by L.L. No. 18-2003]**
- (1) The emission of sound for the purpose of alerting persons to the existence of an emergency or the creation of sound in the performance of emergency work.
 - (2) Noise from noncommercial public-speaking and public-assembly activities.
 - (3) Noise from municipally sponsored celebrations or events.
 - (4) Noise emanating from the recreational discharge of firearms at a County-owned, -operated- or -leased shooting range, the site for which was being used as a facility for the recreational discharge of firearms prior to January 1, 1980.

§ 618-6. Penalties for offenses.

Any person who intentionally violates any provision of § 618-3 or 618-4 of this chapter shall be guilty of an unclassified misdemeanor, punishable by a fine of \$500 and/or up to one year of imprisonment. Each such violation shall constitute a separate and distinct offense.

Chapter 639
PARKING, OFF-STREET

GENERAL REFERENCES

Parks and park facilities — See Ch. 643.

Vending vehicles — See Ch. 826.

Vehicles and traffic — See Ch. 818.

ARTICLE I

Traffic Regulations on County-Owned Property
[Adopted 1-23-1973 by L.L. No. 5-1973 (Ch. 372, Art. I, of the 1985 Code)]

§ 639-1. Definitions. [Amended 5-8-1979 by L.L. No. 8-1979]

As used in this article, unless otherwise expressly stated or unless the context or subject matter otherwise requires, the following terms shall have the meanings indicated:

COMMISSIONER OF BUILDINGS AND GROUNDS — The Commissioner of Buildings and Grounds of the County of Suffolk.¹

COUNTY — The County of Suffolk.

COUNTY PROPERTY — All property owned by the County of Suffolk and all property under the jurisdiction of the County of Suffolk, including property owned by the County or leased by the County and property otherwise under the control of the County of Suffolk, except that these regulations shall not apply to highways or to Suffolk County airports.

PARKING AREAS — Any portion or portions of County-owned, -leased or -controlled property set aside for the parking of vehicles.

PARK, PARKING or PARKED — The stopping of a vehicle and leaving such vehicle unattended by a person capable of operating it.

PERSON — Any person, firm, partnership, association, corporation or organization.

STOP, STOPPED or STOPPING — The bringing or coming from motion to rest or halting or causing the same to cease from motion.

VEHICLE — The same meaning as defined in the Vehicle and Traffic Law of the State of New York.

§ 639-2. Speed limit.

No person shall operate any vehicle within any County property at a speed in excess of 15 miles per hour.

§ 639-3. Restrictions on parking, standing and stopping.

- A. No person shall park, stand or stop a vehicle at any place within County property except those places where parking, standing or stopping shall be permitted by order of the Commissioner of Buildings and Grounds, subject to the approval of the County Executive.
- B. The Commissioner of Buildings and Grounds may, by order, subject to the approval of the County Executive, designate areas where parking, standing or stopping shall be restricted to vehicles operated by County

1. Editor's Note: The position of Commissioner of Buildings and Grounds was abolished by L.L. No. 31-1979.

officials or personnel or others having official business or performing special services at the particular County installation.

§ 639-4. Required handicapped parking. [Added 8-3-1976 by L.L. No. 17-1976; amended 7-25-1978 by L.L. No. 13-1978; 2-5-1980 by L.L. No. 4-1980]

- A. The Commissioner is hereby authorized and directed to designate a minimum of 2% of parking spaces or two spaces, whichever is more, for vehicles of handicapped persons, except that in no way shall such reservation be less than what may be required under applicable codes, rules and regulations under federal or state laws.
- B. Such spaces shall be clearly marked by blue striping and the appropriate sign as being for handicapped persons only.
- C. The cars of such handicapped persons shall be clearly marked with a handicapped parking permit, issued in accordance with § 1203-a of the Vehicle and Traffic Law after certification by the appropriate governmental unit.
- D. The use of the reserved parking spaces by vehicles not marked by the official handicapped parking permit shall be a parking violation, punishable by a fine of \$15.
- E. Insofar as practicable, those spaces designated for use by handicapped persons shall be located in the immediate vicinity of an entrance to each facility adapted to handicapped use.

§ 639-5. Movement of traffic.

The Commissioner of Buildings and Grounds may, by order, prescribe the direction in which vehicles shall proceed and the places where vehicles shall stop, turn or otherwise maneuver within County property.

§ 639-6. Signs and markings.

The Commissioner of Buildings and Grounds shall cause such appropriate signs to be erected and pavement markings to be made or other devices installed as he shall deem necessary for the enforcement of those rules and regulations or any order authorized herein.

§ 639-7. Compliance with signs, markings and orders.

- A. Persons operating vehicles within County property shall at all times observe and obey the directions, orders and instructions appearing upon or conveyed by signs, pavement markings or other devices relating to the parking, standing or stopping of vehicles or the direction in which vehicles shall be operated or the place or manner in which vehicles shall be stopped, turned or otherwise maneuvered.

- B. Persons operating vehicles within County property shall at all times comply with the orders of any peace officer engaged in the direction of traffic, whether the same is given orally or by hand signal.

§ 639-8. Parking in restricted areas prohibited. [Amended 5-8-1979 by L.L. No. 8-1979]

Any vehicle improperly parked in a restricted parking area shall be deemed to be in violation of these rules and regulations.

§ 639-9. Effective date of orders.

The orders of the Commissioner of Buildings and Grounds promulgated under the authority herein contained shall become effective as provided by said orders when the approved signs and markings have been erected and installed, giving notice thereof.

§ 639-10. Authority to remove vehicles.

- A. When any vehicle is parked or abandoned on any Suffolk County parking field or property during a snowstorm, flood, fire or other public emergency which affects that portion of the Suffolk County property upon which said vehicle is parked or abandoned, said vehicles may be removed by the Commissioner of Buildings and Grounds.
- B. When any vehicle is found unattended within the confines of the parking fields of Suffolk County or any of its properties, where said vehicle constitutes an obstruction to traffic, said vehicle may be removed by the Commissioner of Buildings and Grounds.
- C. When any vehicle is found unattended within the confines of the parking fields of the County of Suffolk, parked in such a manner as to be in violation of these rules and regulations, said vehicle may be removed by the Commissioner of Buildings and Grounds.

§ 639-11. Storage of vehicles; charges.

After the removal of any vehicle as provided in this article, the Commissioner of Buildings and Grounds may store such vehicle in a suitable place at the expense of the owner. Such owner, or the person in charge of such vehicle, may recover the same upon payment to the County of Suffolk of the amount of all expenses and charges actually and necessarily incurred in effecting such removal, such charges not to exceed \$25, together with any charges for any storage, such storage not to exceed \$2 per day or fraction thereof.

§ 639-12. Notice of removal.

The Commissioner of Buildings and Grounds shall, without delay, report to the Sheriff of Suffolk County the removal and disposition of any vehicle removed as provided in this article and ascertain the owner or the person

having charge thereof and notify him in writing of the removal and disposition of such vehicle and the amount which shall be required to redeem the same.

**§ 639-13. Restrictions on soliciting and conducting other business.
[Amended 8-17-1994 by Res. No. 673-1994]**

- A. No County property or parking areas shall be used for soliciting or for business purposes unless such use is specifically granted by the County Legislature.
- (1) Contracts shall be awarded only after a comparative evaluation of the revenue to be generated by the County from each responsible proposed contract vendor, and whenever other than the highest revenue generator receives the approval, there must be written documentation explaining why the highest proposed revenue generator for the County was rejected and justification for why the alternative approval was granted;
 - (2) A documented explanation shall be provided whenever fewer than two responses are submitted; and
 - (3) The Suffolk County Legislature shall review these policies and procedures biennially.
- B. The Commissioner of the County Department of Public Works is hereby authorized, empowered and directed, pursuant to § C8-2X of the Suffolk County Charter, to implement the following in connection with the awarding of contracts for vending machines to be placed in County buildings, which policy shall include but not be limited to the following:
[Added 5-9-2000 by Res. No. 287-2000]
- (1) An RFP or competitive bidding process shall be used in the awarding of vending machine contracts, said process to be conducted under the jurisdiction and control of the Purchasing Division, in the County Department of Public Works, pursuant to § C5-2L of the Suffolk County Charter.²
 - (2) A separate line item shall be created in the County budget to account for moneys generated by vending contracts.
 - (3) No vending machine shall be allowed on County property without written approval by the County Commissioner of Public Works.
 - (4) Decals shall be placed on all vending machines on County property indicating the owner's name, phone number and the contract's expiration date.

2. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. IV).

§ 639-14. Restrictions on parking during certain hours.

No vehicle shall be parked on County property between sunset and sunrise except vehicles of authorized County personnel and vehicles of persons attending public functions unless specifically authorized by the Commissioner of Buildings and Grounds or his authorized representative.³

§ 639-15. Enforcement officials.

Any peace officer, the Sheriff or his deputy, the Commissioner of Buildings and Grounds and his authorized designees and the County Police Department are authorized to enforce these rules and regulations and prevent violations thereof.

§ 639-16. Provisions not applicable on certain lands.

The rules and regulations as promulgated by this article shall not apply for the use of, riding on and traffic in and through County-owned property specifically designated as a park or parks and lands under the jurisdiction of the Department of Parks, Recreation and Conservation.

§ 639-17. Penalties for offenses.

- A. Any person violating any of the provisions of this article, any rule or regulation prescribed hereunder or any direction, order or instruction given by anyone authorized to enforce this article or by any official sign or pavement marking shall be guilty of an offense and shall, upon conviction thereof, be punishable by a fine not to exceed \$100, and in addition thereto, any permit issued pursuant to the provisions of this article or of such regulations may be suspended or revoked.
- B. In lieu of criminal action against any person for any such violation, a penalty in an amount not to exceed \$100 may be recovered by the County in an action in respect to any violation.

3. Editor's Note: Section 14 of L.L. No. 5-1973, which immediately followed this section and pertained to identification tags and stickers, was repealed by L.L. No. 8-1979.

ARTICLE II

Handicapped Parking in Public Areas**[Adopted 9-14-1982 by L.L. No. 19-1982 (Ch. 372, Art. II, of the 1985 Code)]****§ 639-18. Purpose.**

Section 1203-c of the Vehicle and Traffic Law establishes requirements for the owners of a shopping center or facility with at least five separate retail stores and at least 20 off-street parking spaces concerning the provision of a minimum number of such spaces for handicapped parking. The penalties imposed under this section of the Vehicle and Traffic Law are made subject to the provisions of local legislation. It is the intent of this Legislature to impose more stringent penalties for such illegal parking and to utilize the revenues derived from such penalties to improve handicapped facilities within the County.

§ 639-19. Interpretation of statutory provisions.

- A. Section 1203-c of the Vehicle and Traffic Law shall be interpreted as follows: Any person, firm or corporation owning a shopping center or facility with at least five separate retail stores and at least 20 off-street parking spaces which are provided for use by the shopping public must designate as only for the handicapped and clearly mark for use by the handicapped a minimum of 5% of such parking spaces or 10 such spaces, whichever is less. These spaces must be located as close as reasonably practicable to the shopping center facility and be reasonably distributed so as to provide convenient access for use by handicapped drivers. Such parking spaces are to be used either by handicapped drivers displaying a special municipal parking permit (as defined in Vehicle and Traffic Law § 1203-a and distributed by the Commissioner of Motor Vehicles to local governing bodies to be issued to handicapped persons who reside in such locality) or by motor vehicles registered in accordance with Vehicle and Traffic Law § 404-a and being used for the transportation of a handicapped person.
- B. The parking spaces designated pursuant to the provisions of this section shall be clearly identified for use by handicapped drivers, which designation may include the use of blue painted lines or markings and the international symbol of access.

§ 639-20. Penalties for offenses. [Amended 8-11-1998 by L.L. No. 20-1998; 3-13-2001 by L.L. No. 5-2001]

Any person who parks in spaces clearly marked for use by the handicapped, in accordance with § 1203-c of the Vehicle and Traffic Law, without a special municipal parking permit or whose motor vehicle is not registered in accordance with § 404-a of the New York Vehicle and Traffic Law and being used for the transportation of a handicapped person shall be subject to a fine of \$150 for the first offense and \$200 for every offense thereafter. This

fine shall be imposed in addition to whatever fine is imposed under § 1203-c, Subdivision 4, of the New York Vehicle and Traffic Law.

§ 639-21. Enforcement.⁴ [Amended 7-14-1987 by L.L. No. 29-1987]

- A. This article shall be enforced by those public officials charged with the duty of enforcing the New York Vehicle and Traffic Law.
- B. The Suffolk County Director of Handicapped Services is hereby authorized, empowered and directed to establish a program to utilize volunteers with cameras to survey parking lots for the purpose of photographing automobile vehicles parked in violation of the provisions of this article and/or §§ 1203 and 1203-c of the New York Vehicle and Traffic Law, together with the car license plate, the handicapped parking sign and the blue striping designating said space as a reserved handicapped parking space. This program shall include, but not be limited to, the issuance of identification cards to such volunteers with names and pictures affixed thereto to be used in the event that police officers need more identification from the volunteer, schedules to allow for the placement of people in various areas of the County on different days on a rotating basis so as not to leave any areas unpatrolled or duplicated, a system of reminder letters to people who are cited for handicapped parking violations, and:
 - (1) Volunteers shall be required to wear large badges identifying the persons as part of this volunteer program with an identification number corresponding to a list of volunteers kept in the County Office of Handicapped Services.
 - (2) Cameras shall be provided to such volunteers by the County, together with funding for the development of film.
 - (3) The program shall also include a procedure by which the Police Department may be requested and empowered to prepare the necessary deposition for signature by the volunteer who actually witnessed the infraction, administer the necessary oath for verification, prepare the necessary information for presentation to the appropriate court, and to forward all pertinent documents to said court, together with requirement that the Police Department arrange to send, via certified mail, return receipt requested, an appearance ticket advising the registered owner of the motor vehicle when and where to appear in court and what charge has been lodged against him.
- C. The Director of the Suffolk County Division of Handicapped Services is hereby authorized and empowered to promulgate and issue such rules

4. Editor's Note: The Office of Handicapped Services referred to in this section was changed to the "Office for People with Disabilities" 6-7-2011 by Res. No. 443-2011. In addition, "Director of Handicapped Services" was changed to "Director of Office for People with Disabilities."

and regulations as he shall deem necessary and sufficient to implement the provisions of this article.

- D. The Director of the Suffolk County Division of Handicapped Services is hereby authorized and empowered to develop this program in conjunction with the Suffolk County Police Department, District Attorney's Office, the District Court Clerk's Office, and State Department of Motor Vehicles.
- E. The Director of the Suffolk County Division of Handicapped Services is hereby authorized and empowered to issue appearance tickets and to enforce handicapped parking laws in connection with this article.

§ 639-22. Disposition of fines.

The proceeds of the fines collected pursuant to this article shall be turned over to the County of Suffolk and shall be used by the County for the sole purpose of improving handicapped facilities in the County of Suffolk.

**§ 639-23. Dumping snow in handicapped parking spaces prohibited.
[Added 8-11-1998 by L.L. No. 21-1998]**

Any person who knowingly dumps or shovels snow onto a parking place for handicapped persons rendering such place unusable for parking purposes shall be subject to a fine of \$50 for the first offense and a fine not to exceed \$200 for every offense thereafter.

ARTICLE III

Parking Policy on County-Owned Property

[Adopted 5-8-1979 by L.L. No. 8-1979; amended in its entirety 8-16-1994 by L.L. No. 15-1994 (Ch. 372, Art. III, of the 1985 Code)]

§ 639-24. Definitions.

As used in this article, the following terms shall have the meanings indicated:

COUNTY PROPERTY — All property owned by the County of Suffolk and all property under the jurisdiction of the County of Suffolk, including property owned by the County or leased by the County and property otherwise under the control of the County of Suffolk.

RESERVED PARKING IDENTIFICATION CARD — A card officially designated for the purpose, measuring approximately eight inches horizontally by five inches vertically, being appropriately numbered, bearing a facsimile of the Official Seal of Suffolk County and approved by the Suffolk County Administrative Judge, or his or her designee, as to form and design, issued to personnel of the Unified District Court System, Family Court, Supreme Court, Appellate Division, County Court or federal court system.

§ 639-25. Designation of restricted parking areas.

- A. The Commissioner of the Department of Public Works shall, at all County-owned or -operated nonjudicial facilities, and the Suffolk County Administrative Judge shall, in the instance of County-owned property used for court purposes, designate and properly identify those spaces for the use of handicapped permit holders, spaces for the use of emergency vehicles, spaces for the use of individuals holding "Reserved Parking Identification Cards," and spaces in such areas as may be necessary to provide for the safety and protection of the facility and the persons using the facility. In addition, the Commissioner of the Department of Public Works or the Suffolk County Administrative Judge in the instance of County-owned property used for court purposes, as the case may be, shall designate other general areas in which no parking shall be permitted, for such purposes as loading and unloading areas or as may be required to properly service the particular facility.
- B. Except as authorized by this article, the Commissioner of the Department of Public Works or the Suffolk County Administrative Judge in the instance of County-owned property used for court purposes, as the case may be, shall not designate any other reserved parking spaces and shall immediately undertake a program to remove all signs or other markings from the County-owned or County-operated facilities which appear to authorize such reserved parking spaces.

§ 639-26. Penalties for offenses.

The operators and/or owners of vehicles which are parked in areas designated as either handicapped spaces or other restricted areas without proper permits or other identification shall be guilty of a violation and shall be subject to a fine of not more than \$100.

§ 639-27. Display of parking identification card.

- A. A Suffolk County reserved parking identification card shall be properly displayed on any vehicle parked in a reserved parking space.
- B. Any vehicle parked in a parking area space designated for court personnel without such reserved parking identification card shall be deemed to be in violation of this article, the owners of which vehicle shall be deemed jointly and severally liable for any penalty imposed hereunder.

ARTICLE IV

Parking for "Clean Pass" Vehicles at County Facilities
[Adopted 12-2-2008 by L.L. No. 53-2008 (Ch. 372, Art. V, of the 1985 Code)]

§ 639-28. Legislative intent.

- A. This Legislature hereby finds and determines that for most of the 20th Century the United States was the world's largest producer of petroleum, producing enough oil to meet domestic needs and provide a surplus for export.
- B. This Legislature hereby finds and determines that United States oil production peaked in the early 1970s and has declined ever since, while our oil consumption has continued to climb steeply. As of 2001, imported oil accounted for 55% of United States consumption, while projections indicate that as of 2020, imported oil will account for 70% of United States consumption.
- C. This Legislature also finds and determines that remaining oil reserves are concentrated in a few giant reservoirs, over 80% of which are found in developing countries. In fact, nearly 2/3 of remaining oil reserves are located in six Persian Gulf nations: Saudi Arabia, Iraq, the United Arab Emirates, Kuwait, Iran and Qatar.
- D. This Legislature also finds and determines that a member of Long Island's congressional delegation has named schools and local government as the ideal starting point for the transformation of America from a country dependent on its enemies for fuel, to a country that can regain its position as a world leader by reclaiming its economy, maintaining a self-sustaining military and restoring its environment.
- E. This Legislature also finds and determines that because the need for energy independence is a matter of national security, local governments must take all steps necessary to contribute to a nationwide effort to break our oil addiction.
- F. This Legislature finds and determines that the use of low-emission and energy-efficient vehicles contributes to the effort to break the grip of oil addiction, while vastly reducing greenhouse gases.
- G. This Legislature also finds and determines that New York State has instituted the "Clean Pass" Program to allow eligible low-emission, energy-efficient vehicles to use the forty-mile Long Island Expressway high-occupancy vehicle (LIE/HOV) lanes in an effort to reduce greenhouse gas emissions by 6,000 tons and save more than 500,000 gallons of gasoline a year.
- H. This Legislature further finds that Suffolk County government may contribute to national energy security by offering residents incentives

to make smart energy decisions, such as offering priority parking to "Clean Pass" qualified vehicles.

- I. This Legislature determines that Suffolk County can and should adapt this environmentally and security conscious, forward-looking policy to County-owned and -operated facilities.
- J. Therefore, the purpose of this article is to set aside parking spaces at all County facilities for "Clean Pass" certified vehicles.

§ 639-29. Definitions.

As used in this article, the following terms shall have the meanings indicated:

CLEAN PASS VEHICLE — Any vehicle that displays a Clean Pass vehicle sticker issued by the New York State Department of Motor Vehicles certifying that the vehicle is certified to the California super ultra-low-emission vehicle (SULEV) standard and achieves a US EPA highway fuel economy rating of 45 miles per gallon or more; or a pre-model-year 2005 hybrid vehicle which is certified to the California ultra-low-emission vehicle (ULEV) standard and achieves a US EPA highway fuel economy rating of 45 miles per gallon or more.

COMMISSIONER — The Commissioner of the Suffolk County Department of Public Works.

COUNTY FACILITY — Any building or facility owned by the County of Suffolk or under the jurisdiction of the County of Suffolk, including buildings and facilities owned by the County or leased by the County and otherwise under the control of the County of Suffolk.

PARKS COMMISSIONER — The Commissioner of the Suffolk County Department of Parks, Recreation and Conservation. **[Added 4-28-2009 by L.L. No. 13-2009]**

§ 639-30. Designation of spaces. [Amended 4-28-2009 by L.L. No. 13-2009]

- A. Notwithstanding any provision of law to the contrary, the Commissioner is hereby authorized, empowered and directed to designate a minimum of 2% of parking spaces at all County facilities, except County facilities under the jurisdiction of the Parks Commissioner, for the exclusive use of parking by the owners/operators of Clean Pass vehicles.
- B. Notwithstanding any provision of law to the contrary, the Parks Commissioner is hereby authorized, empowered and directed to designate a minimum of 2% of parking spaces at all County facilities under his jurisdiction for the exclusive use of parking by the owners/operators of Clean Pass vehicles.
- C. Such designated spaces shall be clearly marked for use by owners/operators of Clean Pass vehicles. The Commissioner and Parks

Commissioner shall cause such appropriate signs to be erected and pavement markings to be made to clearly mark these parking spaces and allow for the enforcement of this article.

- D. To the extent practicable, spaces designated for parking by owners/operators of Clean Pass vehicles shall be located in the immediate vicinity of an entrance to each County facility. In no event, however, shall "Clean Pass" parking spaces be located closer to a facility entrance than those spaces designated for use by the handicapped.
- E. Spaces designated for Clean Pass vehicles may be used by vehicles with handicapped permits when all designated handicapped parking spaces are occupied. **[Added 6-22-2010 by L.L. No. 38-2010]**
- F. If the Commissioner or Parks Commissioner determines it is impossible or impracticable to designate 2% of parking spaces for Clean Pass vehicles at a specific County facility, he or she shall so advise the County Executive and each member of the County Legislature, in writing, and enumerate the reasons why Clean Pass spaces cannot be designated at a County facility. The County Legislature may override such determination by a duly enacted resolution.

§ 639-31. Parking by unauthorized vehicles. [Amended 6-22-2010 by L.L. No. 38-2010]

Except for vehicles that are parked in accordance with § 639-30E, any non-Clean-Pass vehicle that is parked in a parking space reserved for Clean Pass vehicles shall be deemed to be in violation of this article, and the owner of such vehicle shall be responsible for the penalty imposed hereunder.

§ 639-32. Enforcement. [Amended 4-28-2009 by L.L. No. 13-2009]

The provisions of this article shall be enforced by the Suffolk County Police Department, the Suffolk County Sheriff, and the Suffolk County Park Police.

§ 639-33. Penalties for offenses.

Any person violating the provisions of this article shall be guilty of an offense and be punishable by a fine not to exceed \$100.

§ 639-34. Applicability.

This article shall apply to actions occurring on or after the effective date of this article.

§ 639-35. When effective.

This article shall take effect on the 120th day immediately subsequent to filing in the Office of the Secretary of State.

ARTICLE V

Parking for Veterans at East End Veterans Administration Health Clinic**[Adopted 12-16-2008 by L.L. No. 2-2009 (Ch. 372, Art. IV, of the 1985 Code)]****§ 639-36. Reserved parking.**

- A. Notwithstanding any other provision or law to the contrary, the Commissioner of the Suffolk County Department of Public Works shall designate and properly identify five spaces for the sole and exclusive use of veterans receiving care at the new East End Veterans Administration Health Clinic at the Riverhead County Center.
- B. The spaces so designated for parking by veterans shall, to the extent practicable, be located in the immediate vicinity of the clinic's main entrance, and the Commissioner is directed to install appropriate signs and pavement markings. The spaces designated for veterans will be in addition to those designated for use by the handicapped.

ARTICLE VI

**Parking for Veterans at County Facilities
[Adopted 6-21-2016 by L.L. No. 21-2016]****§ 639-37. Legislative intent.**

This Legislature hereby finds and determines that the County of Suffolk is home to the largest population of military veterans in New York State. This Legislature further finds and determines that the County strives to assist veterans in meeting their needs, through services provided by the County's Veterans Service Agency and other departments, as well as providing veteran-specific benefits. This Legislature finds that many veterans visit County facilities to obtain necessary services and interact with government officials. This Legislature also finds that it would be appropriate to designate two spots at each County facility as dedicated parking for veterans in recognition of their sacrifices to protect our nation's freedom. This Legislature further finds that Resolution No. 488-2007 established a program in the Veterans Service Agency where veterans may obtain a resident veteran identification card to expedite access to County services and benefits. This Legislature also determines that the Suffolk County Veteran Resident Identification Card Program should be expanded to provide veterans with markers that will allow them to park their vehicles in designated parking. Therefore, the purpose of this article is to establish reserved parking at County facilities for veterans.

§ 639-38. Definitions.

As used in this article, the following terms shall have the meanings indicated:

COMMISSIONER — The Commissioner of the Suffolk County Department of Public Works.

COUNTY FACILITY — Any building or facility owned by the County of Suffolk or under the jurisdiction of the County of Suffolk, including buildings and facilities that are owned, leased or otherwise under the control of the County.

DIRECTOR — The Director of the Suffolk County Veterans Service Agency.

PARKS COMMISSIONER — The Commissioner of the Suffolk County Department of Parks, Recreation and Conservation.

§ 639-39. Parking for veterans.

- A. Notwithstanding any provision of law to the contrary, the Commissioner is hereby authorized, empowered and directed to designate two parking spaces at each County facility with a total of at least 30 parking spaces in a single parking lot under his or her jurisdiction for the exclusive use of parking by veterans.

- B. Notwithstanding any provision of law to the contrary, the Parks Commissioner is hereby authorized, empowered and directed to designate two parking spaces at each County park with a total of at least 30 parking spaces in a single parking lot under his or her jurisdiction for the exclusive use of parking by veterans.
- C. Such spaces shall be clearly marked for use by veterans. The Commissioner and Parks Commissioner shall cause appropriate signs to be erected and pavement markings to be made to clearly mark these parking spaces and allow for the enforcement of this article.
- D. To the extent practicable, spaces designated for parking by veterans shall be located in the immediate vicinity of an entrance to each County facility. In no event, however, shall veteran parking spaces be located closer to a facility entrance than those spaces designated for use by the handicapped.
- E. Veterans who elect to park in veteran-exclusive parking spaces must have their veteran status clearly marked on their vehicle either by an official designation on a New York State custom license plate or on a hanging tag issued by the Suffolk County Veterans Service Agency as part of the Suffolk County Veteran Resident Identification Card Program.

§ 639-40. Prohibited parking

Any person who parks a vehicle in a parking space reserved for veterans without the proper identification established in § 639-39D of this article shall be deemed to be in violation of this article. The owner of such vehicle shall be responsible for the penalty imposed hereunder.

§ 639-41. Enforcement.

Provisions of this article shall be enforced by the Suffolk County Police Department, the Suffolk County Sheriff and the Suffolk County Park Rangers.

§ 639-42. Penalties for offenses.

Any person violating the provisions of this article shall be guilty of an offense and be punished by a fine not to exceed \$100.

§ 639-43. Expansion of County Veteran Resident Identification Card Program.

The Director is hereby authorized, empowered and directed to expand the Suffolk County Veteran Resident Identification Card Program to include the issuance of a hanging tag for vehicles being operated by persons who receive an identification card pursuant to such program.

§ 639-44. Applicability.

This article shall apply to all actions occurring on or after the effective date of this article.

§ 639-45. When effective.

This article shall take effect 120 days immediately subsequent to filing in the office of the Secretary of State.

Chapter 643

PARKS AND PARK FACILITIES

GENERAL REFERENCES

Department of Parks, Recreation and Conservation — See Charter, Art. XXVIII; Admin. Code Art. XXVIII.

Lease of County property — See Ch. 194.

Noise — See Ch. 618.

Off-street parking — See Ch. 639.

Parks and recreation fees — See Ch. 948, Art. X.

Marinas — See Ch. 1012.

Park police — See Ch. 1038.

ARTICLE I

Rules and Regulations

[Adopted 5-22-1979 by L.L. No. 16-1979 (Ch. 378, Art. I, of the 1985 Code)]

§ 643-1. Title.

This article may be known and cited as the "Rules and Regulations for the Use of Suffolk County Parks."

§ 643-2. Definitions.

As used in this article, the following terms shall have the meanings indicated:

BOARD OF TRUSTEES — The Board of Trustees of the Suffolk County Department of Parks, Recreation and Conservation, a body of 10 members and the Commissioner of Public Works, County Executive and Chairman of the Suffolk County Legislature, as constituted by Local Law No. 1-1966,¹ and herein referred to as the "Park Commission."

COUNTY — The County of Suffolk.

PARK COMMISSIONER — The Commissioner of Parks, Recreation and Conservation, the appointed administrative head of all parks and beaches in Suffolk County as defined in Local Law No. 1-1966,² and to the extent that the County Legislature has authorized a park ranger force, he shall be the chief ranger thereof.

PARK or PARK PROPERTY — Any park, play area, beach, recreation area or other area in Suffolk County designated or set apart by the County Legislature for park or recreation purposes as the same is more particularly defined in § C28-2 of the Suffolk County Charter.

PERSON — Any person, firm, partnership, association, corporation, company or organization of any kind.

STIMULANT DRINK — A beverage that contains 75 or more milligrams of caffeine per eight fluid ounces and generally includes a combination of other supplements such as methylxanthines, B vitamins, herbal ingredients and other ingredients which are advertised as being specifically designed to provide or improve energy.**[Added 3-19-2013 by L.L. No. 17-2013]**

VEHICLE — Any motor vehicle as defined in the Vehicle and Traffic Law, or other conveyance or device for transportation of persons or property, whether motor-powered or animal-drawn, except those self-propelled instruments such as bicycles, skateboards, wagons, etc., when permitted.

§ 643-3. Persons authorized to use parks.

1. Editor's Note: See Charter Art. XXVIII.

2. Editor's Note: See Charter Art. XXVIII.

- A. Parks and park property of Suffolk County are for the exclusive use of residents of Suffolk County, except as otherwise may be duly prescribed from time to time by the Suffolk County Legislature.
- B. The County parks shall be open to use by the following persons, subject to all rules and regulations governing same:
 - (1) Bona fide residents of the County of Suffolk and their guests.
 - (2) Any person owning real property assessed upon any town assessment roll in Suffolk County.
 - (3) Any person in possession of real property in the County under verbal or written lease.
 - (4) Any person who is a registered guest of a bona fide hotel, motel or lodging or rooming house in the County and so certified by the person owning, leasing or managing such hotel, motel or lodging or rooming house. The total of such persons certified at no time shall exceed the capacity of the hotel, motel or lodging or rooming house from which they are certified.
- C. The Commissioner of the County Department of Parks, Recreation, and Conservation is hereby authorized, empowered, and directed, pursuant to § C28-4A of the Suffolk County Charter, to construct dog runs for the use of families with pet dogs within Coindre Hall, as more specifically described in Exhibit A attached hereto and made a part hereof, whether leashed or unleashed.³ **[Added 5-13-2003 by L.L. No. 17-2003]**
- D. The Commissioner of the County Department of Parks, Recreation and Conservation is hereby authorized, empowered, and directed, pursuant to § C28-4A of the Suffolk County Charter, to construct dog runs for the use of families with pet dogs within West Hills County Park, and Blydenburgh County Park in the Town of Smithtown, consistent with the provisions of § 643-4A(5) of this chapter. **[Added 5-13-2003 by L.L. No. 17-2003; amended 9-27-2005 by L.L. No. 28-2005]**
- E. The Commissioner may, in his discretion, require any person in or seeking admission to County park property to produce satisfactory proof of residence or ownership of property or otherwise as may be relevant and, without liability, may exclude anyone failing to submit such proof.
- F. All persons shall obey all rules and regulations established by the Commissioner for the use of all facilities and activities.

§ 643-4. Prohibited acts.

- A. No person in a County park shall:

3. Editor's Note: Exhibit A is on file in the County offices.

- (1) Willfully destroy, injure, deface, damage, remove or displace any County real or personal property.
- (2) Deposit or leave any bottles, cans, boxes, paper, rubbish, garbage, waste or trash in the park or waters in or contiguous thereto, but all such shall be placed in the proper receptacles where these are provided, and where such receptacles are not provided it shall be carried away by the person responsible for its presence.
- (3) Be under the influence of intoxicating liquor or illegal drugs.
- (4) Carry a knife upon his person having a blade three inches or longer in length or bring in or discharge any fireworks, gun, rifle, shotgun, air gun, BB gun, bow and arrows or firearms, except in the case of police officers, the Sheriff, Deputy Sheriffs, park rangers, authorized park personnel or a person given express authorization.
- (5) Bring in or permit any horses, cattle, livestock or domestic animals of any kind in or on any parkland, except that a dog or cat may be permitted to use County parkland on a leash, in areas designated for such use. No dogs shall be permitted off leash outside of an authorized dog run area that is fenced in, bordered by natural boundaries or otherwise segregated from other park users. Horses may be permitted on approved trails, and special permits must be obtained from the Commissioner for any events involving horses, dogs, etc. No animals shall be allowed at large except as provided in this section. **[Amended 6-26-2007 by L.L. No. 23-2007]**
- (6) Conduct any business, solicitation or advertising except licensed concessionaires or others when granted permission by the Commissioner or his designee.
- (7) Build or set fires except under rules and in areas designated by park personnel.
- (8) Enter or use areas closed to public use or use any area in violation of posted notices.
- (9) Engage in indecent or disorderly conduct or disturb or interfere with other persons occupying any area under authority of a permit.
- (10) Fail to comply with directions or instructions of the Commissioner, his representatives, park attendants, park rangers, lifeguards and police officers.
- (11) Trap, kill, catch, injure or pursue any wild birds or wild animals except as authorized by the Commissioner.
- (12) Play any game of chance or bring into any park or use, play, sell or have in his possession any implement or device used for gambling purposes.

- (13) Make any mechanical repairs or do any work on any motor vehicle in any park, except repairs of an emergency nature.
- (14) Pour or cause to spill or permit to escape, in any park, any oil, gas, salt, acid or other deleterious substance, whether liquid, solid or gaseous.
- (15) Ride a horse in a reckless manner. Horses shall be well-broken and ridden only with bridle and saddle. Horseback riding is permitted only in certain designated parks and, in those parks, only on those routes and trails specifically established for that purpose. Any person hiring a horse at riding stables licensed by the Commissioner shall obey any rules or regulations of said licensee regarding the use of said horse.
- (16) Prune, cut, carry away, pull up, dig, fell, bore, chop, saw, chip, pick, move, sever, climb, molest, take, break, deface, destroy, set fire to, burn, scorch, carve, paint, mark or in any manner interfere with, tamper, mutilate, misuse, disturb or damage any tree, shrub, plant, grass, flower or any specimen of floral or faunal life except when specifically authorized by the Commissioner for scientific, educational or other purpose.
- (17) Bring beer, ale or other alcoholic beverages into any park where such is specifically prohibited, except by special written permission of the Commissioner or his designee.
- (18) Engage in any cutting of wood except as authorized by the Commissioner or his designee.
- (19) Exhibit, sell or offer for sale or hire any object, merchandise or service except pursuant to a permit issued by the Commissioner. No photographs or motion pictures shall be taken for advertising, commercial or publicity purposes except pursuant to a permit.
- (20) Obstruct or interfere with any lifeguard or other park employee in the performance of his duties.
- (21) Enter, remain or loiter in any comfort station or other public structure in a park area except to use such facility for the purpose for which it is intended.
- (22) Play baseball, football, tennis or frisbee throwing or engage in any game or sport except if permitted and done only upon the grounds provided for such purpose, nor shall any person throw stones or any other object not intrinsic to such sport.
- (23) Operate any motor-powered plane, rocket device, sail device or unlicensed vehicle unless authorized to do so in writing by the Commissioner or his designee.
- (24) Use electronic amplification equipment except by prior permit. Bands or other group activities using amplified equipment will be

permitted only after application in person at the administration office at West Sayville. At no time may the volume of the sound interfere with the enjoyment of others in the park.

- (25) Smoke in any area outside of the park's designated parking areas. This restriction shall not apply to any golf course or campground owned and/or operated by the County of Suffolk. **[Added 6-19-2012 by L.L. No. 44-2012]**

- (26) Sell or offer for sale, provide or otherwise distribute stimulant drinks to persons under the age of 18. **[Added 3-19-2013 by L.L. No. 17-2013]**

§ 643-5. Buses.

Buses, in the discretion of the Commissioner, whether operating on a schedule or charter basis, shall enter the park only after first obtaining from the Commissioner or his designee a permit upon application therefor in such form and containing such information as the Commissioner may prescribe. No bus shall load, unload or park except in accordance with directions of the Commissioner and park attendants. Such permits will be issued only to buses transporting passengers who are authorized to enter the park under the rules and regulations.

§ 643-6. Restricted activities.

No person in a park shall:

- A. Bathe or swim in any waters in or adjacent to the park except at places designated therefor and in compliance with all rules prescribed and during hours designated by the Commissioner.
- B. Dress or undress in the park or in any toilet or other place except such bathhouses as may be provided for that purpose.
- C. Use the shore for dockage except as authorized by the Commissioner or his designee.
- D. Fish or hunt except from or on areas designated by regulations and rules prescribed by the Park Commissioner.
- E. Picnic or lunch in places other than those designated for that purpose. Park attendants are authorized to regulate such activities to prevent interference and secure the maximum comfort and convenience of all.
- F. Conduct games or sports contrary to the instructions and directions of park attendants.
- G. Use water spigots to wash clothes, dishes or his or her person under them. Water spigots are provided for obtaining drinking and/or cooking water only. Water spigots may not be permanently hooked up to a trailer campsite.

§ 643-7. Operating policies.

- A. The Park Commissioner or his designee shall prescribe the times and hours during which the park or areas therein are open and shall post such and other information on a park bulletin board and elsewhere as he may determine. The Commissioner or his designee may close a park or areas therein at any time and for any intervals or either entirely or as to certain uses.
- B. Permits.
- (1) A permit shall be obtained from the Park Commissioner or his designee before entering a park in the following instances:
 - (a) Buses on scheduled or charter trips.
 - (b) Groups and organizations comprising 10 or more persons attending a single occasion.
 - (c) Persons desiring to use the park or portion thereof for a special event, celebration or group-sponsored activity.
 - (d) To bring into any park beer, ale or other alcoholic beverages.
 - (2) Such permit shall be upon application made in such form and containing such information as the Park Commissioner prescribes, including the name and address of the applicant and of the person or group involved, the day and hours for which the permit is desired, the area for which use is desired and the estimated number of anticipated attendance; provided, however, that the Park Commissioner may waive the requirement of a permit.
 - (3) The Park Commissioner, in determining whether to issue such permit, may consider whether the proposed purpose will unreasonably interfere with general public enjoyment considering the areas and facilities available, whether the proposed purpose is reasonably anticipated to incite disorder or will entail burdensome police duties or other duties beyond the scope of the usual burdens of park personnel, attendants and lifeguards and whether the facilities desired are available.
 - (4) Any permittee shall be bound by all park rules and regulations, and the Commissioner may revoke any permit for violation of any park rules or regulations.
 - (5) The Park Commissioner may provide for issuance of permits in the form of tags or otherwise for persons or vehicles to indicate eligibility to attend the park.
 - (6) In those parks through which a County-maintained road passes, the Park Commissioner or his designee may, by order, prescribe maximum and/or minimum speed limits for said road within the park itself and cause same to be posted therein.

- C. Fees. There shall be collected by the Commissioner or his designee any fees as may from time to time be established by the County Legislature. The current fee schedule shall be conspicuously posted in all parks.
- D. Firewood. **[Added 3-25-1980 by L.L. No. 9-1980]**
 - (1) Notwithstanding the prohibition set forth in § 643-4A(16) and (18) herein, the Commissioner may establish rules and regulations to allow Suffolk County residents to obtain wood which has either fallen down or has been cut down by authorized agents. Such rules and regulations shall establish a system, whether by lot or otherwise, to ensure that all interested residents of Suffolk County will have an equal opportunity to obtain wood. **[Amended 3-22-2011 by L.L. No. 21-2011]**
 - (2) An individual can be permitted to remove wood only upon approval by the Commissioner. In making application for approval, the applicant must state that all wood removed from the park will be used by the individual for a personal use in heating his residence. In addition, no individual will be allowed to remove more than two cords of wood within any twelve-month period. In issuing a permit to remove wood, the Commissioner shall specifically designate the fallen trees which the applicant can cut to appropriate lengths for removal. Violation of any rule or regulation established pursuant to this subsection or violation of the terms of the permit shall be punishable pursuant to § 643-9 herein.

§ 643-8. Traffic and parking.

- A. All persons entering or in a park shall comply with the state vehicle and traffic laws, obey all park rangers and park employees directing traffic and comply with posted signs and such supplementary directions as may be given by a park ranger or park personnel at any time.
- B. All persons entering or in a park shall drive and park any vehicle only on park roads and park areas specifically designated for use by the Park Commissioner and shall comply with posted directions and instructions of any park attendant, police officer or park ranger.
- C. The Park Commissioner shall set such speed limits as he shall determine and may, by order, prescribe the direction in which vehicles shall proceed and the places where vehicles shall stop, turn or otherwise maneuver.
- D. The Park Commissioner shall cause such appropriate signs to be erected and pavement markings to be made or other devices installed as he shall deem necessary for the enforcement of those rules or regulations or any other authorized herein.
- E. Persons operating vehicles within the park shall at all times observe and obey the directions, orders and instructions appearing upon or conveyed by signs, pavement markings or other devices relating to the

parking, standing or stopping of vehicles or how vehicles shall be operated or the place or manner in which vehicles shall be stopped, turned or otherwise maneuvered.

- F. The orders of the Park Commissioner promulgated under the authority contained herein shall become effective as provided by said orders when the approved signs and markings have been erected and installed giving notice thereof.

§ 643-9. Penalties for offenses.

- A. Any person violating any of the rules or regulations prescribed hereunder or any direction, order or instructions given by anyone authorized to enforce such rules and regulations, or by any official sign or pavement marking, shall be guilty of an offense and shall, upon conviction thereof, be punishable by a fine not to exceed \$250; and in addition thereto, any permit issued pursuant to the provisions of any rule or regulation herein contained may be suspended or revoked.
- B. In lieu of criminal action against any person for such violations, a penalty in an amount not to exceed \$250 may be recovered by the County in an action with respect to any single violation. Notwithstanding the above sentence, however, a penalty in an amount of not less than \$1,000 nor more than \$5,000 per violation may be recovered by the County in an action with respect to the illegal removal or cutting of wood or standing trees. **[Amended 3-25-1980 by L.L. No. 9-1980]**

§ 643-10. Enforcement.

The Commissioner, his representatives, park personnel, lifeguards, park rangers and members of the Sheriff's office or any police force shall enforce these rules and regulations and shall have the authority to cause to be removed from a park any person violating or acting in violation of these park rules and regulations.

§ 643-11. Rules and regulations.

The Commissioner may make additional rules and regulations which he deems necessary to carry into effect the intent of this article. Such rules and regulations shall not take effect until a copy is on file with the Clerk of the Suffolk County Legislature. The Commissioner shall not have authority to amend this article except to propose additional rules as set forth above.

ARTICLE II

Lease or Licensing of Park Facilities

[Adopted 8-5-2008 by L.L. No. 30-2008 (Ch. 378, Art. II, of the 1985 Code)]

§ 643-12. Definitions.

As used in this article, the following terms shall have the meanings indicated:

COMMISSIONER — The Commissioner of the Department of Parks, Recreation and Conservation.

DEPARTMENT — The Department of Parks, Recreation and Conservation.

PARKS FACILITIES — Buildings or structures under the jurisdiction of the Department of Parks, Recreation and Conservation that are suitable for residential use.

§ 643-13. Residence authorized; facilities available for lease.

- A. The Department is hereby authorized to lease or license parks facilities under its jurisdiction, subject to the requirements of this article and the approval of the Suffolk County Legislature, to the following persons and in the order of priority as follows:
- (1) A current full-time employee as a Suffolk County Park Police officer.
 - (2) A current full-time employee of the Suffolk County Department of Parks, Recreation and Conservation.
 - (3) A current full-time Suffolk County law enforcement officer.
 - (4) A current full-time employee of the County of Suffolk.
 - (5) A former full-time Suffolk County law enforcement officer.
 - (6) A resident of the County of Suffolk who is a veteran of the United States Armed Forces. **[Added 6-18-2019 by L.L. No. 28-2019⁴]**
 - (7) A resident of the County of Suffolk.
- B. If a tenant retires from County employment, leaves County employment because of a disability, or changes from full-time to part-time County employment, the tenant may continue to occupy the park facility, provided that he or she meets all other conditions set forth herein.
- C. The number and location of park facilities suitable to be leased or licensed shall be determined jointly by the Commissioner and the Suffolk County Parks Trustees. Once a list is established, park facilities may be added upon a joint determination of the Commissioner and the Suffolk County Parks Trustees. A parks facility may be removed from

4. Editor's Note: This local law also redesignated former Subsection A(6) as Subsection A(7).

the list if it is determined by the Commissioner and the Parks Trustees that it is required for another park purpose such as administrative or operational space, museum use, or environmental stewardship program management.

§ 643-14. Parks Housing Rental Board.

There is hereby established a Parks Housing Rental Board ("Board"), which shall be comprised of the following members:

- A. The Commissioner of the Department of Parks, Recreation and Conservation, or his or her designee, who shall serve as the Chairperson.
- B. The Commissioner of the Department of Public Works, or his or her designee.
- C. The Director of the Historic Trust properties.
- D. The Director of the Division of Real Property Acquisition and Management, Department of Environment and Energy, or his or her designee.
- E. The Chairman of the Council on Environmental Quality Historic Trust Committee, or his or her designee.
- F. The Chairman of the Suffolk County Legislature's Parks and Recreation Committee, or his or her designee.
- G. The Presiding Officer of the Suffolk County Legislature, or his or her designee.
- H. The Minority Leader of the Suffolk County Legislature, or his or her designee.
- I. A representative of the Suffolk County Parks Trustees.

§ 643-15. Rental procedure.

- A. A listing of all parks facilities available for lease or license shall be distributed by the Department on a periodic basis to all County employees via an "All Employees Memorandum" (included with County paychecks) and the Suffolk County Intranet. The Department shall provide applications for occupancy upon request.
- B. The Division of Real Property Acquisition and Management's Appraisal Review Unit shall prepare and recommend to the Parks Housing Rental Board updated appraisals to establish current rental value for all parks facilities that are available for license by the Department. Said appraisals will include/consider the following:
 - (1) A full interior inspection of the parks facility.

- (2) The current market for residential and commercial real estate on Long Island.
 - (3) The lack of insulation and other energy-efficient features within the parks facility and any restrictions which prevent installation of energy-efficient features.
 - (4) Rental value and marketability of oil-heated parks facilities.
 - (5) External factors, i.e., isolation, risk of vandalism, diminished privacy, that affect the rental value of the facility.
- C. The Board may recommend to the Commissioner a rental value for a parks facility that is below the appraised fair market value based on one or more of the following factors:
- (1) The historic significance and vulnerability of the subject facility.
 - (2) The prospective tenant's familiarity with historic properties.
 - (3) The level of security the facility requires.
 - (4) The routine maintenance the prospective tenant will provide.
- D. The Commissioner shall review the recommendations of the Parks Housing Rental Board and submit recommendations of applications and rental charges/license fees for approval to the Suffolk County Legislature. The Commissioner may recommend, and the Legislature may adopt, rental charges/license fees below the appraised fair market value, based on the recommendation of the Parks Housing Rental Board.
- E. The Division of Real Property Acquisition and Management's Appraisal Review Unit shall update the appraisal for any rental of parks facilities upon the expiration of the lease/license of said facility.

§ 643-16. Payment of utilities; documentation of residents.

- A. Tenants or licensees living in parks facilities equipped with individual meters shall apply to the appropriate utility company for individual service to be paid for directly by the tenant or licensee to the utility company.
- B. Tenants or licensees living in parks facilities which are not equipped with individual meters shall pay a rate to be negotiated annually between the tenant and the Commissioner, which negotiated rate shall include, at a minimum, automatic increases in rent or license fees equivalent to the percentage increase in LIPA (or successor entity) rates calculated on at least an annual basis, and based on standard square-foot form and increased annually.
- C. Any tenant or licensee using or occupying such parks facilities shall be responsible for the payment of all of his or her own utility charges (heat,

gas, oil, telephone, water, electricity, etc.) and shall provide evidence of renter's insurance to the County Department of Parks, Recreation, and Conservation. In addition, tenants shall pay for each nonstructural repair to their unit.

- D. Lease agreements and license agreements entered into pursuant to authorization under this resolution shall list each person residing in the facility, and each such agreement shall be revised to list new children and/or spouses, as the case arises. Failure to disclose such information shall be a ground for eviction under the lease or license agreement.

§ 643-17. Applicability.

This article shall apply to all leases, lease renewals, lease modifications, licenses, license renewals, and license modifications affecting parks facilities entered into by the County of Suffolk on or after the effective date of this article.

ARTICLE III

**Use of Unmanned Aerial Vehicles
[Adopted 9-9-2015 by L.L. No. 29-2015]****§ 643-18. Legislative intent.**

This Legislature hereby finds and determines that the County of Suffolk is responsible for protecting the safety and welfare of its 1.5 million residents. This Legislature finds that the County, through its Department of Parks, Recreation and Conservation, owns and operates several parks which are frequented by members of the public. This Legislature also finds that advances in technology allow individuals to purchase and operate unmanned aerial vehicles (UAVs), which are controlled via remote control and can fly significant distances. This Legislature further finds that the use of UAVs has been growing in popularity and that members of the public wish to engage in this activity in Suffolk County owned parks. This Legislature determines that the safety of the public entering into Suffolk County parks is of utmost importance. This Legislature further determines that in order to better protect the public and ensure the safe use of UAVs operated upon Suffolk County owned parks, the County should institute a permitting process for UAVs launching from or landing in Suffolk County parks. Therefore, the purpose of this article is to set forth a permitting process to ensure the safe and recreational use of UAVs in Suffolk County parks where UAVs have been deemed to be an appropriate and safe activity.

§ 643-19. Definitions.

As used in this article, the following terms shall have the meaning indicated:

AIRCRAFT — A device that is used or intended to be used for flight in the air.

COMMISSIONER — The Commissioner of the Suffolk County Department of Parks, Recreation and Conservation.

DEPARTMENT — The Suffolk County Department of Parks, Recreation and Conservation.

OPERATE or OPERATING — To launch, land, or fly.

PERSON — Any natural individual, firm, partnership, association, corporation, company or other business or organization of any kind.

SUFFOLK COUNTY PARK — All public parks, beaches, wetlands, playgrounds, athletic fields, recreation centers, marinas, golf courses, open spaces and areas publicly owned and acquired for the conservation of natural resources and the enjoyment thereof by the residents of the County of Suffolk, including all buildings, structures, equipment and appurtenances located thereon, also entrances and approaches thereto and streets or roads in or through such park or parks and parts thereof, but not including any town, village, County or state highway, and such other rights and appurtenances as the Department shall utilize for its purposes, whether the same is now or hereafter owned or acquired in fee or otherwise by the

County or under the care and control of the County by lease or otherwise for park, recreation and conservation purposes, not including canals, canal locks and waterways, channels and other County-owned or leased facilities placed under the jurisdiction of the Department of Public Works as provided in Article VIII of the Suffolk County Charter.

UNMANNED AERIAL VEHICLE — An unmanned, powered aircraft that:

- A. Does not carry a human operator; and
- B. Can be autonomous or remotely piloted or operated.

UNMANNED AERIAL VEHICLE PERMIT — A permit issued by the Department allowing the launching and landing of an unmanned aerial vehicle from a Suffolk County park.

§ 643-20. Permit required.

No person shall launch or land an unmanned aerial vehicle from or in any Suffolk County park without a permit issued by the Department in accordance with this article.

§ 643-21. Exemptions.

The prohibitions established in this article shall not apply to:

- A. Unmanned aerial vehicles used by the federal government or the New York State government or a person who is using an unmanned aerial vehicle to provide contracted services to the federal government or the New York State government;
- B. Unmanned aerial vehicles used by a local police department;
- C. Persons, businesses or organizations who or which use unmanned aerial vehicles to provide contracted services to the County of Suffolk; and
- D. Persons who hold an active media press pass issued by the Police Departments of Nassau County, Suffolk County or New York City.

§ 643-22. Standards of operation.

- A. A person may only operate an unmanned aerial vehicle in those Suffolk County parks designated by the Department and only within the areas of such designated Suffolk County park as may be authorized by the Department. Prior to May 1, 2016, the Department shall set forth a list of all designated Suffolk County parks and the authorized areas within those Suffolk County parks in which unmanned aerial vehicles may be operated. This list shall be kept current and maintained on the Suffolk County website.
- B. Any person operating an unmanned aerial vehicle on County property must fly such vehicle within such person's visual line of sight.

§ 643-23. Permit procedure.

- A. The Commissioner is authorized and empowered to issue unmanned aircraft vehicle permits in accordance with this article.
- B. The Commissioner shall have the power to promulgate rules and regulations not inconsistent with the provisions of this article as may be necessary with respect to the form and content of applications for unmanned aerial vehicle permits, provided that the Commissioner first hold two public hearings prior to February 1, 2016, in order to receive input from the public regarding the establishment of an unmanned aerial vehicle permitting process, including which County parks are appropriate to allow such permits to be utilized. One such public hearing shall be held in Hauppauge, New York and one public hearing shall be held in Riverhead, New York at the Riverhead County Center.
- C. Unmanned aerial vehicle permits shall be valid for one year from the date of issuance. The yearly fee for the unmanned aerial vehicle permit shall be determined by the Department.
- D. All unmanned aerial vehicle permit applications shall be submitted in writing on forms furnished by the Department.

§ 643-24. Violations; revocation of permit.

- A. No fine may be imposed for a violation of this article nor any permit suspended or revoked until after a hearing has been held before the Commissioner or Commissioner's designee. Such hearing shall be held upon at least seven business days' notice to the person. Notice of such hearing shall be served either personally or by certified mail, return receipt requested, to the last known address of the person and shall state the date and place of the hearing as well as enumerate the grounds constituting the allegations against such person. The person may be represented by counsel and may produce witnesses in his/her/its own behalf. A record of the hearing shall be taken and preserved. For purposes of such hearing, the Commissioner or the Commissioner's designee may administer oaths, take testimony, subpoena witnesses and compel the production of books, papers, records or other documents deemed pertinent to the subject of the hearing.
- B. The Commissioner shall have the power to suspend or revoke such permit or to deny an application for such permit or for renewal of such permit based upon finding of a violation after a hearing held in accordance with this article.

§ 643-25. Enforcement.

The provisions of this article shall be enforced by the Suffolk County Department of Parks, Recreation and Conservation and the Suffolk County Police Department.

§ 643-26. Penalties for offenses.

- A. Civil penalty. A person violating this article shall be subject to a civil penalty of no less than \$250 per violation nor more than \$500 per violation. Such civil penalties may be recovered after a hearing on written notice as set forth in this article. Such civil penalty shall be in addition to any other penalty imposed by federal, local, or state law pertaining to the use of unmanned aerial vehicles.
- B. Criminal penalty. In addition to any civil penalties imposed pursuant to this article, any person who shall launch, land or operate an unmanned aerial vehicle in violation of this article shall be guilty of a misdemeanor and, upon conviction, shall be subject to a fine of not more than \$5,000 or imprisonment for not more than one year, or both. Each such violation shall be deemed a separate offense.

§ 643-27. Activities limited by other regulations.

This article shall not be construed to allow for activity that is not permitted pursuant to any federal statutes, rules or regulations governing the use of air space subject to the jurisdiction of the Federal Aviation Administration.

§ 643-28. Applicability.

This article shall apply to all actions occurring on or after the effective date of this article.

§ 643-29. When effective.

This article shall take effect 60 days following its filing in the Office of the Secretary of State.

ARTICLE IV

Distribution of Single-Use Plastics
[Adopted 4-9-2019 by L.L. No. 15-2019]**§ 643-30. Legislative intent.**

This Legislature hereby finds and determines that the County of Suffolk is a national leader in the field of environmental protection, as it strives to protect the natural resources and beauty of Long Island. This Legislature also finds and determines that the County has enacted a wide variety of environmental protection laws, from the establishment of farmland and open space preservation programs to recent legislation which imposed a fee on single-use plastic bags and established a task force to reduce the consumption of single-use plastics locally. This Legislature further finds and determines that straws contribute to plastic pollution that litters the ground and clogs oceans, rivers and waterways. This Legislature finds that while many plastics are recyclable, plastic straws are so lightweight that they are not captured by mechanical sorters that pick up waste. As a result, straws are frequently found as pollution debris in our environment, parks and beaches. This Legislature determines that the County owns and stewards a vast network of parkland to provide passive and active outdoor recreation opportunities while preserving the natural beauty of Long Island. This Legislature also finds that concessions are available at some County parks with active recreation areas, which offer food and drinks for sale to park visitors. Presently, many of these concessionaires provide plastic drinking straws, cups and utensils to customers with the products they sell. This Legislature further finds that there are a number of alternatives to single-use plastics, including products made from paper, bamboo or other biodegradable materials. This Legislature determines that in order to better protect the pristine nature of County parkland, reduce litter and encourage environmentally sustainable practices, concessionaires in Suffolk County parks should be required to provide disposable straws, cups and utensils to its customers which are biodegradable. Therefore, the purpose of this article is to require that all future contracts with concessionaires at County parks include a clause prohibiting the use of plastic or nonbiodegradable single-use plastic beverage straws, cups and utensils.

§ 643-31. Definitions.

As used in this article, the following terms shall have the meanings indicated:

BEVERAGE STRAW — A tube used for transferring a beverage from its container to the mouth of a consumer.

BIODEGRADABLE — The ability of a material to break down, within one year, into natural materials in the natural environment without causing harm.

DISABILITY — A physical, intellectual or sensory impairment that substantially limits one or more major life activities.

MEDICAL CONDITION — Any illness, disease, disorder or injury that requires medical treatment.

PLASTIC — A synthetic material made from organic polymers, including, but not limited to, polypropylene and polystyrene, that can be molded into shape while soft, and then set into a rigid or slightly elastic form.

SINGLE USE — A product that is designed and intended to be used only once and is generally recognized by the public as an item that is to be discarded after one use.

UTENSIL — A fork, spoon, knife or beverage stirrer.

§ 643-32. Future concession licenses; exception.

- A. All concession licenses and license renewals entered into by the Suffolk County Department of Parks, Recreation and Conservation on or after the effective date of this article shall contain a provision barring the concessionaire from selling or distributing single-use cups, utensils, plates, trays, bowls, or beverage straws made from plastic or other nonbiodegradable substances. This restriction shall not apply to prepackaged individual serving beverages where a small plastic straw is included in the packaging.
- B. Concessionaires may provide suitable beverage straws, including those prohibited by this section, to an individual that requires a plastic straw due to a disability or medical condition.

§ 643-33. Applicability.

This article shall apply to all concession license contracts and license renewals entered into pursuant to requests for proposals issued by the Department of Parks, Recreation and Conservation on or after the effective date of this article.

§ 643-34. Severability.

If any clause, sentence, paragraph, subdivision, section, or part of this article or the application thereof to any person, individual, corporation, firm, partnership, entity, or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section, or part of this article, or in its application to the person, individual, corporation, firm, partnership, entity, or circumstance directly involved in the controversy in which such order or judgment shall be rendered.

Chapter 717

SCAFFOLDS

GENERAL REFERENCES

Building construction — See Ch. 344.

Commercial and industrial painting businesses — See Ch. 563, Art. VIII.

Home improvement — See Ch. 517.

§ 717-1. Legislative intent.

- A. This Legislature hereby finds and determines that supported scaffolds are often utilized as part of a construction project and that the erection of supported scaffolds in excess of 20 feet in height in connection with construction projects potentially poses a risk to the safety of the public as well as public and private property within the County of Suffolk.
- B. This Legislature also hereby finds that, over the past 10 years, scaffolding collapses have led to property damage, severe injury, and even death not only to construction workers, but to members of the public as well.
- C. This Legislature further finds that the risk of injury and death to members of the public and the threat of costly damage to property will be reduced and overall public safety will be enhanced by a requirement that persons working with scaffolds within the County of Suffolk have the requisite training and expertise to utilize and maintain supported scaffolds in a responsible and safe manner.
- D. Therefore, the purpose of this chapter is to establish a requirement that individuals working with scaffolds in excess of 20 feet in height within the County of Suffolk first complete approved training and refresher courses offered by Occupational Safety and Health Administration (OSHA) certified instructors.

§ 717-2. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

COMMISSIONER — The Commissioner of the Department of Public Works, or his or her designee.

SUPPORTED SCAFFOLD — One or more platforms supported by outrigger beams, brackets, poles, legs, uprights, posts, frames, or similar rigid support 20 feet in height or more and including, but not limited to, sidewalk bridge scaffolds, single pole scaffolds, tube and coupler scaffolds, fabricated frame scaffolds, tubular welded frame scaffolds, outrigger scaffolds, needle beam scaffolds, mobile scaffolds, repair bracket scaffolds, mast climber scaffolds that are mechanized or motorized, back structures for personnel

hoists and/or material hoists and system scaffolds. Any sidewalk shed that provides a base for a supported scaffold will subject the entire structure, including the sidewalk shed, to the requirements of this chapter.

§ 717-3. Certificate of completion required.

It is unlawful for any individual to erect, dismantle, repair, maintain or modify any supported scaffold within the County of Suffolk, or to be on any supported scaffold assisting in the erection, dismantling, repair, maintenance or modification of any supported scaffold within the County of Suffolk, unless such individual has been issued a supported scaffold certificate of completion under the provisions of this chapter.

§ 717-4. Exemptions.

The provisions of this chapter shall not apply to:

- A. The erection, dismantling, repair, maintenance or modification of any supported scaffold performed by an employee of a public utility or any federal, state or local government or any agencies thereof when such supported scaffold is located within the interior of a building or structure owned or operated by such utility or federal, state or local government or any agencies thereof, and when such public utility or federal, state or local government or any agencies thereof have a safety training program of not less than 32 hours for their employees who erect, dismantle, repair, maintain or modify such scaffolds.
- B. Employees of a public utility or any federal, state or local government or any agencies thereof performing work while using a supported scaffold, provided that such employees are trained, pursuant to the United States Department of Labor's OSHA requirements, to be able to recognize the hazards associated with the type of supported scaffold being used, and to understand the procedures to control those hazards.
- C. The erection, dismantling, repair, maintenance or modification of standalone, one-story sidewalk sheds.

§ 717-5. Training requirements.

In order to obtain and hold a supported scaffold certificate of completion, an individual shall have successfully completed the thirty-two-hour training program or course pursuant to the United States Department of Labor's OSHA thirty-two-hour scaffold safety and training curriculum and conducted pursuant to a registered New York State Department of Labor apprenticeship program or conducted by an educational institution or school chartered, licensed or registered by the New York State Department of Education, and, if such training program or course has been completed more than two years previously, taken an eight-hour scaffold safety and training refresher program or course. Successful completion of the training program or course shall be evidenced by a dated supported scaffold certificate of completion issued by the provider of the training program

or course to the individual participant named on such certificate. This certificate of completion, or a true copy thereof, shall be readily available to the Commissioner upon request. Such supported scaffold certificate shall be deemed valid if such certificate is dated within two years of its date of issuance. Any training program or course presented under the provisions of this section must be presented by instructors who are certified under the applicable provisions established by the United States Department of Labor's OSHA for construction safety.

§ 717-6. Penalties for offenses.

- A. The Commissioner shall have the power to impose a fine not to exceed \$500 for a first violation and \$1,500 for any subsequent violation upon an individual who violates any of the provisions of this chapter.
- B. No fine shall be imposed until after a hearing has been held before the Commissioner upon at least five business days' notice to the alleged violator. Such notice shall be served either personally or by certified mail, return receipt requested, to the last known address of the alleged violator and shall state the date and place of the hearing as well as enumerate the grounds constituting the allegations. The alleged violator may be represented by counsel and may produce witnesses in his or her own behalf. A record of the hearing shall be taken and preserved. For purposes of such hearing, the Commissioner may administer oaths, take testimony, subpoena witnesses and compel the production of books, papers, records or other documents deemed pertinent to the subject of the hearing.

§ 717-7. Powers of Commissioner.

- A. The Commissioner shall have the power to:
 - (1) Keep records of all fines adjudged; and
 - (2) Promulgate such rules and regulations not inconsistent with the provisions of this chapter as may be necessary with respect to the administration and enforcement of this chapter and other matters incidental or appropriate to his or her powers and duties as prescribed by this chapter, and to amend or repeal any such rules and regulations.
- B. No rule or regulation may be promulgated pursuant to Subsection A(2) herein unless a public hearing is held by the Commissioner. At least seven business days' prior notice of such public hearing shall be published in the official newspapers of the County of Suffolk. A copy of all rules and regulations promulgated and any amendments thereto shall be filed in the office of the Clerk of the County Legislature.
- C. Whenever in this chapter the Commissioner is empowered to or charged with the responsibility to do or perform any act, he or she may

deputize, in writing, any officer or employee of the office to do or perform the act in his or her place and stead.

§ 717-8. Injunctive relief.

Upon application of the Commissioner, the County Attorney may commence an action in the name of the County of Suffolk to restrain, prevent and enjoin a violation of this chapter or any rule or regulation promulgated hereunder or any continuance of such violation.

§ 717-9. Applicability.

This chapter shall apply to any actions occurring on or after its effective date.

§ 717-10. When effective.

This chapter shall take effect 12 months after its filing in the office of the Secretary of State.

Chapter 759

STORM SEWERS

GENERAL REFERENCES

Sewers — See Ch. 740.

**Disposal of stormwater placement — See Ch.
1133, Art. I.**

Stormwater management — See Ch. 763.

ARTICLE I

Illicit Discharges and Connections to Storm Sewer System
[Adopted 4-29-2008 by L.L. No. 12-2008 (Ch. 445, Art. I, of the 1985 Code)]

§ 759-1. Legislative intent.

- A. This Legislature hereby finds that Suffolk County owns and operates a municipal separate storm sewer system ("municipal system").
- B. This Legislature further finds that the County is required to implement a local law to enforce local programs to detect and eliminate illicit discharges and illicit connections to the municipal system and reduce the discharge of pollutants into the municipal system pursuant to 33 U.S.C. § 1342, the rules and regulations promulgated thereunder and New York Environmental Conservation Law Article 17, Title 8.
- C. This Legislature further finds it necessary to provide for the health, safety, and general welfare of the citizens of Suffolk County by protecting against illicit discharges and illicit connections to the municipal system that result in:
 - (1) An increase of a pollutant of concern;
 - (2) A violation of a total maximum daily load allocation;
 - (3) A violation of a federal or state water quality standard; or
 - (4) A violation of the State Pollutant Discharge Elimination System General Permit No. GP-02-02, as amended, for stormwater discharges from municipal separate storm sewer systems, issued by the New York State Department of Environmental Conservation to Suffolk County pursuant to New York State Environmental Conservation Law Article 17, Title 8.
- D. This Legislature further finds that the above General Permit No. GP-02-02, as amended, also requires the County to implement a local law to detect and prohibit illicit discharges to the municipal system and to implement appropriate enforcement procedures and actions.
- E. This Legislature further finds it necessary to establish a mechanism to recoup the cost of detecting and eliminating illicit discharges and illicit connections to the municipal system and the cost of damages to the municipal system caused by nonstormwater discharges.
- F. Therefore, the purpose of this article is to create a local law for controlling illicit discharges and illicit connections into the municipal system, to protect the health and safety of the citizens of Suffolk County, and to establish an enforcement program to accomplish these goals.

§ 759-2. Definitions.

As used in this article, the following terms shall have the meanings indicated:

COMMISSIONER — The Commissioner of the Suffolk County Department of Public Works, or his designee.

DYE TESTING — A test to determine whether a connection to the municipal system exists.

ILLICIT CONNECTION — Any drain or conveyance, whether on the surface or subsurface, direct or indirect, which allows an illicit discharge to the municipal system.

ILLICIT DISCHARGE — Any direct or indirect nonstormwater discharge to the municipal system, except as exempted in § 759-4 of this article.

ILLICIT DISCHARGE DETECTION AND ELIMINATION ENFORCEMENT OFFICER — An employee of Suffolk County empowered to administer and enforce the illicit discharge detection and elimination component of the stormwater management program.

MUNICIPAL SEPARATE STORM SEWER SYSTEM ("MUNICIPAL SYSTEM") — A conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, retention basins, outfall structures or storm drains):

- A. Owned or operated by Suffolk County;
- B. Designed or used for collecting or conveying stormwater;
- C. Which is not a combined sewer; and
- D. Which is not part of a publicly owned treatment works, as defined by 40 CFR 122.2.

POLLUTANT OF CONCERN — A substance on the most current list prepared by the Commissioner of the Suffolk County Department of Public Works, on file with the Office of the Clerk of the County Legislature, which specifies the primary pollutants causing pollution of water bodies listed pursuant to Section 303(d) of the Clean Water Act [33 U.S.C. § 1313(d)].

RESPONSIBLE DISCHARGER — Any individual, corporation, association, partnership, or other entity recognized by law causing or permitting to be caused a violation of this article.

STORMWATER — Rainwater, surface runoff, snowmelt and drainage.

STORMWATER MANAGEMENT OFFICER — An employee of Suffolk County designated to provide overall management and oversight of the stormwater management program.

TOTAL MAXIMUM DAILY LOAD ALLOCATION — The maximum amount of a pollutant allowed to be released under Section 303(d) of the Clean Water Act and regulations promulgated thereunder.

WATER QUALITY STANDARD — Such measure of purity or quality for any waters in relation to their reasonable and necessary use as may be established by:

- A. The New York State Department of Environmental Conservation pursuant to New York Environmental Conservation Law § 17-0301 and 6 NYCRR Parts 700 through 706;
- B. The New York State Department of Health, pursuant to the Public Health Law; or
- C. The United States Environmental Protection Agency, pursuant to the Clean Water Act.

§ 759-3. Prohibitions.

- A. It shall be unlawful to cause, or engage in any activity that reasonably may be expected to cause, an illicit discharge into the municipal system.
- B. It shall be unlawful to make, or permit to be made, any illicit connections to the municipal system.

§ 759-4. Illicit discharge remediation requirements.

- A. In the event of any illicit discharge, the responsible discharger shall immediately notify the appropriate emergency response agencies and the Commissioner, and take all necessary steps to investigate, contain, eliminate and abate or remediate such release as required by any federal, state or local law.
- B. The responsible discharger shall, as soon as reasonably practicable after an illicit discharge, notify the Commissioner in writing of such discharge. Such notification shall contain information required by the rules and regulations promulgated hereunder.
- C. The owner or operator of a commercial or industrial establishment at which the illicit discharge occurs shall retain on-site a written record of the discharge and those actions taken to prevent recurrence of the illicit discharge. Such records shall be retained for a period of three years as measured from the date of the illicit discharge.
- D. The remediation requirements set forth in this section shall not be construed to constitute compliance with other applicable laws, rules or regulations.

§ 759-5. Exemptions.

- A. The following discharges shall be exempt from the prohibitions of this article unless such discharges have been previously determined to be substantial contributors of pollutants by the Suffolk County Department

of Health Services or the New York State Department of Environmental Conservation:

- (1) Water line flushing or other potable water sources;
 - (2) Landscape irrigation or lawn watering;
 - (3) Existing diverted stream flows;
 - (4) Rising groundwater;
 - (5) Uncontaminated groundwater infiltration to storm drains;
 - (6) Pumped groundwater;
 - (7) Uncontaminated water from foundation or footing drains, crawl spaces or basement sump pumps;
 - (8) Air-conditioning condensate;
 - (9) Water from individual residential car washings;
 - (10) Dechlorinated swimming pool discharges;
 - (11) Residential street washwater; and
 - (12) Discharges from fire-fighting activities.
- B. The Commissioner may, in writing, approve an exemption which authorizes a discharge necessary to protect life or property from imminent harm or damage; provided, however, that such approval shall not be construed to constitute compliance with other applicable laws, rules and regulations, and further provided that such approval shall contain such conditions as deemed appropriate in the Commissioner's sole discretion.
- C. The Commissioner may, in writing, approve an exemption which authorizes a dye testing discharge; provided, however, that such approval shall not be construed to constitute compliance with other applicable laws, rules and regulations, and further provided that such approval shall contain such conditions as deemed appropriate in the Commissioner's sole discretion.
- D. The prohibitions in this article shall not apply to any discharge permitted under a National Pollutant Discharge Elimination System Permit issued pursuant to 33 U.S.C. § 1342, a State Pollutant Discharge Elimination System permit issued pursuant to New York Environmental Conservation Law Article 17, Title 8, and any waiver or waste discharge order issued to the discharger under the authority of an authorized governmental agency; provided, however, that the discharger is in full compliance with such permit, waiver or order.
- E. The exemptions set forth in this section shall not be construed to constitute compliance with other applicable laws, rules or regulations.

§ 759-6. Rules and regulations.

- A. The Commissioner, in consultation with the Suffolk County Department of Health Services and the Suffolk County Department of Environment and Energy, shall promulgate such rules and regulations as deemed necessary and appropriate for the implementation and enforcement of any provision of this article. Such rules shall govern the conduct of adjudicatory proceedings and appeals, and the Commissioner is hereby authorized and empowered to consult with the County Attorney to draft such rules providing for due process procedural mechanisms.
- B. The Suffolk County Department of Health Services and the Suffolk County Department of Environment and Energy are hereby authorized, empowered and directed to provide such resources to the Commissioner as may be needed to implement this article.
- C. The Commissioner is hereby authorized, empowered and directed to appoint one or more Stormwater Management Officers and Illicit Discharge and Detection Elimination Enforcement Officers, from the ranks of personnel of the Department of Public Works, the Suffolk County Department of Health Services or the Suffolk County Department of Environment and Energy, and, upon consultation with said department management, may refer one or more functions necessary for the implementation of this article to those departments.

§ 759-7. Penalties for offenses.

- A. A willful violation of the provisions of § 759-3 of this article shall be deemed a misdemeanor.
- B. Any violation of any provision this article shall be subject to a civil penalty, in an amount not less than \$250 nor more than \$1,000.
- C. Each day of continued violation not corrected to the Commissioner's satisfaction in compliance with this article shall constitute a separate additional violation.

§ 759-8. Enforcement.

The County Attorney or the Suffolk County District Attorney may commence legal proceedings to restrain, prevent and enjoin a violation of this article or any rule or regulation promulgated hereunder, to seek civil penalties, equitable remedies, damages, criminal fines and sanctions, and such other and further relief as may be deemed appropriate.

§ 759-9. Applicability.

This article shall apply to all illicit discharges and illicit connections occurring on or after the effective date of this article.

Chapter 763

STORMWATER MANAGEMENT

GENERAL REFERENCES

Dumping and littering — See Ch. 433.

Surface water protection — See Ch. 1133.

Storm sewers — See Ch. 759.

ARTICLE I

Protection of Recharge Basins

[Adopted 10-25-1988 by L.L. No. 38-1988 (Ch. 446, Art. I, of the 1985 Code)]

§ 763-1. Legislative intent.

- A. This Legislature hereby finds and determines that recharge basins located within the County of Suffolk provide a critical function in the hydrogeologic cycle which should be protected and preserved to the maximum extent possible.
- B. This Legislature further finds and determines that the use of recharge basins to collect storm runoff and retain it for groundwater recharge purposes has been crucial in facilitating groundwater recharge areas within the County of Suffolk as the County has become increasingly urbanized through extensive development resulting in the creation of impervious surfaces.
- C. This Legislature also determines that many such recharge basins are not being properly maintained within the County of Suffolk and, in some cases, are being used for purposes in direct contradiction to their primary function by virtue of such activities as the dumping of construction debris and the temporary storage of machinery and building materials at such sites.
- D. Therefore, the purpose of this article is to establish a mechanism for the designation and protection of those recharge basins owned and/or operated or maintained by the County of Suffolk, currently approximating 250 such sites.

§ 763-2. Definitions.

As used in this article, the following terms shall have the meanings indicated:

DEPARTMENT — The Suffolk County Department of Public Works.

RECHARGE BASIN — An excavated area, located within the County of Suffolk, which is generally associated with roadways, parking lots and paved or altered areas, which is designed to hold stormwater runoff and certain other waters for the purpose of recharging the collected water back to the groundwater system. This term shall include those sites commonly known as "sumps."

§ 763-3. Designation of water recharge protection areas; posting of signs.

- A. Any recharge basin owned and/or operated or maintained by the County of Suffolk is hereby designated as a "water recharge protection area."

- B. All such water recharge protection areas shall be posted with signs facing out from each side of their perimeter with the following information, to be set forth in conspicuous lettering on a contrasting background:
- (1) Designation of the site as a water recharge protection area;
 - (2) Statement of the site's function and importance in groundwater recharge;
 - (3) Prohibition against the dumping of any material within the water recharge protection area or around its perimeter;
 - (4) Telephone number for reporting alleged violations of this article to a County agency or department; and
 - (5) Penalties imposed for illegal dumping within such water recharge protection area pursuant to pertinent provisions of this article.

§ 763-4. Dumping prohibited.

No person shall throw, dump, deposit, place or cause to be thrown, dumped, deposited or placed upon any recharge basin owned and/or operated or maintained by the County of Suffolk, in whatever capacity and for whatever purpose, any refuse, trash, garbage, debris, rubbish or litter, without the written consent of the County of Suffolk.

§ 763-5. Penalties for offenses.

A violation of the provisions of § 763-4 above shall be punishable as an unclassified misdemeanor, subject to a fine of \$1,000. Every day of violation shall constitute a separate offense.

§ 763-6. Applicability.

Nothing contained in this article shall be construed as prohibiting any town or village within the County of Suffolk from enforcing the provisions of anti-litter ordinances on public property if such ordinances were enacted and in effect prior to the effective date of this article.¹

1. Editor's Note: Former § 446-7, Management and protection regulations, which immediately followed this section, was deleted at time of adoption of Code (see Ch. 1, General Provisions, Art. IV).

ARTICLE V
Highway Work Fees
[Adopted 8-28-1990 by Res. No. 764-1990 (Ch. 651 of the
1985 Code)]

§ 948-13. Authorization to set fees.

The Suffolk County Department of Public Works, through the County Superintendent of Highways, is hereby authorized, empowered and directed, pursuant to § C8-2H of the Suffolk County Charter, to impose a schedule of fees for the issuance of highway work permits for construction, reconstruction, maintenance or improvements done on County roads or County road rights-of-way, fee assessments for planning comments and curb cut permits, which schedule of fees shall be submitted to the County Legislature for ratification, approval and amendment before such schedule of fees or amendments thereto shall take effect.

§ 948-14. Schedule of fees. [Amended 11-4-1991 by Res. No. 807-1991; 9-23-1992 by Res. No. 743-1992; 11-18-2008 by Res. No. 950-2008; 9-15-2011 by L.L. No. 49-2011]

The following fees are hereby imposed:

A. Utility highway work permit fees.

| Type of Work | Base Fee | Additional Fee |
|-------------------------------------------------|---------------------|-----------------------|
| 1. Underground (first 1,000 linear feet) | \$1 per linear foot | |
| A. Trenching, jacking or direct boring | \$1 per linear foot | |
| B. Bell holes | \$100 each | |
| C. Residential subdivisions (see A and B above) | \$1 per linear foot | |
| Underground (for any amount over 1,000 feet) | | |

| Type of Work | Base Fee | Additional Fee |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------|-----------------------|
| D. If the installation of underground facilities exceeds 1,000 linear feet, in total or in part, an inspection fee, in addition to the base fee, will be required. This additional fee will be calculated at \$5 per linear foot of trench required to install facilities, and is payable to the County prior to the issuance of the permit. | \$5 per linear foot of trench required to install facilities | |
| E. After original service installation Note: No charge for servicing single residential homes. | \$1 per linear foot | |
| 2. Overhead Facilities | | |
| A. Install poles, towers, etc. | \$100 per unit | |
| B. Overhead wires | \$1 per linear foot | |
| C. Attachments (i.e., transformers, switches, etc.) Note: No charge for servicing single residential homes. | \$100 | |
| Note: For #1 and #2, fees will be waived for County-requested relocations. | | |
| 3. Utility Installations on Bridges or Culverts | | |
| A. Nonrequired structural change | \$1 per linear foot | |

| Type of Work | Base Fee | Additional Fee |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------|-----------------------------------------------------------------------------------------|
| B. Installation requiring structural change | \$1,000 | Review fee of not less than \$1,000 per day or any portion thereof for DPW staff review |
| 4. Maintenance | | |
| A. Repairs | \$100 per job | |
| B. Annual tree work or trimming for overhead lines | \$5,000 per year | |
| 5. Telecommunications | | |
| Transmission (nondistribution or local) | | |
| A. Underground conduit (ducts), cables, inner duct, wires and manholes | \$5 per linear foot of trench | \$1 per linear foot of trench annually thereafter |
| 6. Public Telephones | | |
| A. Public telephones are not permitted within the County right-of-way. | NA | |
| B. Review fees for planning comments requested by various municipalities or comments requested pursuant to § 239-f of the New York General Municipal Law shall be set forth based on the highest two-way peak-hour driveway traffic volumes as follows: | | |
| Number of Vehicles in Highest Two-Way Peak Hour | Fee | |
| 0 to 49 vehicles generated | \$200 | |
| 50 to 99 vehicles generated | \$400 | |
| 100 to 199 vehicles generated | \$800 | |
| 200 to 299 vehicles generated | \$1,200 | |
| 300 to 399 vehicles generated | \$1,600 | |

**Number of Vehicles in Highest Two-Way
Peak Hour**

Fee

| | |
|---------------------------------|-------------------------------|
| 400 to 499 vehicles generated | \$2,200 |
| 500 to 749 vehicles generated | \$3,300 |
| 750 and over vehicles generated | \$10 per vehicle generated |

Note: There is no review fee for non-subdivision singular residential homes.

- C. The permit fee for highway work permits under § 136 of the New York Highway Law, excluding non-subdivision singular residential homes, shall be 10% of the value of the work, as determined by the Department of Public Works.
- D. Copies of road record maps.

Map Sale Prices

Size

(inches)

Price

| | |
|---------------------------------|--------|
| 8 1/2 x 11 | \$1.50 |
| 8 1/2 x 18 | \$3 |
| 8 1/2 x 36 | \$3 |
| 18 x 17 | \$4 |
| 17 x 36 | \$5 |
| 22 x 36 | \$5 |
| 24 x 36 | \$5 |
| Printed County road map (small) | \$2.50 |
| County road map (8 feet) | \$5 |

- E. The review and permit fee for private signage located within Suffolk County property, including, but not limited to, right-of-way, under § 136 of the New York Highway Law, shall be \$5 per square foot of each sign facet. All signage shall be installed as per regulations set forth by the Commissioner of the Suffolk County Department of Public Works.
- F. The impact assessment fee shall be computed using the following Impact Assessment Schedule promulgated by the County Highway Superintendent pursuant to New York State Highway Law § 136(2), utilizing the highest two-way peak-hour driveway

traffic volumes as follows: **[Amended 9-12-2013 by Res. No. 671-2013]**

Number of Vehicles in Highest

| Two-Way Peak Hour | Impact Assessment Fee |
|--------------------------|------------------------------|
| 0 to 10 | \$0 |
| 11 to 25 | \$25 x vehicles generated |
| 26 to 99 | \$40 x vehicles generated |
| 100 to 199 | \$100 x vehicles generated |
| 200 to 299 | \$120 x vehicles generated |
| 300 to 399 | \$160 x vehicles generated |
| 400 to 499 | \$200 x vehicles generated |
| 500 to 549 | \$285 x vehicles generated |
| 550 to 599 | \$370 x vehicles generated |
| 600 to 649 | \$455 x vehicles generated |
| 650 to 699 | \$540 x vehicles generated |
| 700 to 749 | \$625 x vehicles generated |
| 750 to 799 | \$710 x vehicles generated |
| 800 and over | \$800 x vehicles generated |

Note: The impact assessment calculation shall be a straight calculation based upon ITE (Institute of Traffic Engineers) data and will not utilize any trip credits.

§ 948-15. Approval of schedule. [Amended 11-18-2008 by Res. No. 950-2008]

The imposition of such fees or amendments thereto shall be subject to approval and ratification by the County Legislature.

§ 948-16. Applicability.

No permits shall be issued for any land which is the subject matter of an Open Space Program acquisition or 1/4% County Drinking Water Protection Program (Article XII of the Suffolk County Charter) acquisition.

§ 948-16.1. Deposit of fees. [Added 11-18-2008 by Res. No. 950-2008]

All permit and inspection fees imposed by the County Highway Superintendent under § 136(2) of the New York State Highway Law shall be collected and deposited with the Department of Public Works in 01-1490-0206-4560.

Chapter 8. Bay and Harbor Bottoms

[HISTORY: Adopted by the Town Board of the Town of Brookhaven 6-16-1987 by L.L. No. 7-1987; amended in its entirety 3-17-1998 by L.L. No. 6-1998, effective 3-20-1998. Subsequent amendments noted where applicable.]

GENERAL REFERENCES

Parks and recreation areas — See Ch. 10.

Boat control — See Ch. 13.

Houseboats — See Ch. 14.

Docks — See Ch. 22.

Shellfish — See Ch. 57.

Brookhaven-Port Jefferson Harbor Complex Waterway — See Ch. 74.

§ 8-1. Legislative intent.

The bay and harbor bottoms of the Town of Brookhaven are an important natural resource which supports a diverse assemblage of benthic fauna. The commercial and recreational harvesting of shellfish continues to provide a livelihood and a means of recreation to the residents of the Town of Brookhaven. In recent years, there has been a dramatic increase in the number of boat moorings placed on Town-owned underwater lands. The unregulated, unplanned, and uncontrolled placement of moorings has resulted in use conflicts between the baymen, some recreational boaters and the mooring owners. By virtue of the Town of Brookhaven's ownership of the lands underwater, it is the intent of this chapter to regulate the placement of boat moorings to avoid use conflicts and provide for safe navigation and the protection of existing natural resources, public health and welfare, and to ensure that areas for water-dependent recreational activities are available to the residents of the Town of Brookhaven.

§ 8-2. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

BOAT or VESSEL

Any watercraft or other contrivance used on or capable of being used as a means of transportation in water.

CATWALK

An elevated walkway, usually built to gain access to a commercial or residential dock, built at a fixed height above grade and which is constructed landward of the apparent highwater line.

[Added 1-25-2018 by L.L. No. 2-2018, effective 2-6-2018]

COMMISSIONER

The Commissioner of Planning, Environment and Land Management.

[Added 1-25-2018 by L.L. No. 2-2018, effective 2-6-2018]

DESIGNATED MOORING AREA

See “mooring area.”

DIRECTOR

The Director of the Division of Environmental Protection or the designee of the Commissioner of Planning, Environmental and Land Management.

[Amended 1-25-2018 by L.L. No. 2-2018, effective 2-6-2018]

DOCK MAINTENANCE AND REPAIR

The customary, usual and normal activity to restore the sound and good state of a dock after normal decay or degradation from normal use or exposure to the elements. This includes the routine maintenance necessary from time to time to keep a structure in a state of good repair, including, but not limited to: the incidental replacement of decking lumber for a dock, catwalk, or floating dock or other alterations which do not require a building permit, increase the square footage of an existing structure, or replace structural supports that are anchored or installed firmly into the ground or provide load-bearing support.

[Added 1-25-2018 by L.L. No. 2-2018, effective 2-6-2018]

DOCK PERMIT

That form of written Town approval required to place a dock on Town-owned land and underwater lands as specified under this chapter.

[Added 1-25-2018 by L.L. No. 2-2018, effective 2-6-2018]

FIXED DOCK

An elevated walkway which is constructed at a fixed height above grade and which extends seaward from the apparent high-water line.

[Added 1-25-2018 by L.L. No. 2-2018, effective 2-6-2018]

FLOATING DOCK

Any structure, raft or floating platform which is designed to float upon the surface of a water body and is secured in place by poles, pilings, anchors, or any other type of mooring system that provides access to the water. A floating dock shall include the float itself, any pilings or mooring system designed to keep the dock at a fixed point and the ramp, which spans the distance from a fixed structure (fixed dock or bulkhead) or shoreline to the floating dock.

[Added 1-25-2018 by L.L. No. 2-2018, effective 2-6-2018]

FLOATING HOME

Any vessel in fact used, designed or occupied as a dwelling unit, business office or source of any occupation or for any private or social club of whatsoever nature, including but not limited to a structure constructed upon a barge primarily immobile and out of navigation which functions substantially as a land structure while the same is moored or docked within the municipal limits of the Town of Brookhaven, whether or not such vessel is self-propelled.

MOORING

Any anchorage system which by design and/or construction is not capable of or is not normally retrieved when a vessel or boat leaves its anchorage, or is used to semipermanently secure in place any boat, barge, floating home, scow, raft, float, or any other vessel or floating object. A mooring includes, but is not restricted to, an anchorage system consisting of an anchor or weight attached to a length of chain and/or line secured to a mooring buoy or float.

MOORING AREA (also designated mooring area)

Any Town-owned bay or harbor bottom, or other underwater lands, so designated by the Trustees of the Freeholders and Commonalty of the Town of Brookhaven as such, where mooring may occur without a mooring permit as required by this chapter.

MOORING PERMIT

That form of written Town approval required to place a mooring on Town-owned underwater lands as specified under this chapter.

MOORING TACKLE

Any assemblage of hardware, rope, line, wire or chain which is used to attach a mooring anchor or weight to a float or buoy.

MOUNT SINAI HARBOR MOORING AREA

All that area of land underwater depicted by a map entitled "MOUNT SINAI HARBOR MOORING AREA" as "Mooring Areas - Permit Required" and those lands indicated on said map as "Leased and/or Licensed Underwater Lands No Public Mooring" and further described as located north of the tidal marsh islands and excluding the areas: within the navigational channel; all areas within 100 feet of the apparent low water mark of the shoreline of Mount Sinai Harbor; all areas within 100 feet of any marsh island as measured by the seaward limit of the *Spartina alterniflora* vegetation; all areas within 100 feet of any Town dock, commercial or private dock, launching ramp or Town-leased and/or -licensed underwater lands.

NAVIGATION LANES

Those channels so designated and identified on federal navigation charts and those channels in common use for local navigation and so identified by navigational buoys or markers.

PERSON

Any firm, partnership, corporation, association or individual.

PORT JEFFERSON COMPLEX MOORING AREA

All that area situate within the area 100 feet east of the main navigational channel and south of the line drawn 1,500 feet north of the existing location of the green navigational "7" buoy to a point of land located at the northernmost point of the bulkhead located at the end of Motts Hollow Road, excluding those areas within 200 feet of the apparent low water mark of any shoreline, within 500 feet of any recreational or commercial dock or pier or within 1,500 feet of the northernmost tip of the Bridgeport-Port Jefferson ferry terminal dock; all that area known as "Setauket Harbor" and located west and south of an imaginary line extending west into the harbor from the intersection of Van Brunt Manor Road and Tinker Lane in Poquott and excluding all areas within one hundred 100 feet of the apparent low water mark of the shoreline, and those areas known as "Little Bay" and "Scott's Cove."

PORT JEFFERSON HARBOR COMPLEX

The surface waters of Port Jefferson Harbor, Setauket Harbor, Lithe Bay, Conscience Bay, the Narrows and 1,500 feet north of Mount Misery extending west following the shoreline to 1,500 feet northwest of Old Field Point, also known as the "Harbor Complex."

[Added 4-17-2001 by L.L. No. 13-2001, effective 4-20-2001]

POWER DREDGING

The action by which a powered vessel is tied to a dock or anchored to a stationary point while the motor is engaged to blow out or remove sediments using the prop wash to scour the material around a dock to increase water depth.

[Added 1-25-2018 by L.L. No. 2-2018, effective 2-6-2018]

RESIDENTIAL DOCK

Any fixed dock and/or floating dock designed or constructed as a continuous unit to provide access to the surface waters from a lot that is zoned for residential use. The term "dock" shall include all associated structures such as ramps and mooring piles.

[Added 1-25-2018 by L.L. No. 2-2018, effective 2-6-2018]

TOWN MOORING AREA

A mooring area designated by the Town Board pursuant to § 10-29D(2) of the Brookhaven Town Code, and any amendments thereto.

[Added 4-17-2001 by L.L. No. 13-2001, effective 4-20-2001]

TOWN-OWNED UNDERWATER LANDS

The bottom of any bay, creek, harbor or tidal wetland over which the tide ebbs and flows, the title to which is vested in the Trustees of the Freeholders and Commonalty of the Town of Brookhaven or in the Town of Brookhaven.

§ 8-3. Uses restricted.

- A. No person shall place or cause to be placed a mooring on any underwater lands within the Town of Brookhaven without first obtaining a mooring permit from the Town of Brookhaven's Division of Environmental Protection.
[Amended 4-17-2001 by L.L. No. 13-2001, effective 4-20-2001]
- B. No person shall tie to or secure any boat, vessel, floating home, barge, scow, raft, float or any other object to any mooring which has not first received a mooring permit from the Town of Brookhaven's Division of Environmental Protection.
[Amended 4-17-2001 by L.L. No. 13-2001, effective 4-20-2001]
- C. Exceptions. The requirements of this chapter shall not be applicable to the following uses:
 - (1) Temporary mooring installed to facilitate work on projects for which a valid wetlands and waterways permit has been issued by Town of Brookhaven;
 - (2) Temporary mooring installed to facilitate work on projects financed or undertaken by the government of the United States of America, the State of New York, or any political subdivision thereof, the County of Suffolk, or the Town of Brookhaven; and
 - (3) Moorings located within a Town mooring area as defined in and regulated under Chapter **10** of the Town Code of the Town of Brookhaven. Moorings placed or installed within a Town mooring area shall require a mooring permit pursuant to Chapter **10** of the Town Code of the Town of Brookhaven and any amendments thereto.
[Amended 4-17-2001 by L.L. No. 13-2001, effective 4-20-2001]
 - (4) Moorings located within the Port Jefferson Harbor Complex as defined and regulated under Chapter **74** of the Brookhaven Town Code. Moorings placed or installed within the Port Jefferson Harbor Complex shall require a mooring permit pursuant to Chapter **74** of the Town Code of the Town of Brookhaven, and any amendments thereto.
[Added 4-17-2001 by L.L. No. 13-2001, effective 4-20-2001]

§ 8-4. Application for mooring permit.

[Amended 4-17-2001 by L.L. No. 13-2001, effective 4-20-2001]

Any person proposing to place or cause to be placed a mooring upon any underwater lands within the Town of Brookhaven shall file a permit application with the Division of Environmental Protection, on such forms as promulgated by the Director and shall include:

- A. A statement of authority from the applicant for any agent making application;
- B. The exact location of the mooring placed on a navigation chart with either the longitude and latitude or distances to at least two permanent landmarks indicated;
- C. An accurate description of the mooring system to be employed indicating the type and weight of the anchor, the length of the chain, and the size and type of the mooring buoy;
- D. A notarized affidavit signed by the applicant which indemnifies and holds harmless the Town of Brookhaven from any liability claims, in such form as shall be approved by the Town Attorney;

- E. A copy of the current registration, title, and/or documentation papers of the boat or vessel if applicable;
- F. Other factual information as the Director deems necessary and/or appropriate; and
- G. Payment of a fee as otherwise required by the Code.

§ 8-5. Granting, denying or limiting mooring permits.

- A. In granting, denying or limiting any mooring permit, the Division of Environmental Protection shall consider: navigation, public access to water-dependent recreational activities, shellfishing and other natural resources, public health and welfare, the potential impact of the mooring on the access of the waterway by local waterfront property owners, and access to the mooring from the adjacent upland or shoreline.
- B. The Division of Environmental Protection shall give preference to those mooring applications which are:
 - (1) For the sole use of a property owner lessee of nearby waterfront property; or
 - (2) For sole use of residents of the Town of Brookhaven or for the sole use of a locally based property owner's association, yacht club or the like;
 - (3) For proposed locations outside of certified shellfishing areas; and
 - (4) For proposed locations which are outside of normal navigational lanes.

§ 8-6. Duration of mooring season.

After issuance of a mooring permit, moorings may be placed from March 1 through November 30. For just cause and at the discretion of the Director, mooring permits may be issued with no seasonal restrictions.

§ 8-7. Permit expiration.

A mooring permit shall be valid for one mooring season as defined herein.

§ 8-8. Display of permit number.

Any holder of a mooring permit must display the permit number, in numbers not less than three inches in height, on the buoy or float attached to the mooring tackle.

§ 8-9. Fee.

[Amended 1-7-2014 by L.L. No. 2-2014, effective 1-15-2014]

Mooring permit fees shall be established by the Town Board and may be amended from time to time. Note: No fee shall be assessed for permits issued for moorings placed or installed on privately owned underwater lands.

§ 8-10. Appeals of decisions regarding mooring permits.

Any person or applicant may appeal any decision regarding a mooring permit to the Town Board of the Town of Brookhaven. Said appeal must be taken within 30 days of the denial by the Director, and made to the Town Clerk upon such forms promulgated by the Town Clerk. Any person or applicant may appeal the Town Board determination pursuant to Article 78 of the Civil Practice Law and Rules.

§ 8-11. Mastic Beach docks.

[Added 1-25-2018 by L.L. No. 2-2018, effective 2-6-2018^[1]]

- A. No person shall use or tie a boat to a dock located on Town of Brookhaven parkland (formerly owned by the Village of Mastic Beach) without first obtaining a docking permit from the Town of Brookhaven's Division of Environmental Protection.
- B. No person shall construct or repair a dock located on Town of Brookhaven parkland or land underwater without first obtaining a permit or approval from the Town of Brookhaven's Division of Environmental Protection and any other regulatory agencies.
- C. No person shall violate the conditions of a dock permit issued by the Division of Environmental Protection.
- D. Exceptions. The requirements of this chapter shall not be applicable to the following:
 - (1) The temporary docking of a vessel, not to exceed three days, due to a storm event, mechanical failure, or other reasons necessary to protect persons or private property;
 - (2) Vessels located within property owned by the Mastic Beach Property Owner's Association (known as "section one marina"); and
 - (3) Vessels docked at the bulkhead within the Sheep Pen Creek embayment formerly known as "section five marina."
- E. Restrictions:
 - (1) The dock must be maintained in a condition that it is safe and not a danger to navigation or public health and welfare. The maintenance and repair of the dock shall be the sole responsibility of the dock permit holder. The Division of Environmental Protection shall inspect all docks in April of each year and any dock that is deemed unsafe, and which has not been issued permits by all regulatory agencies to complete the necessary repair by April 30 of that year, will be removed by the Town of Brookhaven.
 - (2) The docking permit shall be valid from the second Saturday in May through the first Saturday in November. No overwintering of the vessels shall be permitted.
 - (3) No dock shall be relocated, altered or repaired without the issuance of permits by the regulatory agencies.
 - (4) A path to the dock will be via a single access path not to exceed five feet in width. Unauthorized mowing or clearing will be considered a violation of the docking permit.
 - (5) No more than one vessel may be authorized to be attached to a dock at any given time, unless the conditions of the dock permit state otherwise.
 - (6) No vessel that is tied to the dock will be permitted to rest on the bottom. Docks must be of sufficient length to access navigable water that has adequate depth to allow the vessel to float through all tidal cycles with the engine in the tilt position.

- (7) Power dredging is prohibited.
- (8) Any holder of a dock permit must display the dock authorization sticker supplied by the Town of Brookhaven. The permit sticker must be affixed to the vessel in a location that is easily visible from the dock.
- (9) All dock permits shall expire at the end of the docking season.
- (10) The Town of Brookhaven's Division of Environmental Protection will make every effort to ensure that a previously leased dock stays with the lessee in subsequent years. Should a previous lessee not reapply and pay for a docking permit by April 1 of each year, the dock will be forfeit and either removed or leased to an applicant on a waiting list.

[1] *Editor's Note: This local law also renumbered former §§ 8-11 and 8-12 as §§ 8-15 and 8-16, respectively.*

§ 8-12. Application for dock permit.

[Added 1-25-2018 by L.L. No. 2-2018, effective 2-6-2018]

Any person proposing to place or cause to be placed a dock upon underwater lands formerly owned by the Village of Mastic Beach within the Town of Brookhaven shall file a permit application with the Division of Environmental Protection, on such forms as promulgated by the Director, and shall include:

- A. A statement of authority from the applicant for any agent making application;
- B. The exact location of the dock placed on a map or navigation chart with either the longitude and latitude or distances to at least two permanent landmarks indicated;
- C. An accurate description of the dock;
- D. A notarized affidavit signed by the applicant which indemnifies and holds harmless the Town of Brookhaven from any liability claims, in such form as shall be approved by the Town Attorney;
- E. A copy of the current registration, title, and/or documentation papers of the boat or vessel if applicable;
- F. Other factual information as the Director deems necessary and/or appropriate; and
- G. Payment of a fee as required.

§ 8-13. Granting, denying or limiting mooring permits.

[Added 1-25-2018 by L.L. No. 2-2018, effective 2-6-2018]

- A. In granting, denying or limiting any dock permit, the Division of Environmental Protection shall consider: navigation, public access to water-dependent recreational activities, shellfishing and other natural resources, tidal wetland protection and protection of the flora and fauna of the benthos, public health and welfare, and access to the dock from the adjacent upland or shoreline.
- B. The Division of Environmental Protection shall give preference to dock applications which are:
 - (1) For the sole use of a property owner who previously leased the dock and/or residents of the former Village of Mastic Beach; or

- (2) For residents who hold valid fishing or shellfishing licenses from the Town of Brookhaven and the New York State Department of Environmental Conservation; and
- (3) Holders of valid mariculture permits.

§ 8-14. Appeals of decisions regarding dock permits.

[Added 1-25-2018 by L.L. No. 2-2018, effective 2-6-2018]

Any person or applicant may appeal any decision regarding a dock permit to the Town Board of the Town of Brookhaven. Said appeal must be taken within 30 days of the denial by the Director, and made to the Town Clerk upon such forms promulgated by the Town Clerk. Any person or applicant may appeal the Town Board determination pursuant to Article 78 of the Civil Practice Law and Rules.

§ 8-15. Penalties for offenses.

A violation of the foregoing shall be an offense punishable by a fine of not less than \$100 and not exceeding \$250. Each violation shall be a separate and distinct offense. Each day's continued violation shall constitute a separate and additional violation.

§ 8-16. Severability.

The various parts, sections and clauses of this chapter are hereby declared to be severable. If any part, sentence, paragraph, section or clause is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this chapter shall not be affected thereby.

Chapter 9. Beaches

[HISTORY: Adopted by the Town Board of the Town of Brookhaven 6-16-1987 by L.L. No. 7-1987. Amendments noted where applicable.]

GENERAL REFERENCES

Parks and recreation areas — See Ch. **10**.

Boat control — See Ch. **13**.

Houseboats — See Ch. **14**.

Docks — See Ch. **22**.

Fish nets — See Ch. **32**.

Vegetation on beach areas — See Ch. **75**.

Part 1. Use of Motor Vehicles

Article I. Definitions

§ 9-1. Terms defined.

The following words and phrases, when used in this chapter, shall have the meanings respectively ascribed to them in this section:

BEACH

All real property in or adjacent to the Town of Brookhaven along the shore of the Atlantic Ocean lying between the low water mark as a southerly boundary and the base of the dunes as the northerly boundary from the Long Cove Cut west to the westernmost boundary of the Town of Brookhaven, except when such term shall be applicable to sand beaches within the Town abutting the Long Island Sound.

MOTOR VEHICLE

Every motor vehicle which is self-propelled.

OPERATOR

Any person who operates or drives a motor vehicle.

OWNER

The recorded or registered owner of a motor vehicle.

PUBLIC WAY

Any road, street, walk, lane or any avenue, driveway or any public way.

SCHOOL BUS

Every motor vehicle used in the transportation of pupils and/or teachers to and from a school or school activities.

TOWN

The Town of Brookhaven.

TOWN CLERK

The Town Clerk of the Town of Brookhaven.

Article II. South Shore Beaches

§ 9-2. Applicability.

No motor vehicle of any type whatsoever shall be operated upon the Great South Beach except as hereinafter provided.

§ 9-3. Permitted uses.

The following vehicles may be operated on the Great South Beach, provided that a permit has been issued by the Town Clerk:

- A. School buses.
- B. Bottled gas service vehicles.
- C. Motor vehicles for which a permit under §§ **9-4** and **9-5** hereof has been issued.

§ 9-4. Permit application.

- A. Any person, firm, corporation or partnership may apply hereunder to the Town Clerk of the Town of Brookhaven for a permit to operate a motor vehicle on the Great South Beach. Such application shall state the reasons therefor, the intended use and the times of intended operation, in addition to the information required under § **9-5** hereof. Such application shall be on a form provided therefor and shall be accompanied by a filing fee as established by Town Board resolution. The Town Clerk, in passing upon the application, shall consider whether or not the nature and extent of the intended use is consistent with the public health, safety and welfare and the rules and regulations governing the Fire Island National Seashore. The Town Clerk may grant the application, deny the application or grant the application with limitations and restrictions.

[Amended 3-16-2004 by L.L. No. 9-2004, effective 3-19-2004; 7-18-2019 by L.L. No. 17-2019]

- B. A permit may be issued under this section only to vehicles which shall be equipped as follows:

- (1) Tow cable.
- (2) Fire extinguisher.
- (3) Jack.
- (4) Jack board.
- (5) Shovel.
- (6) Tire gauge.
- (7) First aid kit.

(8) Spare tire.

(9) Flashlight.

§ 9-5. Information required; fee.

A. An application for a permit to operate a motor vehicle on the Great South Beach shall be made to the Town Clerk on a form to be provided by him. The applicant shall furnish the following information:

- (1) The name and address of the applicant's dwelling or residence.
- (2) Whether the permit applied for hereunder has ever been suspended or revoked and, if so, the circumstances thereof.
- (3) In the case of a school bus, the name and number of the school district.
- (4) The make, model and year of the vehicle for which the permit is sought and current registration number of said vehicle.
- (5) A statement that the operator is a duly licensed operator under the laws of the State of New York.^[1]

[1] *Editor's Note: Former Subsection B, regarding permit fees, as amended, which immediately followed this subsection, was repealed 1-24-2017 by L.L. No. 4-2017, effective 2-6-2017.*

§ 9-6. Display of permit.

The permit required hereunder shall be carried by the operator of the vehicle on the Great South Beach at all times and shall be displayed upon request to any peace officer or official of the State of New York, County of Suffolk or Town of Brookhaven.

§ 9-7. Unlicensed operators and vehicles prohibited.

No motor vehicle may be operated on the Great South Beach unless the same is duly registered under the laws of the State of New York. No motor vehicle may be operated upon the Great South Beach by any person unless a permit has been issued by the Town of Brookhaven for such use. No motor vehicle may be operated on the Great South Beach by any person who is not a duly licensed operator under the laws of the State of New York.

§ 9-8. Maximum speed.

It shall be unlawful to operate any vehicle at a speed in excess of 30 miles per hour except in areas where a lesser speed has been posted pursuant to a law, local law, rule or regulation.

§ 9-9. Towing prohibited.

No motor vehicle shall be operated upon the beach in the use of towing any person in, on, through or over the waters by the Atlantic Ocean.

§ 9-10. Penalties for offenses.

Any violation of this article shall be deemed to be an offense punishable by a fine not to exceed \$250 or 10 days in jail, or both. Upon conviction of any violation of § 9-2, 9-7, 9-9 or 9-14 of this article, the permit issued hereunder shall be automatically revoked by the presiding Magistrate. No permit which has been revoked shall be issued for a period of one year from the date of such revocation. Upon conviction of any other violation of this article, the permit issued hereunder shall be automatically suspended for a period of one month from the date of suspension.

§ 9-11. Reciprocity.

Any person to whom a permit has been issued by the Town of Islip may operate a motor vehicle on the Great South Beach within the boundaries of the Town of Brookhaven as herein provided.

§ 9-12. Expiration of permit.

All permits issued pursuant to this article shall expire on December 31 of the year issued.

§ 9-13. (Reserved)

§ 9-14. Transportation for hire prohibited.

It shall be unlawful for any person to operate a motor vehicle on the Great South Beach to carry passengers for hire unless a permit has been issued for such use.

§ 9-15. (Reserved)

§ 9-16. Motor vehicles exempted.

The following motor vehicles may be operated at any time upon the Great South Beach:

- A. Motor vehicles of the United States of America, the State of New York, the County of Suffolk, the Towns of Brookhaven and Islip, and the agency, instrumentality or department thereof, when used on official business or motor vehicles operated by officers or employees of such governmental agencies when used on official business.
- B. Motor vehicles commandeered for use by peace officers in the performance of their duties.
- C. Ambulances or motor vehicles used as ambulances.
- D. Motor vehicles owned or operated by public utilities subject to the jurisdiction of the Public Service Commission.
- E. Motor vehicles operated by a Fire Department or Fire District in the performance of its duty.

Article III. North Shore Beaches

§ 9-17. Operation of motor vehicles prohibited; penalties.

No person shall operate a motor vehicle upon sand beaches in the Town of Brookhaven abutting the Long Island Sound. This prohibition shall not apply to emergency or governmental vehicles fulfilling essential functions. Any violation of this article shall be deemed to be an offense punishable by a fine not to exceed \$250 or 10 days' imprisonment, or both.

§ 9-18. (Reserved)

§ 9-19. (Reserved)

§ 9-20. (Reserved)

§ 9-21. (Reserved)

§ 9-22. (Reserved)

§ 9-23. (Reserved)

§ 9-24. (Reserved)

§ 9-25. (Reserved)

§ 9-26. (Reserved)

Article IV. Protection of Wildlife

[Added 6-6-2000 by L.L. No. 10-2000, effective 6-14-2000^[1]]

[1] *Editor's Note: This local law provided that it shall apply to all real property within the Town of Brookhaven fronting, adjoining and/or adjacent to the Atlantic Ocean side of Fire Island (Great South Beach), fronting, adjoining and/or adjacent to the Long Island Sound and fronting, adjoining and/or adjacent to the embayments of Long Island Sound that extend landward from the mean low water line to the seaward toe of a dune or bluff or, where there is no dune or bluff, 100 feet landward from the place where there is marked change in material or physiographic form or from the line of permanent vegetation, whichever is most seaward.*

§ 9-27. Intent.

The Town Board of the Town of Brookhaven declares its intent to protect and conserve several threatened and endangered species that occur on or use Town of Brookhaven shoreland as habitat. It is unlawful to harm any species of bird listed as "endangered" and/or "threatened" pursuant to the

Endangered Species Act, 16 USCS § 1531, et seq. and any amendments thereto. The provisions herein render it unlawful to harm any species of bird listed as "endangered" and/or "threatened" pursuant to the Endangered Species Act, 16 USCS § 1533, and any amendments thereto, and further allow the Supervisor of the Town of Brookhaven to issue executive orders imposing emergency measures restricting uses of the shorelands as deemed necessary to protect endangered and/or threatened species of birds.

§ 9-28. Definitions.

As used in this article, the following terms shall have the meanings indicated:

ENDANGERED SPECIES OF BIRD

Any species of bird listed as "endangered" and/or "threatened" pursuant to the Endangered Species Act, 16 USCS § 1533 and any amendments thereto.

OPERATE

To drive or physically control a motor vehicle, including sitting in the driver's seat of such motor vehicle with the keys in the ignition and the engine engaged whether or not the motor vehicle is moving, standing or parked.

SHORELANDS

That area within the Town of Brookhaven fronting, adjoining and/or adjacent to the Atlantic Ocean side of Fire Island (Great South Beach), fronting, adjoining and/or adjacent to the Long Island Sound, and fronting, adjoining and/or adjacent to the embayments of Long Island Sound that extend landward from the mean low water line to the seaward toe of a dune or bluff or, where there is no dune or bluff, 100 feet landward from the place where there is marked change in material or physiographic form or from the line of permanent vegetation, whichever is most seaward.

§ 9-29. Protection of endangered species of bird.

- A. With respect to any endangered species of bird, no person shall operate a motor vehicle:
 - (1) In any manner that disturbs, endangers, harasses, harms, pursues or kills any endangered species of bird.
 - (2) In an area that has been fenced, roped or flagged in order to delineate a nesting or foraging area of any endangered species of bird.
- B. The Supervisor of the Town of Brookhaven is authorized to issue executive orders imposing emergency measures restricting the operation of motor vehicles on the shoreland or any portion thereof as such measures are deemed necessary in order to protect and conserve any endangered species of bird.

§ 9-30. Disturbance of endangered species of bird.

- A. No person shall:
 - (1) Disturb, endanger, harass, harm, pursue, hunt, shoot, wound, trap, capture or collect any endangered species of bird that may nest or forage on a shoreland.
 - (2) Alter, remove or tamper with any fence, rope, signage or flagging designating a nesting or foraging area of any endangered species of bird.

(3) Unless authorized, enter any fenced, roped or flagged area designating a nesting area of any endangered species of bird.

- B. The Supervisor of the Town of Brookhaven is authorized to issue executive orders imposing emergency measures restricting the use of any shoreland or portion thereof as deemed necessary to protect and conserve any endangered species of bird.

§ 9-31. Penalties for offenses.

Any violation of this article shall be deemed to be an offense punishable by a fine not to exceed \$250 or imprisonment for a period not to exceed 10 days for each such offense, or both.

§ 9-32. (Reserved)

§ 9-33. (Reserved)

Part 2. General Provisions

Article V. Overnight Sleeping and Camping

§ 9-34. (Reserved)

§ 9-35. Overnight sleeping.

No person shall sleep on any beach, as herein set forth, between the hours of sunset and sunrise.

§ 9-36. Camping.

No person shall erect or maintain a shelter or tent or camp upon any beach with either a sleeping bag, similar cover or other related equipment for purposes of camping.

§ 9-37. (Reserved)

§ 9-38. Penalties for offenses.

Any violation of this article shall be deemed to be an offense punishable by a fine not to exceed \$250 or imprisonment for a period not to exceed 10 days for each such offense, or both.

§ 9-39. (Reserved)

Chapter 13. Boat Control

[HISTORY: Adopted by the Town Board of the Town of Brookhaven 6-16-1987 by L.L. No. 7-1987. Amendments noted where applicable.]

GENERAL REFERENCES

Alcoholic beverages — See Ch. 3.
Bay and harbor bottoms — See Ch. 8.
Beaches — See Ch. 9.
Parks and recreation areas — See Ch. 10.
Houseboats — See Ch. 14.
Docks — See Ch. 22.
Fish nets — See Ch. 32.

§ 13-1. Scope.

The regulations established by this chapter shall apply to all navigable waters located within the boundary lines of the Town of Brookhaven, except when the provisions thereof are in conflict with the laws or ordinances of the United States or the State of New York or any municipal corporation or administrative authority thereof having jurisdiction thereover.

§ 13-2. Navigation laws.

All provisions of the Navigation Law of this state, of the inland rules enacted by Congress and governing the navigation of the inland waters of the United States and of Pilot Rules for United States Inland Waters, applicable to the channel systems relative to the rules for vessels passing each other and other matters consistent with the proper use of the channel systems, shall be complied with by all boats using the navigable waters within the boundary lines of the Town of Brookhaven.

§ 13-3. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

BOAT or VESSEL

Includes every description of watercraft or other contrivance used on or capable of being used as a means of transportation in water.

MOTORBOAT

Includes any vessel propelled in whole or part by an engine or motor, whether inboard or outboard.

OWNER

Includes the person under whose name the vessel was last registered with the United States Coast Guard or the New York Conservation Department, Division of Motor Boats, and in any

other case the last known owner.

§ 13-4. Operation of boats.

- A. Every person operating a boat shall at all times operate it in a careful and prudent manner and at such a rate of speed as not to disturb the reasonable comfort or endanger the property of another or the life or limb of any person or so as to interfere with the free and proper use of the navigable waters within the Town of Brookhaven.
- B. No person shall fail to comply with any lawful order or direction of any police officer, bay constable, harbormaster, dock master or other person duly empowered to regulate boat traffic in the navigable waters within the Town of Brookhaven and at any marina and dock facilities under the ownership and jurisdiction of the Town of Brookhaven.
- C. Police authority during emergency conditions. Whenever the commanding officer or executive officer of the Suffolk County Police Marine Bureau shall deem it advisable during a fire or storm or at a time of any accident or special emergency, and only for such period of time as is necessitated thereby for the public safety or convenience, to temporarily close any harbor, channel, inlet or waterway in the navigable waters within the Town of Brookhaven or regulate, direct and divert boating traffic, such police officer shall have the power and authority to do so.

§ 13-5. Speed limit.

[Amended 10-18-1988 by L.L. No. 25-1988; 7-6-1993 by L.L. No. 16-1993, effective 7-9-1993; 6-12-2012 by L.L. No. 14-2012, effective 6-22-2012]

No person shall operate a boat at a speed in excess of 12 miles per hour in any channel or at a speed in excess of five miles per hour within 100 feet of any area designated as a boat basin, marina, harbor, river, stream, creek or bathing area, or an anchored or moored vessel, provided that any such area in which speed limit signs are posted, no person shall operate a boat at a speed in excess of the speed limit posted.

- A. No person shall operate (start/run) or permit to be operated a motor, other than an electric motor, to propel a vessel on water areas in and/or on the waters designated as Peconic Lake.

§ 13-5.1. Motorboats prohibited.

[Added 1-23-2007 by L.L. No. 1-2007, effective 1-29-2007; amended 6-4-2013 by L.L. No. 28-2013, effective 6-17-2013]

No person shall operate (start/run) or permit to be operated a motorboat, other than an electric motor to propel a motorboat, on the Peconic River, Willow Lake or Lilly Lake f/k/a Upper and Lower Yaphank Lakes within the Town of Brookhaven. This restriction shall not apply to emergency personnel in the performance of emergency activities that are necessary to protect the public health, safety and welfare and in furtherance of activities pursuant to a lawfully issued permit.

§ 13-6. Muffler required.

No person shall operate a boat with an outboard motor or an inboard motor unless equipped with an adequately muffled exhaust, nor shall any such person use any siren or other noise-producing or noise-amplifying instrument on a boat in such a manner that the peace and good order of the neighborhood is disturbed; provided, however, that nothing in this chapter shall be construed to prohibit the use of whistles, bells or horns as signals as required by the United States Motorboat Act or other federal law for the safe navigation of motorboats or vessels.

§ 13-7. Compliance with Coast Guard equipment regulations required.

No person shall operate a boat which does not meet all applicable equipment requirements of the United States Coast Guard.

§ 13-8. Operating under influence of alcoholic beverages and narcotics prohibited.

No person shall operate a boat while under the influence of intoxicating liquor, narcotic drugs or opiates.

§ 13-9. Disturbing other boats.

No person shall operate a boat in such a manner as to unjustifiably or unnecessarily annoy or frighten or endanger the occupants of any other boat or throw up a dangerous wake when approaching another boat.

§ 13-10. Use of searchlights.

No person operating a boat shall use searchlights indiscriminately or in such a manner as to annoy or disturb other persons or boats.

§ 13-11. Hours for running engines.

No person shall run or operate any boat engine for the purpose of charging batteries, running auxiliary equipment or testing between the hours of 10:00 p.m. and 7:00 a.m.

§ 13-12. Improper mooring.

No boat shall be moored or anchored in any channel except at the edges thereof, and in no case closer than 50 feet to channel markers or so as to interfere with the full use of the channel by others.

§ 13-13. Navigation hazards.

Every boat in the navigable waters of the Town of Brookhaven which becomes a menace to navigation or unseaworthy or sinks, grounds or becomes otherwise disabled is hereby declared to be a nuisance, and the person in charge thereof shall abate such nuisance within two days after notice from the Town Board.

§ 13-14. Regattas.

The provisions of this chapter shall not be construed to prohibit the running of regattas or boat races under the auspices of a recognized bona fide boat or yacht club or association when a permit

therefor has been granted by the Town Board and after prior approval by the United States Coast Guard.

§ 13-15. Boats to observe sanitary regulations.

Persons in charge of or occupying boats docked at or moored to land, docks, piers or wharves abutting navigable waters shall observe all the health and sanitary regulations of the Town of Brookhaven and of the County of Suffolk. Discharging of toilets or of oil is prohibited in areas designated as boat basin anchorage or bathing areas.

§ 13-16. Water skis and surfboards.

- A. No person shall operate a boat on the navigable waters of the Town for towing a person on water skis, a surfboard or similar device unless there is in such boat a person, other than the operator, of at least 10 years of age, in a position to observe the progress of the person being towed.
- B. No person shall ride on water skis, a surfboard or similar device or use or operate a boat to tow a person thereon on the navigable waters of the Town between the period from one hour after sunset to one hour after sunrise; provided, however, that the provisions hereof shall not apply to a paid performer engaged in a professional exhibition.

§ 13-17. Penalties for offenses.

Any person violating any of the provisions in this chapter shall be deemed guilty of a violation and, upon conviction thereof, shall be fined in an amount not exceeding \$500 or be imprisoned for a period not exceeding 15 days, or be both so fined and imprisoned. A separate offense shall be deemed committed upon each day during or on which a violation occurs or continues.

§ 13-18. (Reserved)

§ 13-19. (Reserved)

§ 13-20. Defacing or removing serial numbers or identification marks on motors.

- A. No person shall willfully remove, deface, cover, alter or destroy the manufacturer's serial number or any other distinguishing number or identification mark on any inboard, outboard or inboard-outboard motor.
- B. No person shall knowingly buy, sell, receive, dispose of, conceal or knowingly have in his possession any inboard, outboard or inboard-outboard motor from which the manufacturer's serial number or any other distinguishing mark or identification mark has been removed, defaced, covered, altered or destroyed for the purpose of concealing or misrepresenting the identity of such inboard, outboard or inboard-outboard motor.
- C. Any person, firm, corporation, partnership or other legal entity whatsoever found in violation of Subsection **A** or **B** of this section shall be guilty of a Class B misdemeanor and, upon

conviction, shall be punishable by a fine not exceeding \$500 or imprisonment, not exceeding three months, or by both such fine and imprisonment.

Chapter 16. Building Construction Administration

[HISTORY: Adopted by the Town Board of the Town of Brookhaven 6-16-1987 by L.L. No. 7-1987. Amendments noted where applicable.]

GENERAL REFERENCES

Deposits on construction of new homes — See Ch. **41**.

Subdividers; posting of information — See Ch. **61**.

Disposition of trees and debris — See Ch. **72**.

Zoning — See Ch. **85**.

Subdivision Regulations — See Ch. 95.

§ 16-1. General provisions.

[Amended 2-7-1995 by L.L. No. 5-1995, effective 2-13-1995; 1-7-2014 by L.L. No. 1-2014, effective 1-9-2014; 9-29-2016 by L.L. No. 22-2016, effective 10-11-2016; 12-20-2018 by L.L. No. 31-2018, effective 12-27-2018]

This chapter provides for the administration and enforcement of the New York State Uniform Fire Prevention and Building Code (the Uniform Code) and the State Energy Conservation Construction Code (the Energy Code) in the Town of Brookhaven. Except as otherwise provided in the Uniform Code, other state law, or other section of this chapter, all buildings, structures, and premises, regardless of use or occupancy, are subject to the provisions of this chapter.

§ 16-2. General powers and duties.

[Amended 3-1-2005 by L.L. No. 7-2005, effective 3-4-2005; 7-25-2006 by L.L. No. 15-2006, effective 7-31-2006; 12-4-2007 by L.L. No. 26-2007, effective 12-10-2007; 1-7-2014 by L.L. No. 1-2014, effective 1-9-2014]

- A. The Division of Building shall be responsible for the administration and enforcement of the New York State Uniform Fire Prevention and Building Code and all other applicable laws, ordinances, rules and regulations relating to the use, occupancy and/or construction of real property or buildings or structures located thereon, and such other matters as may from time to time be referred to such Division. Such general powers and duties shall be administered under the general supervision of the Commissioner of Planning, Environment and Land Management.
- B. The Chief Building Inspector, any Building and Zoning Inspector or any Building Inspector as designated by the Commissioner of Planning, Environment and Land Management shall have the full power, authority and responsibility to undertake and perform all acts and duties performed by the Chief Building Inspector in accordance with the Town Code. The Chief Building Inspector and any Building and Zoning Inspector and any Building Inspector as designated by the Commissioner pursuant to this subsection shall be subject to the supervision and direction of the Commissioner of Planning, Environment and Land Management.
- C. The Chief Building Inspector, any Building and Zoning Inspector and any Building Inspector as designated by the Commissioner of Planning, Environment and Land Management in § **16-2B** shall possess the minimum experience and qualifications as established by the Suffolk County

Department of Civil Service for the position of "Chief Building Inspector."

- D. Any Building and Zoning Inspector or any Building Inspector may revoke all permits issued and approved in the following instances:
- (1) Where he finds that there has been any false statements or misrepresentations as to a material fact in the application, plans, specifications or other documents upon which the building permit was based;
 - (2) Where he finds that the building permit was issued in error and should not have been issued in accordance with the applicable law, regulation or code;
 - (3) Where he finds that the work performed under the permit is not being performed in accordance with provisions of the application, plans, specifications or other documents; or
 - (4) Where the person or entity to whom a building permit has been issued fails or refuses to comply with a stop-work order issued pursuant to this chapter.
- E. In addition to the duties prescribed by law, it shall be the duty of the Division of Building to receive all applications for permits to repair, remove, alter or erect any buildings or structures; to inspect plans, including specifications and descriptions; to grant permits; to enforce the building laws; and to perform such other duties as may be prescribed by the Town Board from time to time.

§ 16-3. Permit required; inspection; information to be submitted.

[Amended 2-7-1995 by L.L. No. 5-1995, effective 2-13-1995; 6-1-1999 by L.L. No. 6-1999, effective 6-8-1999; 7-25-2006 by L.L. No. 15-2006, effective 7-31-2006; 12-4-2007 by L.L. No. 26-2007, effective 12-10-2007; 5-12-2009 by L.L. No. 12-2009, effective 5-22-2009; 12-8-2009 by L.L. No. 12-15-2009; 8-17-2010 by L.L. No. 12-2010, effective 8-25-2010; 12-21-2010 by L.L. No. 3-2011, effective 1-24-2011; 6-4-2013 by L.L. No. 29-2013, effective 6-17-2013; 1-7-2014 by L.L. No. 1-2014, effective 1-9-2014]

- A. It shall be unlawful to construct, alter, remove, demolish or maintain, or to allow, commence or continue to maintain the alteration, removal, or demolition of a wall, structure, plumbing, building or any part thereof, without first filing an application in writing with the Town of Brookhaven Building Division and obtaining a formal written permit. A permit shall not be required for minor repairs to existing plumbing systems. When accessory to one- and two-family dwellings, a building permit shall not be required for the following:
- (1) Detached residential storage sheds not greater than 144 square feet and conforming to the provisions of **§ 85-190**;
[Amended 8-27-2015 by L.L. No. 17-2015, effective 9-4-2015]
 - (2) Decks, patios and walkways not above grade greater than eight inches at any point, constructed of any material;
 - (3) Gazebos not greater than 144 square feet and with walls no higher than 36 inches;
 - (4) Trellises, pergolas and arbors not greater than 144 square feet;
- B. Structures or plumbing hereafter erected or installed without a permit or not in conformity with this chapter shall be removed or made to conform to the code.
- C. No building shall be moved, removed or demolished until a permit has been obtained from the

Chief Building Inspector or Building and Zoning Inspector or Building Inspector, and such Inspector shall not issue a permit if, in his judgment, the proposed new location of the buildings would seriously increase the fire hazard of the surrounding buildings.

- D. The Chief Building Inspector or any Building and Zoning Inspector or any Building Inspector shall, as often as practical, inspect all buildings or structures during the construction for which a permit has been issued to see that the provisions of the law are complied with and that construction is prosecuted safely. Whenever, in his opinion, by reason of defective or illegal work in violation of a provision of the code, the continuance of a building operation is contrary to public welfare, he may order all further work to be stopped and may require suspension of work until the condition in violation has been remedied.
- E. Copies of plans and specifications and a plot plan showing the location of the proposed building shall, when required by the Building Division, accompany every application for a permit and shall be filed in triplicate.
- F. All plans and specifications shall be of sufficient clarity to indicate the nature and character of the work proposed and show that the code will be complied with throughout. Computations, strains sheets, stress diagrams and other data necessary to show the correctness of the plans shall accompany the same when required by the Chief Building Inspector.
- G. All plans and specifications shall bear the name and address of the architect, engineer or designer.
- H. Demolition permits shall be applied for in the same manner as building permits, but no plans shall be needed. Any such permit shall expire 90 days from the date of issuance. However, specifications and diagrams showing methods to be used for needling or shoring adjacent buildings may be required by the Chief Building Inspector.
- I. If demolition occurs within an Historic District or historic district transition area or regarding a structure designated as an historic landmark, then HDAC review shall be required.
- J. No plans or specifications, when once approved by the Chief Building Inspector or any Building and Zoning Inspector or any Building Inspector, shall in any way be changed or altered without the written consent of the Chief Building Inspector or any Building and Zoning Inspector or any Building Inspector.
- K. The permit holder or his agent shall keep posted in a conspicuous place on the work the permit and shall keep same posted until the completion of the work.
- L. All building permits are valid and considered in effect for one year from the date of issuance except as otherwise permitted in this Code and no such permit shall be amended. Upon an application being submitted within one month from the date of the expiration of an original building permit, the Chief Building Inspector may grant one extension of said expired building permit for a period not to exceed three months. The applicant shall render a payment fee of the greater amount of 1/3 of the current building permit fee as established by Town Board resolution or the minimum fee as established by Town Board resolution.
[Amended 11-20-2018 by L.L. No. 26-2018, effective 12-3-2018]

(1) Permit renewals.

- (a) First renewal. A permit may be renewed for a single one-year period upon submission of the required documents and payment of the application fee(s) as established by Town Board resolution.
- (b) Second renewal. A permit may be renewed a second time for a single one-year period upon submission of the required documents and payment of the fees as established

by Town Board resolution. In the event the permit grants permission for exterior work and said work has begun and is not completed, a fee in the amount equal to double the application fee(s) as established by Town Board resolution shall be submitted for said exterior work. The Chief Building Inspector or designee may perform an inspection prior to the second renewal of a permit.

- (c) Third and successive renewals. A permit may be renewed a third time for a single one-year period upon submission of the required documents and payment of the fees as established by Town Board resolution. In the event the permit grants permission for exterior work and said work has begun and is not completed, a fee in the amount equal to triple the application fee(s) as established by Town Board resolution shall be submitted for said exterior work. The Chief Building Inspector or designee may perform an inspection prior to the second renewal of a permit.
- M. No permit for the erection, repair, remodeling, altering or moving of a structure, building or portion thereof shall be issued if such building or structure has previously been condemned or has violations of this chapter, Chapter **16A**, Chapter **30** or Chapter **85**, unless it has been determined by the Chief Building Inspector or his authorized designee that such condemnation has been rescinded or such violations have been corrected. No permit shall be issued if prior approval of another governmental agency is required unless the applicant has demonstrated said approvals have been obtained and remain valid.
- N. The provisions of this section shall not apply to any structures or buildings within the Town of Brookhaven for which building permits and certificates of occupancy have been duly issued or to any building or structure built prior to January 1, 1945, for which a building permit and certificate of occupancy could lawfully be issued.
- O. To ensure compliance with the code, the Chief Building Inspector, during the course of construction, may request certification from a testing laboratory, including but not limited to soil compaction, reinforcing bars, slump and cylinder, welding and materials.^[1]
- [1] *Editor's Note: Former Subsection P, which required adherence to the National Electrical Code but prohibited use of aluminum wiring in residential buildings, and which immediately followed this subsection, was repealed 12-20-2018 by L.L. No. 28-2018.*

§ 16-3.1. Apprenticeship participation for construction of buildings in commercial and industrial zoning districts.

[Added 4-28-2009 by L.L. No. 8-2009, effective 5-7-2009; amended 7-2-2013 by L.L. No. 34-2013, effective 7-15-2013; 1-7-2014 by L.L. No. 1-2014, effective 1-9-2014]

- A. This section shall be applicable only to applications for foundation permits and building permits for the construction of a building located in commercial and industrial zoning districts where the square footage of the footprint is 100,000 square feet or greater, which have been filed with the Town Division of Building on or after the effective date of this amendment.
- (1) For purposes of this section, the square footage of the footprint shall be defined and measured as that area between exterior faces of walls.
- (2) This section shall be applicable to an addition to an existing building located in commercial and industrial zoning districts when such addition is 100,000 square feet or greater. The square footage of the existing building shall not be included in the square footage of such addition, provided the existing building maintains a certificate of occupancy or its equivalent.
- (3) This section shall not be applicable to buildings constructed as places of worship, colleges

or universities.

- B. Prior to the issuance of a building permit for such projects, an applicant shall demonstrate that any general contractor, contractor or subcontractor for such project participates in an approved apprenticeship training program(s) appropriate for the type and scope of work to be performed, that has been registered with, and approved by, the New York State Department of Labor in accordance with Article 23 of the New York Labor Law.
- C. The determination of compliance with this section shall be made and certified by the Chief Building Inspector. An aggrieved party may appeal such determination to the Supreme Court, Suffolk County, pursuant to the Civil Practice Law and Rules.^[1]

[1] *Editor's Note: Former § 16-3.2, Solar-ready roofs, added 2-25-2016 by L.L. No. 2-2016, effective 3-17-2016, which immediately followed this section, was repealed 9-29-2016 by L.L. No. 22-2016, effective 10-11-2016.*

§ 16-4. Certificates of occupancy.

[Amended 4-30-1990 by L.L. No. 14-1990, effective 4-9-1990; 2-7-1995 by L.L. No. 5-1995, effective 2-13-1995; 7-25-2006 by L.L. No. 15-2006, effective 7-31-2006; 12-4-2007 by L.L. No. 26-2007, effective 12-10-2007; 1-7-2014 by L.L. No. 1-2014, effective 1-9-2014]

- A. No land shall be occupied or used and no building, structure or portion thereof shall be occupied, used or changed in its use until a certificate of occupancy has been issued by the Town of Brookhaven Division of Building stating that the building, structure or proposed use complies with the provisions of this code and any other applicable codes and regulations.
- B. No certificate of occupancy shall be issued under this section unless the applicant has obtained and possesses a valid building permit at the time of application for the certificate of occupancy. A certificate of occupancy may be issued after the date of expiration of the associated permit if all construction and inspections had been successfully completed prior to the date of expiration and the Chief Building Inspector has determined that lack of issuance of said certificate of compliance was in no way due to any action or failure to act on the part of the applicant, with the written concurrence of the Commissioner of Planning, Environment and Land Management.
- C. No certificate of occupancy shall be issued under this section until an affidavit is filed by the applicant with the Building Division of the Town of Brookhaven stating that such applicant has no knowledge that trees or debris, as defined in the Tree and Debris Disposition Law of the Town of Brookhaven,^[1] are buried or will be buried in, upon or under the parcel for which the certificate of occupancy is sought.

[1] *Editor's Note: See Ch. 72, Disposition of Trees and Debris.*
- D. Temporary certificate of occupancy. Upon request, the Chief Building Inspector may issue a temporary certificate of occupancy for a building or structure or part thereof before the entire work covered by the building permit shall have been completed, provided that such portion or portions as have been completed may be occupied safely without endangering life, health or the public welfare. A temporary certificate of occupancy may be issued for a period not exceeding three months from its date of issuance and shall be void thereafter, except that, for good cause, the Chief Building Inspector may allow a maximum of two extensions for periods not exceeding three months each. The Chief Building Inspector shall require that a cash bond be deposited with the Department of Finance in sufficient sum to guarantee completion of any incomplete site improvements. Said bond may only be returned to the applicant upon submission of a certification by the Chief Building Inspector that all on-site improvements have been completed.
- E. For all parcels of land identified as a Superfund site, including but not limited to parcels located

adjacent to said identified parcels and parcels which are located over plumes or other contamination originating from a Superfund site parcel, the Chief Building Inspector shall place an advisory notice on all certificates of occupancy, or their equivalent, issued for such parcels. In addition, the Chief Building Inspector shall require certification from a certified testing laboratory as to the presence or absence of soil vapor intrusion from volatile organic compounds and the levels of same. In the event the certification from the certified testing laboratory indicates volatile organic compound levels in excess of federal, state or county government standards, the Chief Building Inspector shall require mitigation and/or remediation in accordance with said government standards before the issuance of a certificate(s) of occupancy.

[Added 5-22-2014 by L.L. No. 10-2014, effective 6-5-2014]

§ 16-4.1. Energy conservation requirements.

[Added 8-22-2006 by L.L. No. 24-2006, effective 8-28-2006; amended 5-18-2010 by L.L. No. 7-2010, effective 5-28-2010; 6-28-2011 by L.L. No. 17-2011, effective 7-12-2011; 1-7-2014 by L.L. No. 1-2014, effective 1-9-2014]

- A. Any new single-family dwelling, multiple-family dwelling, Planned Retirement Community (PRC) or Planned Retirement Congregate Housing Community (PRCHC) as defined in § 85-1, in buildings containing four units or less, not more than three stories in height, with a separate means of egress for each dwelling, minimum of one heating facility for each four dwelling units and a separate primary electric meter for each dwelling unit, including townhouses (hereinafter "subject dwelling"), shall be built to achieve minimum energy conservation performance as verified by the Home Energy Rating System (HERS) promulgated by the Residential Energy Service Network (RESNET).
- B. The energy conservation requirements must be satisfied by achieving a minimum rating of 70 or lower on the current expanded Home Energy Rating System (HERS) Index as defined in the 2006 Mortgage Industry National Home Energy Rating Systems Standards promulgated by (RESNET).
- C. In addition to demonstrating compliance with the energy performance standard set forth in Subsection **B** above, prior to issuance of certificate of occupancy, the subject dwelling must comply with the following additional requirements:
 - (1) Include a tamper-resistant, automatically controlled mechanical ventilation system that provides whole house ventilation (dilution air) as required by the American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE) 62.2 standard most recently published at the time the most recent building permit was issued; and
 - (2) Comply with the Combustion Safety Testing Standards promulgated by RESNET, the Building Performance Institute, or other organization approved by the Commissioner; testing is to be performed by an individual who has completed appropriate training as approved by the Commissioner; and
 - (3) Heating, ventilation and air conditioning (HVAC) ducts in the subject dwelling shall be subject to an HVAC duct leakage test as defined in Section 403.2.2 of the ECCCNY and achieve the following criteria: post-construction test leakage to outdoors shall be less than or equal to six cfm @ 25Pa per 100 ft² of conditioned floor area; rough-in test leakage shall be less than or equal to four cfm @ 25Pa per 100 ft² of conditioned floor area.
- D. Prior to the issuance of a building permit for any new subject dwelling, the applicant shall certify compliance with energy conservation requirements by submitting a New York State HERS compliance certificate from an independent certified HERS rater, architect or professional engineer (PE) indicating that the building was designed to meet the required HERS Index of

70. Said certificate must indicate compliance with the current version of the Energy Conservation Construction Code of New York State (ECCCNYS) based on source energy expressed in energy costs or BTU or BTU per square foot of conditioned space as defined by Section N1101.4.1 of the Residential Code of New York State.

- E. Prior to the issuance of a certificate of occupancy for any subject dwelling which is granted a building permit after August 1, 2011, the applicant shall be required to demonstrate compliance with Subsections **B** and **C** of this section by submitting a final HERS rating performed by a RESNET-certified HERS rater. The HERS rater shall attest that the subject dwelling complies with the following requirements:
- (1) Achieves a rating of 70 or lower on the HERS Index.
 - (2) Meets the ventilation requirements of Subsection **C(1)** of this section.
 - (3) Passes combustion safety testing required by Subsection **C(2)** of this section.
 - (4) The subject dwelling complies with both Section 402.4.2.1 and Section 402.4.2.2 of the New York State Energy Conservation Construction Code.
 - (5) Ducts within the subject dwelling have been subjected to an HVAC duct leakage test and achieved the standards required by Subsection **C(3)** of this section.
 - (6) An ACCA Manual J has been performed for the subject dwelling as defined in Section 403.6 of the Energy Conservation Construction Code of New York State.
 - (7) All HVAC ducts not completely inside the subject dwelling's thermal envelope are insulated as required by Section 405.2 of the ECCCNYS.
 - (8) A permanent certificate, which includes the building's HERS Index, in a format approved by the Commissioner, has been affixed on or in the electrical distribution panel.
- F. Prior to the issuance of a certificate of occupancy for any subject dwelling which was granted a building permit prior to August 1, 2011, the applicant shall provide evidence that the subject dwelling complies with all aspects of the LIPA ENERGY STAR Homes Version 2 Program, using either the Home Energy Rating System (HERS) or Builder Option Package method. Prior to issuance of a certificate of occupancy, all field verification and testing requirements of that program shall be met.
- G. Commencing on January 1, 2012, prior to the issuance of a building permit for any new subject dwelling for which a building permit has been previously issued and for which construction has not progressed beyond the foundation, the applicant shall comply with Subsection **D** of this section. Prior to issuance of a certificate of occupancy, the subject dwelling shall comply with Subsection **E** of this section.
- H. The Commissioner of Planning, Environment and Land Management shall establish requirements for HERS raters practicing in the Town to provide proof of certification, insurance, experience and independence, and shall maintain a list of approved raters that have provided this information and filed other required information with the Commissioner. The Commissioner shall establish rules to limit conflicts of interest in the HERS rating of subject dwellings. No HERS rater may provide the documentation required by Subsection **D** or **E** of this section, unless he or she complies with the filing and conflict of interest requirements established by the Commissioner and is currently on the list of approved raters. HERS raters may be removed from the list of approved raters by the Commissioner for cause.

§ 16-4.2. (Reserved)

- [1] *Editor's Note: Former § 16-4.2, ENERGY STAR requirements for buildings higher than three stories or containing more than four units, added 8-22-2006 by L.L. No. 24-2006, effective 8-28-2006, was repealed 6-28-2011 by L.L. No. 17-2011, effective 7-12-2011.*

§ 16-4.3. ENERGY STAR exemptions.

[Added 8-22-2006 by L.L. No. 24-2006, effective 8-28-2006; amended 6-28-2011 by L.L. No. 17-2011, effective 7-12-2011]

Notwithstanding any provision contained in § **16-4.1**, the testing and verification requirement may be waived upon the Long Island Power Authority (LIPA) submitting a certification that no testing or verification protocol and procedure can be applied accurately in a particular building configuration.

§ 16-5. Universal design permit and requirements.

[Added 9-17-2009 by L.L. No. 19-2009, effective 9-25-2009^[1]]

- [1] *Editor's Note: This local law also renumbered former §§ 16-5 through 16-10 as §§ **16-6** through **16-11**, respectively.*

§ 16-5.1. Universal design: findings; purpose.

[Added 9-17-2009 by L.L. No. 19-2009, effective 9-25-2009]

- A. The Town Board of the Town of Brookhaven hereby finds that there is a growing need for one-family and two-family dwellings to be constructed in such a manner that they are adaptable to accommodate the physical needs of the elderly or individuals with physical disabilities.
- B. The Town Board further finds that the incorporation of certain universal design features during the planning, construction, extension or alteration of one-family and two-family residences will promote and afford, now or in the future, all persons requiring accessibility to dwellings, thereby accommodating the needs of the Town's diverse population. It is therefore the intent of the Town Board to establish incentives for applicants who submit proposals that incorporate specific universal design features for one-family and two-family dwellings. In furtherance of this goal, this § **16-5** establishes a mechanism by which applications for one-family dwellings or two-family dwellings and/or redevelopment containing universal design features are expedited through the universal permit approval process to the fullest extent practicable.

§ 16-5.2. Universal design: definitions.

[Added 9-17-2009 by L.L. No. 19-2009, effective 9-25-2009]

As used in this § **16-5**, the following terms shall have the meanings indicated:

DIVISION

For purposes of this chapter, "division" shall mean the Town of Brookhaven Division of Building.

INCENTIVE

A specific benefit granted to an applicant submitting an application to construct, reconstruct, develop or redevelop a one-family dwelling or two-family dwelling in accordance with the universal design requirements.

§ 16-5.3. Universal design: applicability.

[Added 9-17-2009 by L.L. No. 19-2009, effective 9-25-2009]

A universal design permit issued in accordance with the requirements of this chapter and Chapter **85**, Zoning, shall have the same force and effect as the issuance of a building permit.

§ 16-5.4. Universal design: application; incentives.

[Added 9-17-2009 by L.L. No. 19-2009, effective 9-25-2009]

- A. Application: An application and other documents as determined to be necessary by the Chief Building Inspector for a universal design permit shall be submitted to the Building Division in accordance with the provisions contained in this chapter and Chapter **85**, Zoning. The Building Division shall review the application. Upon the submission of a complete application, and demonstrating compliance with the requirements set forth in this chapter and Chapter **85**, as determined by the Chief Building Inspector, a universal design permit shall be issued. If the application is denied, the reasons thereof shall be stated.
- B. Incentives.
 - (1) Expedited review. Upon the submission of an application for a universal design permit demonstrating compliance with this chapter and Chapter **85**, the Building Division may expedite the review and processing of an application, subject to such rules and regulations as may be promulgated by said Chief Building Inspector. The expedited review of applications covered by this § **16-5** shall not apply to applications before the Town Board, Planning Board or Zoning Board of Appeals or other divisions or departments.
 - (2) It shall be unlawful for any applicant to make false statements or mislead any Town department, division, agency or board in order to secure an expedited review pursuant to the provisions of this § **16-5**, or to fail and/or neglect to inform the Building Division of a change in the project which would negate eligibility for an expedited review.

§ 16-5.5. Universal design requirements.

[Added 9-17-2009 by L.L. No. 19-2009, effective 9-25-2009]

Applications for a universal design permit shall comply with the requirements as set forth in this section.

- A. All applications must demonstrate compliance with the universal design features as set forth in Subsection **A(1)** through **(5)**.
 - (1) Zero-step entrance. At least one zero-step entrance to the residence, which may be located at the front, rear or side of the structure, but does not include any entrance that is located within an attached garage. There shall be less than a one-half-inch rise at the zero-step entrance. A sidewalk or walkway being utilized as the accessible route to the zero-step entrance must have a slope no greater than 1:12.
 - (2) Doorways and passageways. All doors on the ground floor of the new construction or addition (including bathrooms, walk-in closets, pocket and sliding doors, and any door intended for human passage) shall have a minimum clearance of 34 inches. A thirty-six-inch door, hung in the standard manner, shall be considered to provide the opening required by this section.
 - (3) Adaptability features. There shall be at least one bedroom on the ground floor, or at least one room that can be converted easily into a bedroom.
 - (4) Convenient facilities. There shall be at least a 1/2 bathroom located on the ground floor,

and the fixtures shall be arranged to provide sufficient floor space so as to allow an individual using a wheelchair or other mobility aid to enter and close the door, use the facilities, reopen the door and exit. A sixty-inch turning radius is required to meet the requirements of this section. Maneuvering space may include any knee space or toe space available below bathroom fixtures, including the clear space under a wall-hung lavatory. The lavatory shall be equipped with a lever faucet handle(s).

- (5) Bathroom(s): reinforcements or "blocking" between wall studs around the toilet and the bathroom/shower areas to conveniently and safely allow for future installation of grab bars, commencing at a height of 32 inches from the floor and extending to a height of at least 38 inches above the floor. Reinforcements may be constructed of plywood or wood blocking.
 - (a) Behind the toilet, a minimum twenty-six-inch-wide reinforced area is required, which safely accommodates a twenty-four-inch grab bar and provides proper backing for flange. Where a toilet is adjoining a sidewall, a minimum twenty-six-inch wide reinforced area is required, which safely accommodates a twenty-four-inch grab bar and provides proper backing for flange. For a sidewall adjoining a toilet, a forty-four-inch wide reinforced area is required to safely accommodate a forty-two-inch grab bar with proper backing for flange.
 - (b) Along a tub wall, reinforcements shall be at least 50 inches wide, which safely accommodates a forty-eight-inch grab bar and provides proper backing for flange. Sidewalls shall have a minimum twenty-six-inch wide reinforced area, which safely accommodates a twenty-four-inch grab bar and provides proper backing for flange.
 - (c) Inside a shower stall, reinforcements shall be at least 26 inches wide on each side adjoining a wall, which safely accommodates a twenty-four-inch grab bar and provides proper backing for flange.
- B. All applications must demonstrate compliance with at least five of the universal design features as set forth in Subsection **B(1)** through **(13)**.
 - (1) Seventeen-inch-to-nineteen-inch-high water closet seat in the ground-floor bathroom.
 - (2) Roll-in shower in lieu of standard tub or shower in a ground-floor bathroom.
 - (3) Adjustable hand-held showerhead.
 - (4) Installation of grab bars in the shower area and behind and adjacent to the water closet of the ground-floor bathroom.
 - (5) Ground-floor full bath adjacent to or accessed from a bedroom or the room that is designated as readily converted to a bedroom.
 - (6) Open-front lavatory with knee space and protection panel.
 - (7) Kitchen cabinet base cabinets with pullout shelves and corner cabinets with lazy susan.
 - (8) Removable base cabinet beneath the kitchen sink.
 - (9) Lever handle faucet at kitchen sink.
 - (10) Kitchen appliances: refrigerator with pull-out freezer drawer on bottom; dishwasher with pull-out drawers; microwave base cabinet.
 - (11) A minimum thirty-inch-by-forty-eight-inch clear space at appliances.

(12) "Right Height" vanity.

(13) Elevator, lift or LULA.

§ 16-6. (Reserved)

[1] *Editor's Note: Former § 16-6, Carbon monoxide alarm and carbon monoxide detection required, added 9-9-2014 by L.L. No. 19-2014, was repealed 9-13-2018 by L.L. No. 23-2018, effective 9-24-2018.*

§ 16-7. Fees.

[Amended 3-6-1990 by L.L. No. 10-1990, effective 3-12-1990; 2-7-1995 by L.L. No. 5-1995, effective 2-13-1995; 9-17-2009 by L.L. No. 19-2009, effective 9-25-2009; 11-17-2016 by L.L. No. 24-2016, effective 12-5-2016]

No building permit, universal design permit or other permit or certificate of occupancy required by this chapter shall issue unless the fee has been paid as established by Town Board resolution.

§ 16-8. (Reserved)

[1] *Editor's Note: Former § 16-8, Penalties for offenses, as amended, was repealed 11-16-2017 by L.L. No. 22-2017, effective 1-28-2017.*

§ 16-9. Stop-work orders.

[Added 12-4-2007 by L.L. No. 26-2007, effective 12-10-2007]

A. Whenever any Building and Zoning Inspector or any Building Inspector or any Town Investigator or any Town Engineering Inspector has reasonable grounds to believe that work on any building or structure is being performed: (i) in violation of the provisions of the applicable codes or regulations; or (ii) not in conformity with the provisions of an application, plans, specifications or other documents upon the basis of which a permit was issued; or (iii) in an unsafe and dangerous manner; he shall notify the owner of the property or the owner's agent or the person performing the work to suspend all work, and any such persons shall forthwith stop such work and suspend all building activities until the stop-work order has been rescinded. Such order and notice shall be in writing, shall state the conditions under which the work may be resumed and may be served upon a person to whom it is directed either by delivering it personally to him or by posting the same upon a conspicuous portion of the building under construction and sending a copy of the same by certified mail to the property owner.

[Amended 2-26-2009 by L.L. No. 2-2009, effective 3-9-2009]

B. No person shall continue, allow or cause to be continued the erection of any building or structure or the use of any materials or machinery in or about the location of any work after the issuance of a stop-work order pursuant to this chapter.

C. A stop-work order may be rescinded only by the Chief Building Inspector or a Principal Building Inspector upon evidence of compliance with this chapter.

[1] *Editor's Note: Former § 16-9, Fire limits, was repealed 7-25-2006 by L.L. No. 15-2006, effective 7-31-2006.*

§ 16-10. Word usage.

- A. Unless otherwise expressly stated, whenever used in this chapter, the following terms shall mean literally as written.
- B. Words used in the present tense include the future as well; singular numbers include the plural, and plural the singular; the word "person" includes corporations or copartnerships as well as an individual; and "writing" includes printing, printed or typewritten matter.
- C. No legalization due to delinquency, oversight or dereliction of duty on the part of the Chief Building Inspector or other authorized agent shall legalize the erection, construction, alteration, removal, use or occupancy of any building or structure that does not conform to the provisions of the code.

§ 16-11. Liability for damages.

The code shall not be construed to relieve from or lessen the responsibility of any party owning, operating, renting, leasing or using any building or structure or erecting, altering, removing or demolishing any building or structure for damages to person or persons or property caused by a defect or mismanagement therein, nor shall the Town of Brookhaven be held as assuming any such liability by reason of the inspection authorized therein or certificate or permit of approval issued or endorsed as herein provided.

§ 16-12. Severability.

[Added 4-28-2009 by L.L. No. 8-2009, effective 5-7-2009]

If any clause, sentence, paragraph, subdivision, section, or other part of this chapter shall, for any reason, be adjudged by any court of competent jurisdiction to be unconstitutional or otherwise invalidated, such order or judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part of this chapter, or in its application to the person, individual, corporation, firm, partnership, entity, or circumstance, directly involved in the controversy in which such judgment or order shall be rendered.

Town of Brookhaven, NY
Thursday, October 3, 2019

Chapter 16A. Electrical Code

[HISTORY: Adopted by the Town Board of the Town of Brookhaven 11-21-2000 by L.L. No. 17-2000, effective 11-27-2000. Amendments noted where applicable.]

GENERAL REFERENCES

Building construction administration — See Ch. 16.

§ 16A-1. Purpose.

[Amended 5-3-2018 by L.L. No. 9-2018, effective 5-17-2018]

The Town Board of the Town of Brookhaven hereby determines that in order to insure the safety of its residents and the public in respect of electrical systems for light, heat or power and signal systems operating on 50 volts or more in or on real property located within the Town, it is necessary and prudent to regulate the installation and alteration of the wiring therefor. This chapter shall also provide for private electric inspection entities to perform electric inspections within the Town of Brookhaven when in conformance with the following provisions and approved by the Town Board.

§ 16A-2. Conformity with National Electrical Code.

[Amended 7-25-2006 by L.L. No. 16-2006, effective 7-31-2006; 2-15-2011 by L.L. No. 9-2011, effective 3-1-2011]

All electrical systems and wiring installations within the Town of Brookhaven shall conform to the requirements of the National Electrical Code™, also known as "National Fire Protection Association Code 70," as specified in the New York State Uniform Fire Prevention and Building Code.

§ 16A-3. (Reserved)

[1] *Editor's Note: Former § 16A-3, Aluminum wiring prohibited, as amended, was repealed 5-3-2018 by L.L. No. 9-2018, effective 5-17-2018.*

§ 16A-4. Inspections.

Inspections shall be made only by qualified inspectors so designated by the Town Board.

A. Qualifications. Duly appointed inspectors of qualifying organizations may seek designation as electrical inspectors by the Town Board as authorized agents of the Town, so long as they shall satisfy the following minimum qualifications for eligibility:

- (1) A minimum of 10 years' field experience in the maintenance, installation or inspection of electrical systems;
- (2) Shall hold and maintain a certification from the International Association of Electrical Inspectors (IAEI) for one- and two-family dwellings and for general electrical;
- (3) Shall be familiar with the National Electrical Code and New York State and Town of Brookhaven laws, rules and regulations to the extent that they relate to electrical inspections;
- (4) Shall shelve active electrician licenses during the period of appointment, if there may be a conflict of interest.
- (5) Said qualifying organizations shall:
 - (a) Maintain policies of insurance from an insurance company(ies) duly licensed by the State of New York meeting or exceeding the following minimum coverage requirements and shall provide a certificate of insurance evidencing the same and naming the Town of Brookhaven as an additional insured:
 - [1] General liability: \$1,000,000 per occurrence; \$2,000,000 aggregate.
 - [2] Excess liability: \$1,000,000 per occurrence.
 - [3] Worker's compensation: statutory requirements.

(b) File a verified application with the Chief Building Inspector on the form so designated by him/her.

B. Powers and duties of electrical inspector(s) designated as such by the Town Board shall:

- (1) Report, in writing, to the Chief Building Inspector, whose duty it shall be to enforce all provisions of this chapter, all violations of and/or deviations from or omissions of the electrical provisions of the National Electrical Code, and of all local laws and/or ordinances. Any of the aforementioned are applicable to electrical installations, alterations and/or repairs;
- (2) Make inspections of electrical installations, alterations and repairs in and on properties within the Town, upon the written request of the Chief Building Inspector or his designee other authorized Town official as herein otherwise provided; and to make such inspection(s) upon the oral request of the Chief Building Inspector, his designee or otherwise authorized Town official.
- (3) Furnish written reports to the Chief Building Inspector and the owners and/or lessees of property where defective electrical installations, alterations and repairs are identified upon inspection;
- (4) Authorize the issuing of a certificate of compliance for electrical installations, alterations and repairs which are in conformity with the provisions of this section;
- (5) Direct that the certificate of compliance be sent to the Chief Building Inspector.

§ 16A-5. No waiver or assumption of liability.

This chapter shall not be construed to alter, diminish or relieve the liability of any person owning, operating, controlling or installing electrical wiring, devices, appliances and/or equipment, for loss of life or damage to persons or property caused by any defect therein; nor shall the Town of Brookhaven be deemed to have assumed any such liability by reason of any inspection made pursuant to this chapter.^[1]

[1] *Editor's Note: Former § 16A-6, Penalties for offenses, as amended, which immediately followed this section, was repealed 5-3-2018 by L.L. No. 9-2018, effective 5-17-2018.*

*Town of Brookhaven, NY
Thursday, October 3, 2019*

Chapter 30. Fire Prevention

Article I. General Regulations and Provisions

§ 30-1. Intent.

It is the intent of this chapter to prescribe regulations consistent with nationally recognized good practice for the safeguarding, to a reasonable degree, of life and property from the hazards of fire and explosion arising from the storage, handling and use of hazardous substances, materials and devices and from conditions hazardous to life or property in the use or occupancy of buildings or premises.

§ 30-2. Short title.

This chapter shall be known and may be cited as the "Fire Prevention Local Law of the Town of Brookhaven."

§ 30-3. Applicability.

- A. The provisions of this chapter shall apply equally to new and existing conditions, except that existing conditions not in strict compliance with the terms of this chapter shall be permitted to continue where the exceptions do not constitute a distinct hazard to life or property in the opinion of the Chief Fire Marshal.
- B. Nothing contained in this chapter shall be construed as applying to the transportation of any article or thing shipped under the jurisdiction of and in compliance with the regulations prescribed by the Interstate Commerce Commission, unless specifically stated, nor as applying to the military forces of the United States.
- C. Whenever a provision of this chapter imposes or prescribes any greater requirement or higher standard on premises, buildings or structures, or on the use thereof, than is imposed or prescribed by any other law, ordinance, rule or regulation, the provision of this chapter shall govern.

§ 30-4. Definitions.

Unless otherwise expressly stated, the following terms shall, for the purpose of this chapter, have the meanings indicated in this section.

APPROVED

Accepted by the Chief Fire Marshal as a result of his investigation and experience or by reason of test, listing or approval by Underwriters' Laboratories, Incorporated, the National Bureau of

Standards, the American Gas Association Laboratories or other nationally recognized testing agencies.

ASSISTANT CHIEF FIRE MARSHAL

The Assistant Chief Fire Marshal of the Town of Brookhaven.
[Added 3-1-2005 by L.L. No. 8-2005, effective 3-4-2005]

CHIEF FIRE MARSHAL

The Chief Fire Marshal of the Town of Brookhaven.

DIVISION OF FIRE PREVENTION

The Division of Fire Prevention of the Town of Brookhaven.

INSTITUTIONAL OCCUPANCY

The occupancy or use of a building or structure or any portion thereof by persons harbored or detained to receive medical, charitable or other care or treatment or by persons involuntarily detained.

NFPA

The National Fire Protection Association, its standards and its codes.

OWNER

Includes his duly authorized agent or attorney, a mortgagee or vendee in possession, assignee of rents, purchaser, devisee, fiduciary and any other person having a vested or contingent interest in the property in question.

TOWN BOARD

The Town Board of the Town of Brookhaven.

§ 30-5. Establishment of Division of Fire Prevention.

[Amended 3-1-2005 by L.L. No. 8-2005, effective 3-4-2005]

- A. A Division of Fire Prevention is hereby established, which shall be operated under the supervision of the Chief Fire Marshal. The head of the Division shall be known as the "Chief Fire Marshal." The Chief Fire Marshal shall devote his full time to the duties of the Division of Fire Prevention. In the absence of the Chief Fire Marshal or at the direction of the Commissioner of Public Safety, the Assistant Chief Fire Marshal shall have the full power, authority and responsibility to undertake and perform all acts and duties performed by the Chief Fire Marshal. There shall be appointed as many Fire Marshals as may be necessary to assist the Chief Fire Marshal or Assistant Chief Fire Marshal in his duties.
[Amended 2-28-2019 by L.L. No. 7-2019, effective 3-12-2019]

- B. The Chief Fire Marshal and the Assistant Chief Fire Marshal shall be a resident of the Town of Brookhaven and shall be appointed pursuant to the rules and regulations of the Suffolk County Department of Civil Service and possess the minimum experience and qualifications as established by the Department of Civil Service.

§ 30-6. Establishment of Fire Advisory Board.

- A. A Fire Advisory Board is hereby established which shall consist of 10 members, all of whom shall be residents of the Town of Brookhaven and members of a recognized Fire Department or Board of Fire Commissioners. All members of the Fire Advisory Board shall be appointed by the Town Board for terms of three years. However, of said 10 members, three shall represent

the Brookhaven Town Fire District Officer's Association, three shall represent the Brookhaven Town Fire Chief's Council, and three shall represent the Brookhaven Town Volunteer Firemen's Association. The appointment of the nine members representing said organizations shall be upon the recommendation of the respective organizations which they represent.

- B. The Fire Advisory Board shall select from its own members a Chairman and a Vice Chairman and shall meet at least once every two months. Meetings shall be at the call of the Chairman or upon the request of four members of the Board. Five members shall constitute a quorum for the transaction of business.
- C. The Fire Advisory Board shall study and review the operation of this chapter and all administration thereof by the Chief Fire Marshal and the Division of Fire Prevention for the purpose of formulating and recommending improvements and changes in this chapter. The Fire Advisory Board shall act as an advisory body to the Town of Brookhaven and the Chief Fire Marshal and the Division of Fire Prevention in connection with the carrying out of the provisions and purposes of this chapter.

§ 30-7. Authority to enter premises.

[Amended 3-7-1995 by L.L. No. 8-1995, effective 3-10-1995]

The Chief Fire Marshal and any marshal of the Division of Fire Prevention may, at all reasonable hours, enter any building or premises, with the consent of the owner or occupant, or with a search warrant, for the purpose of making any inspection or investigation which, under the provisions of this chapter, he or they may deem necessary to be made.

§ 30-8. Duties of Division of Fire Prevention.

- A. It shall be the duty of the Chief Fire Marshal to inspect or cause to be inspected by the Division of Fire Prevention all buildings and premises, except the interiors of one-family dwellings, as often as may be necessary for the purpose of ascertaining and causing to be corrected any condition liable to cause fire or endanger life from fire or any violations of the provisions or intent of this chapter and of any other local law affecting the fire hazard.
- B. The Chief Fire Marshal and the Division of Fire Prevention shall cooperate with the Board of Fire Commissioners and other fire district officers in making inspections within a fire district and inspect any buildings and premises within a fire district or protected area at the request of the Board of Fire Commissioners or of the Chief of the Fire Department which protects the area in which the buildings or premises are situated.
- C. Nothing contained in this chapter shall be construed as in any way limiting or restricting the power of any Board of Fire Commissioners or of any Fire District officer to make inspections or investigations pursuant to law.
- D. It shall be the duty of the Chief Fire Marshal to inspect or cause to be inspected by the Division of Fire Prevention all exterior areas adjacent to or adjoining any structure or building, except one-family dwellings, for the purpose of designating said areas or portions thereof as fire zones. Any areas so designated shall be plainly defined and marked as such in a manner prescribed by the Chief Fire Marshal.
- E. It shall be the duty of the Division of Fire Prevention to investigate the origin, cause and circumstances of the following when said condition or occurrence is within the Town of Brookhaven:

- (1) Every fire involving injury or loss of life.

- (2) Every suspicious fire.
 - (3) Every fire which the Chief Fire Marshal determines worthy due to its size, speed or unusual conditions.
 - (4) Every hazardous condition or occurrence which might present a clear and present danger to the health, safety and welfare of the general public.
 - (5) Every fire or related condition or occurrence when requested by the local Fire Department, Fire District or other duly authorized agency.
- F. It shall be the duty of the Chief Fire Marshal and the Division of Fire Prevention, upon request, to assist the local Fire Department, the local Fire District or any other duly authorized agency in the mitigation of any hazardous condition or occurrence which might present a clear and present danger to the health, safety and welfare of the general public when such event shall occur in the town provided, however, that any member of the Division of Fire Prevention may take appropriate action to protect the health, safety and welfare of any person, or to minimize damage to property in the event of an emergency. For purposes of this section, an emergency is defined as an unforeseen occurrence or condition that calls for immediate action.
[Amended 9-18-1997 by L.L. No. 14-1997, effective 9-22-1997; 9-1-1998 by L.L. No. 22-1998, effective 9-4-1998]
- (1) The person or entity responsible for the spill, discharge or other release of any material that creates any hazardous condition or occurrence as described in § **30-8F** above shall reimburse the Town for all expenses incurred by the Town for the mitigation and investigation of the hazardous condition or occurrence. This section shall not apply to accidental spills or releases of home heating oil, swimming pool treatments or similar materials within or on the premises of single-family dwellings, unless such spill or release was due to a negligent or intentional act.
- G. It shall be the duty of the Division of Fire Prevention to assist any Fire Department, Fire District, municipality or any other duly authorized agency not within or part of the Town of Brookhaven, when assistance is requested by such Fire Department, Fire District, municipality or duly authorized agency, in the mitigation or investigation of the origin, cause and circumstances of any fire or hazardous condition or occurrence which might present a clear and present danger to the health, safety and welfare of the general public, regardless of the place of occurrence, provided that the Commissioner of Public Safety or his/her designee shall first approve the renderings of such assistance.
[Amended 9-18-1997 by L.L. No. 14-1997, effective 9-22-1997; 3-1-2005 by L.L. No. 8-2005, effective 3-4-2005; 2-28-2019 by L.L. No. 7-2019, effective 3-12-2019]
- (1) The person or entity responsible for the spill, discharge or other release of any material that creates any hazardous condition or occurrence as described in § **30-8F** above shall be responsible to reimburse the Town for all expenses incurred by the Town for the mitigation and investigation of the hazardous condition or occurrence. This section shall not apply to accidental spills or releases of home heating oil, swimming pool treatments or similar materials within or on the premises of single-family dwellings, unless such spill or release was due to a negligent or intentional act.
 - (2) It shall be the duty of the Fire Department, Fire District, municipality or other duly authorized agency not within or part of the Town of Brookhaven, to provide all necessary assistance in identifying the person or entity responsible for any spill, discharge or other release as described in § **30-8G(1)** above and all reasonable assistance in obtaining reimbursement for the Town of Brookhaven therefrom.
- H. It shall be the duty of the Division of Fire Prevention to enforce the applicable provisions of the New York State Uniform Fire Prevention and Building Code (commonly referred to as the "NYS

Uniform Code") in addition to any other laws, rules, codes or regulations duly adopted by the Code of the Town of Brookhaven.

[Added 4-17-2001 by L.L. No. 12-2001, effective 4-20-2001]

§ 30-9. Orders to eliminate dangerous or hazardous conditions.

Whenever the Division of Fire Prevention shall find in any building, vehicle or vessel or upon any premises dangerous or hazardous conditions or materials as follows, it shall order such dangerous conditions or materials to be removed or remedied in such manner as may be specified by the Chief Fire Marshal:

- A. Dangerous or unlawful amounts of combustible or explosive or otherwise hazardous materials.
- B. Hazardous conditions arising from defective or improperly installed equipment for handling or using combustible or explosive or otherwise hazardous materials.
- C. Dangerous accumulations of rubbish, wastepaper, boxes, shavings or other highly flammable materials.
- D. Accumulations of dust or waste material in air-conditioning or ventilating systems or of grease in kitchen or other exhaust ducts.
- E. Obstructions to or on fire escapes, stairs, passageways, doors or windows, liable to interfere with the operations of the Fire Department or egress of occupants in case of fire.
- F. Any building or other structure which, for want of repairs, lack of adequate exit facilities, automatic or other fire alarm apparatus or fire-extinguishing equipment or by reason of age or dilapidated condition or from any other cause, creates a hazardous condition.
- G. Any violation of this Chapter **30** of the Code of the Town of Brookhaven.

§ 30-10. Service of orders.

- A. The service of orders for the correction of violations of § **30-9** shall be made upon the owner, occupant or other person responsible for the conditions, either by delivering a copy of the same to such person or by delivering the same to and leaving it with any person in charge of the premises or, in case no such person is found upon the premises, by affixing a copy thereof in a conspicuous place on said premises. Whenever it may be necessary to serve such an order by affixing a copy thereof in a conspicuous place upon said premises, another copy thereof shall be mailed by certified mail with return receipt requested within 24 hours of posting to the person to whom it is directed at his last known address or place of residence.
- B. If buildings or other premises are owned by one person and occupied by another under lease or otherwise, the orders issued in connection with the enforcing of this chapter shall apply to the occupant thereof, except where the rules or orders require the making of additions to or changes in the premises themselves such as would immediately become real estate and be the property of the owner of the premises; in such cases, the rules or orders shall affect the owner and not the occupant.

[Amended 10-5-1993 by L.L. No. 19-1993, effective 10-12-1993]

§ 30-11. Permits.

- A. A permit shall constitute permission in writing to manufacture, maintain, store, handle or keep

explosives, chemicals, flammable liquids and gases or other hazardous materials or to use, install or conduct processes or carry on operations involving or creating conditions which are or may be hazardous to life or property or to install equipment used in connection with such activities. Such permit shall not take the place of any other license required by law and shall not be transferable nor assignable. Each permit shall be limited to the purposes and materials set forth in the face thereof, and any change in use or occupancy of premises shall require a new permit.

- B. Before any permit other than a household or commercial burning permit may be issued, the Division of Fire Prevention, with the consent of the owner or occupant, or with a search warrant, shall inspect and approve the receptacles, equipment, vehicles, buildings, premises or storage place to be used. In cases where the approval of any other governmental agency is required, no permit shall be issued until satisfactory evidence of such approval has been submitted by the applicant.
[Amended 3-7-1995 by L.L. No. 8-1995, effective 3-10-1995]
- C. All applications for a permit required by this chapter, other than an application for the household or commercial burning permit, shall be made to the Chief Fire Marshal in such form and detail as he shall prescribe. Applications for permits shall be accompanied by such plans as required by the Chief Fire Marshal. An application for a household or commercial burning permit may be made to the Chief of the Fire Department in whose district the burning is to be conducted. A permit shall not be issued for a period longer than one year unless specifically stated by some other section of this code. A permit shall not be effective until such time as the applicant has corrected all violations which were observed at the time of inspection. The permit fee shall cover a period of one year from the date of initial inspection, unless specifically stated by some other section of this code.
[Amended 2-2-1993 by L.L. No. 4-1993, effective 2-12-1993]
- D. Permits shall at all times be kept on the premises designated therein and shall at all times be subject to inspection by the Division of Fire Prevention and any officer of the Fire or Police Department.
- E. One permit only shall be required by establishments dealing in or using two or more flammable, combustible or explosive materials to be kept in the establishment at any one time, but each of the materials shall be listed in the permit.
- F. A copy of each permit, together with the application and plans upon which it is based, shall be delivered by the Chief Fire Marshal forthwith to the Chief of the Fire Department which protects the area in which the premises are situated.
- G. The Chief Fire Marshal may revoke any permit or approval issued, and the Chief of the Fire Department may revoke a household or commercial burning permit issued by him, if any violation of this chapter is found upon inspection or in case there has been any false statement or misrepresentation as to a material fact in the application or plans on which the permit or approval was based.
- H. No building or structure, except one-family dwellings, shall be erected or altered until the plans therefor have been approved, in writing, by the Chief Fire Marshal. Such written approval shall not be given where said construction or alteration would be in violation of any of the provisions of this chapter.

§ 30-12. Fees.

[Amended 3-6-1990 by L.L. No. 10-1990, effective 3-12-1990; 11-17-2016 by L.L. No. 24-2016, effective 12-5-2016]

The fees shall be established by Town Board resolution.

§ 30-13. Exemption from liability.

This chapter shall not be construed to subject the Town of Brookhaven, any Fire District or Fire Department therein or any officers or employees thereof to any civil or other liability for any damage to persons or property by reason of the inspection or reinspection authorized herein or failure to inspect or reinspect or the permit issued as herein provided or by reason of the approval or disapproval of any equipment authorized herein.

§ 30-14. Modifications.

The Chief Fire Marshal shall have the power to modify any of the provisions of this chapter upon application, in writing, by the owner or lessee or his duly authorized agent when there are practical difficulties in the way of carrying out the strict letter of the chapter, provided that the spirit of the chapter shall be observed, public safety secured and substantial justice done. The particulars of such modification, when granted or allowed, and the decision of the Chief Fire Marshal thereon shall be entered upon the records of the Division of Fire Prevention, and a copy shall be furnished to the applicant.

§ 30-15. Appeals.

Whenever the Chief Fire Marshal shall disapprove an application or refuse to grant a permit applied for or revoke a permit, or when it is claimed that the provisions of this chapter do not apply or that the true intent and meaning of this chapter has been misconstrued or wrongly interpreted, the applicant may appeal, in writing, from the decision of the Chief Fire Marshal to the Town Board within 10 days from the date of the decision appealed. The Town Board, after receipt of such notice of appeal, may, in its discretion, stay the effect of any order pending its decision. The decision of the Town Board shall be entered upon the records of the Division of Fire Prevention, and a copy shall be furnished to the applicant.

§ 30-16. (Reserved)

[1] *Editor's Note: Former § 30-16, Penalties for offenses, as amended, was repealed 1-16-2017 by L.L. No. 22-2017, effective 11-28-2017. See now Executive Law § 382, Subdivision (2).*

§ 30-17. Severability.

If any article, section, subsection, subdivision, paragraph, sentence, phrase, clause, word or portion of this chapter is for any reason held invalid or unconstitutional by a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions of this chapter.

§ 30-18. Occupancy of buildings.

No building or structure or part thereof erected or altered in accordance with § **30-11H** shall be occupied for use until an inspection of the same has been conducted by the Division of Fire Prevention and an appropriate certificate of compliance issued.

§ 30-19. Biennial registration of commercial properties.

[Amended 11-23-2010 by L.L. No. 45-2010, effective 12-7-2010; 3-1-2018 by L.L. No. 5-2018, effective 3-12-2018]

- A. All persons, corporations or other entities owning improved commercial used, zoned or assessed properties in the Town of Brookhaven shall file a certificate of registration with the Chief Fire Marshal in accordance with regulations, as she/he shall prescribe.
- B. A biennial fee, as established by Town Board resolution, is due and payable every January commencing in the year 2019. Penalties for failure are prescribed in § **30-16** herein.^[1]
[1] *Editor's Note: Former § 30-16, Penalties for offenses, as amended, was repealed 1-16-2017 by L.L. No. 22-2017, effective 11-28-2017. See now Executive Law § 382, Subdivision (2).*

§ 30-20. (Reserved)

Article II. Adoption of Standards

§ 30-21. Purpose and intent.

- A. This article is a supplement to Chapter **30** of the Code of the Town of Brookhaven so as to further provide the Town of Brookhaven with rules and regulations to improve public safety by promoting the control of fire hazards; regulating the installation, use and maintenance of equipment; regulating the use of structures, premises and open areas; providing for the abatement of fire hazards; and setting forth standards for compliance with and achievement of these objectives.
- B. It is the intent of this article to identify, adopt and use the standards and codes relating to the prevention of fires published by the National Fire Protection Association with the exception of NFPA Code 1, Fire Prevention, and NFPA Code 5000, Building Construction.
[Amended 4-4-2006 by L.L. No. 2-2006, effective 4-10-2006]

§ 30-22. Adoption of standards by reference; copies on file.

- A. This article adopts the codes and standards of the National Fire Protection Association currently in effect, with the exception of NFPA Code 1, Fire Prevention, and NFPA Code 5000, Building Construction. The same are hereby adopted and incorporated as if fully set out at length herein.
[Amended 4-4-2006 by L.L. No. 2-2006, effective 4-10-2006]
- B. At least one adopted edition, either a computer software program or a print version of the adopted edition of the Codes and Standards of the National Fire Prevention Association shall be maintained in the office of the Chief Fire Marshal and the provisions thereof shall be controlling within the Town of Brookhaven. The adopted edition of the Codes and Standards of the National Fire prevention Association shall be available for viewing by the public for reasonable periods of time, during regular business hours of the Town of Brookhaven. Copies of portions of the Codes and Standards of the National Fire Protection Association shall be available from the office of the Chief Fire Marshal at the prevailing cost per page for photocopies.
[Amended 2-20-1997 by L.L. No. 4-1997, effective 2-24-1997; 7-14-1998 by L.L. No. 19-1998,

effective 7-21-1998]

§ 30-23. Applicability.

- A. The provisions of this article shall apply to all buildings, structures, vehicles and marine vessels within the scope of this code and to premises which shall be constructed or erected and to conditions which arise in the Town of Brookhaven after the effective date hereof.
- B. The provisions of this article shall also apply to existing buildings, structures, vehicles and marine vessels within the scope of this code and to premises or conditions in the Town of Brookhaven when, in the opinion of the Chief Fire Marshal, they constitute a distinct fire hazard to life or the property of others.

§ 30-24. Conflicts with other laws.

This article is intended to be used in conjunction with existing laws, and nothing in this article shall be construed as rendering other applicable laws invalid. Where no law exists or where existing laws are silent in any area where this article sets forth specific provisions, the provisions of this article shall apply. In any situation where a conflict exists between a provision of this article and any existing law, the more restrictive requirement shall prevail, unless otherwise specified.

§ 30-25. (Reserved)

Article III. Fire Protection Equipment

- [1] *Editor's Note: This article title was amended 3-25-2014 by L.L. No. 5-2014, effective 4-1-2014, to add the phrase "and Life Safety Equipment"; and amended 3-1-2018 by L.L. No. 6-2018, effective 3-12-2018, to delete said phrase.*

§ 30-26. Chief Fire Marshal to survey.

[Amended 3-25-2014 by L.L. No. 5-2014, effective 4-1-2014; 3-1-2018 by L.L. No. 6-2018, effective 3-12-2018]

The Chief Fire Marshal shall survey or cause to be surveyed each establishment, except the interior of single-family dwellings, and shall specify what fire-detecting devices or extinguishing appliances shall be provided therein. In special hazardous processes or storage, appliances of more than one type or special systems may be required.

§ 30-27. Protection.

[Amended 6-20-1995 by L.L. No. 15-1995, effective 6-26-1995]

- A. Protection.
 - (1) Every new building or structure exceeding 12,000 square feet in gross area within exterior walls, fire walls notwithstanding, shall be protected throughout by an approved automatic fire sprinkler system.
 - (2) Every existing building exceeding 12,000 square feet in gross area within exterior walls, fire walls notwithstanding, in which greater than 50% of the floor area is modified, shall be

protected throughout by an approved automatic fire sprinkler system.

- (3) Every existing building with a gross area of less than 12,000 feet which is added to so that when the addition is completed, the building will have a floor area exceeding 12,000 square feet in gross area within exterior walls, fire walls notwithstanding, shall be protected throughout by an approved automatic fire sprinkler system.
- (4) The requirements of Subsection **A(1)**, **A(2)** and **A(3)** above may be in addition to other fire-detecting, fire-extinguishing or fire-control systems that shall be required.

§ 30-28. Sprinkler systems in nursing homes.

Every nursing home, convalescent home, old-age home, adult home or other home or structure used for the inpatient care of or occupied by sick, invalid, infirm, disabled or convalescent persons shall be equipped with an approved automatic fire sprinkler system. This requirement shall be in addition to any other required fire-detection or -extinguishing systems.

§ 30-29. Permit required.

[Amended 9-8-1994 by L.L. No. 8-1994, effective 9-16-1994; 3-10-2009 by L.L. No. 5-2009, effective 3-20-2009; 3-25-2014 by L.L. No. 5-2014, effective 4-1-2014; 3-1-2018 by L.L. No. 6-2018, effective 3-12-2018]

A permit shall be obtained from the Chief Fire Marshal prior to the installation or alteration of any fire alarm system, sprinkler or water-based fire protection system, fire service main, fire hydrants, or any other special fire-extinguishing or fire-detection system or for any hood and duct system intended for the removal of smoke and grease-laden vapors from commercial cooking equipment.

§ 30-30. Approval of systems and equipment.

No device, equipment or system installed pursuant to § **30-29** shall be deemed acceptable or approved until an inspection of the same has been conducted by the Division of Fire Prevention and an appropriate certificate of compliance has been issued for the same.

§ 30-31. Maintenance of equipment.

[Amended 3-10-2009 by L.L. No. 5-2009, effective 3-20-2009; ; 3-25-2014 by L.L. No. 5-2014, effective 4-1-2014; 3-1-2018 by L.L. No. 6-2018, effective 3-12-2018]

Sprinkler systems, standpipe systems, fire alarm systems, fire service mains, fire hydrants and other fire-protection or -extinguishing systems or appliances which have been installed in compliance with any permit or order or because of any law or local law shall be maintained in operative condition at all times, and it shall be unlawful for any owner or occupant to reduce the effectiveness of the protection so required, except that this shall not prohibit the owner or occupant from temporarily reducing or discontinuing the protection where necessary to make tests, repairs, alterations or additions. The Division of Fire Prevention shall be notified before such tests, repairs, alterations or additions are started unless the work is to be continuous until completion.

§ 30-31.1. Inspection and testing of systems.

[Added 9-8-1994 by L.L. No. 8-1994, effective 9-16-1994; amended 3-10-2009 by L.L. No. 5-2009, effective 3-20-2009]

- A. Every water-based fire protection system, fire service main, and fire hydrant shall be inspected, tested and maintained in accordance with the appropriate standards of the NFPA.
- B. At least once each year, a report of testing required in Subsection **A** of this section shall be submitted to the Division of Fire Prevention on a form approved by the Chief Fire Marshal.

§ 30-31.2. Notification.

[Added 9-8-1994 by L.L. No. 8-1994, effective 9-16-1994]

- A. Prior to repairing, modifying, testing or inspecting any water-based fire protection system or any auxiliary system, equipment or device connected thereto, the person conducting such work shall notify all entities that might receive automatic notification of the activation of the system, equipment or device.
- B. Upon completion of the repairing, modifying, testing or inspection of any water-based fire protection system, equipment or device, or any auxiliary system, equipment or device connected thereto, the person conducting the work shall notify all entities that the work is complete, as well as the operational status of the system, equipment or device.
- C. The entities to be notified shall include, but not be limited to, the Fire Department, the central station monitoring agency and the occupants of the building.

§ 30-32. Smoke detectors.

[Amended 4-18-2006 by L.L. No. 4-2006, effective 4-24-2006; 3-25-2014 by L.L. No. 5-2014, effective 4-1-2014; 5-12-2016 by L.L. No. 11-2016, effective 5-25-2016; 3-1-2018 by L.L. No. 6-2018, effective 3-12-2018]

Buildings or structures or any portion thereof occupied or used by persons for whom sleeping accommodations are provided therein shall be protected by an approved automatic smoke detection and alarm device located in and adjacent to all sleeping quarters or where otherwise specified by the Chief Fire Marshal.

Article IV. General Precautions Against Fire

§ 30-33. Bonfires and outdoor rubbish fires.

- A. Permit required. No person shall kindle or maintain any bonfire or rubbish fire or authorize any such fire to be kindled or maintained on or in any public street, alley or road. No person shall kindle or maintain any bonfire or rubbish fire or authorize any such fire to be kindled or maintained on any privately owned property or in any other public ground without written permission from the Board of Fire Commissioners in whose area the burning is to be conducted or from its duly authorized representative. During construction or demolition of buildings or structures, no waste materials or rubbish shall be disposed of by burning on the premises or in the immediate vicinity without having obtained written permission from the Board of Fire Commissioners in whose area the burning is to be conducted or from its duly authorized representative. This shall be in no way construed as being applicable to backyard barbecues. The requirements of this section shall be in addition to any other permits required by a higher governmental agency.
- B. Location restricted. No person to whom a permit is issued shall kindle or maintain any bonfire or rubbish fire or authorize any such fire to be kindled or maintained on any private land unless

the location is not less than 50 feet from any structure and adequate provision is made to prevent fire from spreading to within 50 feet of any structure or the fire is contained in an approved waste burner located safely not less than 15 feet from any structure. This shall in no way be construed as applicable to backyard barbecues.

- C. Chief may prohibit. The Chief of the Fire Department, or his designee, which protects the area may prohibit any or all bonfires and outdoor rubbish fires when atmospheric conditions or local circumstances make such fire hazardous.
- D. The Chief Fire Marshal may prohibit all bonfires and rubbish fires regardless of any permissions in all or any part of the Town of Brookhaven when atmospheric conditions or local circumstances make such fires hazardous. Notice of such prohibition and its subsequent termination shall be made to each Fire District and Fire Department as soon as practicable.
- E. All permits and permissions required within the scope of this section shall at all times be present at the location of such burning and shall be readily available for inspection by members of the Fire Department, Fire District, Police Department or Division of Fire Prevention.

§ 30-34. Use of torches for removing paint.

[Amended 12-20-1988 by L.L. No. 30-1988, effective 12-27-1988]

The use of a torch or other flame-producing device for removing paint, varnish or any other interior or exterior finish from any building or structure is prohibited.

§ 30-35. Handling readily combustible materials.

No person making, using, storing or having in charge or under his control any shavings, excelsior, rubbish, sacks, bags, litter, hay, straw or combustible waste materials shall fail or neglect at the close of each day to cause all such material which is not compactly baled and stacked in an orderly manner to be removed from the building or stored in suitable vaults or in metal-lined, covered receptacles or bins. The Chief Fire Marshal shall require suitable baling presses to be installed in all stores, apartment buildings, factories and similar places where accumulations of paper and waste materials are not removed at least every second day.

§ 30-36. Receptacles for readily combustible materials.

All receptacles or bins hereinabove referred to in § **30-35** shall be kept closed at all times and shall be located not less than 15 feet from any building or structure unless otherwise specified by the Chief Fire Marshal. Any such receptacles or bins equipped with wheels shall be enclosed within a noncombustible sill or wall no less than four inches in height.

§ 30-37. Storage of readily combustible materials.

- A. Permit required. No person shall store in any building or upon any premises in excess of 2,500 cubic feet in gross volume of combustible empty packing cases, boxes, barrels or similar containers, rubber tires, baled cotton, rubber or cork or other similarly combustible materials without a permit.
- B. Storage requirements. Storage in buildings shall be orderly, shall not be within two feet of the ceiling and shall not be so located as to endanger exit from the building. Storage in the open shall not be more than 20 feet in height, shall be so located, with respect to adjacent buildings,

as not to constitute a hazard and shall be compact and orderly.

§ 30-38. Open flames, lights or kindling of fire restricted.

- A. No person shall take an open flame or light into any building, barn, vessel, boat or any other place where highly flammable, combustible or explosive material is kept unless such light or flame shall be well-secured in a glass globe, wire mesh cage or similar approved device.
- B. No heating or lighting apparatus or equipment capable of igniting flammable materials of the types stored or handled shall be used in the storage areas of any warehouse storing rags, excelsior, hair or other highly flammable or combustible material; nor in the work area of any shop or factory used for the manufacture, repair or renovating of mattresses or bedding; nor in the work area of any establishment used for the upholstering of furniture.

§ 30-39. Chimneys and heating appliances.

- A. All chimneys, smokestacks or similar devices for conveying smoke or hot gases to the outer air and the stoves, furnaces, restaurant-type cooking equipment, incinerators, fire boxes or boilers to which they are connected shall be constructed and maintained in such manner as not to create a hazardous condition. A permit shall be obtained from the Chief Fire Marshal for the installation of any of the above-mentioned equipment which is connected to any chimney, smokestack or similar device. This section shall be applicable to all construction, excluding single-family dwellings.

[Amended 9-3-1996 by L.L. No. 20-1996, effective 9-6-1996]

- B. No person or persons shall construct a chimney in or attach any chimney to any dwelling unless such chimney is either a masonry chimney designed for the use of all types of fuels and is built up from the ground or a factory-fabricated chimney approved as a result of tests and listed by a nationally recognized laboratory for use with all types of fuels and is installed in accordance with the conditions of approval and listing. The minimum free area of the chimney shall be equivalent to a seven-inch round flue.

§ 30-40. Factory-fabricated chimneys.

- A. Every factory-built chimney shall be equipped with a suitable means for cleaning access at the base and a suitable termination at the top.
- B. Factory-built housings which are field assembled shall be equipped with steel tension straps secured to the roof framing by nails and to the housing by bolts.
- C. Factory-built housings which are factory-assembled must be secured to the roof framing with screws or bolts.
- D. For use on commercial buildings, DWS (double-wall steel) vents may be used for gas-heat appliances only. DWS vents shall be installed in accordance with their listing and/or the manufacturer's instructions.
- E. The installation of factory-fabricated chimneys shall be in accordance with the appropriate standards of the NFPA and the manufacturer's instructions.

§ 30-41. Access to concealed spaces.

[Amended 12-20-1988 by L.L. No. 30-1988, effective 12-27-1988]

- A. All concealed or closed-off spaces above ceilings or other similar areas shall be provided with suitable access from either the interior or exterior of the structure whenever said spaces contain any fire-detecting equipment or devices, fire-suppression equipment or devices or smoke/fire-control equipment or devices. This section does not apply to spaces that contain only wiring or piping for such equipment or devices.
- B. Access opening required by this section shall have a minimum clear opening of not less than 24 inches by 48 inches.
- C. One access opening shall be provided for each 3,000 square feet of concealed or closed-off space.
- D. Access opening shall be arranged so that the maximum travel distance from any opening to the farthest area of such concealed or closed-off space does not exceed 75 feet.
- E. Every access opening shall have the same fire resistance rating as the wall/ceiling/floor assembly in which it is located.

§ 30-42. (Reserved)

[1] *Editor's Note: Former § 30-42, Windows in sleeping quarters, was repealed 4-18-2006 by L.L. No. 5-2006, effective 4-24-2006]*

§ 30-43. (Reserved)

[1] *Editor's Note: Former § 30-43, Fire zones, was repealed 5-20-1993 by L.L. No. 12-1993, effective 5-25-1993.*

§ 30-44. Guard dogs.

Any person causing guard dogs to be harbored or kept on a premises shall cause notice of the presence of said guard dogs to be posted conspicuously on the premises. Said notice shall consist of reflective decals or placards in such form as shall be approved or supplied by the Chief Fire Marshal. Said decals or placards shall be placed in locations specified by the Division of Fire Prevention and shall not be considered signs under other chapters of the Code of the Town of Brookhaven. In addition, said person shall notify the Chief Fire Marshal and the local Fire Department having jurisdiction over his premises of the fact that guard dogs are present on the premises and shall give to said Chief Fire Marshal and local Fire Department the name and phone number of a person to be contacted in the event of an emergency during such times as no employees are present at the premises. When services of guard dogs are no longer required, the Chief Fire Marshal and the Fire Department affording protection shall be notified, and the placard shall be removed and, if supplied by the Division of Fire Prevention, shall be surrendered to said Division.

§ 30-44.1. Dumping of flammable and combustible liquids.

No person shall dump, spill or in any other fashion place or cause to be dumped, spilled or placed any flammable or combustible liquids on the ground or into sewers, drainage ditches or storm drains.

§ 30-44.2. Razor wire prohibited.

The use of razor wire, barbed wire, concertina wire or any other similar wire or device designed to injure persons coming in contact with the same shall be prohibited in or on any building or structure or portion thereof.

Article X. Maintenance of Exitways

§ 30-66. Marking, illumination and maintenance.

Access to, marking, operation, illumination and maintenance of all components of all exits, aisles, enclosures and stairways shall at all times be in accordance with the appropriate standards of the NFPA.

§ 30-67. (Reserved)

[1] *Editor's Note: Former § 30-67, Penalties for offenses, was repealed 5-21-1991 by L.L. No. 2-1991, effective 5-28-1991.*

Article XI. Explosives, Ammunition and Blasting Agents

§ 30-68. Scope.

This article shall apply to the manufacture, possession, storage, sale, transportation and use of explosives and blasting agents, except that nothing in this article shall be construed as applying to:

- A. The Armed Forces of the United States or the state militia.
- B. Explosives in forms prescribed by the Official United States Pharmacopeia.
- C. The sale or use of fireworks.
- D. The possession, transportation and use of small arms ammunition or special industrial explosive devices.
- E. The possession, storage, transportation and use of not more than 15 pounds of smokeless powder and 1,000 small arms primers for hand loading of small arms ammunition for personal use.
- F. The manufacture, possession, storage and use of not more than 15 pounds of explosives or blasting agents in educational, governmental or industrial laboratories for instructional or research purposes when under direct supervision of experienced, competent persons.
- G. The transportation and use of explosives or blasting agents by the United States Bureau of Mines, the Federal Bureau of Investigation, the United States Secret Service or Police and Fire Departments acting in their official capacity.

§ 30-69. Definitions.

As used in this article, the following terms shall have the meanings indicated:

CARRIER

A person who engages in the transportation of articles or materials by air, water, rail or highway.

TERMINAL

Those facilities used by carriers for the receipt, transfer, temporary storage or delivery of articles or materials.

§ 30-70. Permit required.

Permits shall be obtained to:

- A. Manufacture, possess, store, sell or otherwise dispose of explosives or blasting agents.
- B. Transport explosives or blasting agents.
- C. Use explosives or blasting agents.
- D. Operate a terminal for handling explosives or blasting agents.
- E. Deliver to or receive explosives or blasting agents from a carrier at a terminal between the hours of sunset and sunrise.

§ 30-71. General requirements.

- A. The manufacture of explosives or blasting agents shall be prohibited unless such manufacture is authorized by the Chief Fire Marshal. This shall not apply to hand loading of small arms ammunition for personal use when not for resale.
- B. The storage of explosives and blasting agents is prohibited within the limits established by law as the limits of the district in which such storage is to be prohibited, except for temporary storage for use in connection with approved blasting operations; provided, however, that this prohibition shall not apply to wholesale and retail stocks of small arms ammunition, explosive bolts, explosive rivets or cartridges for explosive-actuated power tools in quantities involving less than 500 pounds of explosive material.
- C. The Chief Fire Marshal may limit the quantity of explosives or blasting agents to be permitted at any location.
- D. No person shall sell or display explosives or blasting agents on highways, sidewalks, public property or in places of public assembly.
- E. The Chief Fire Marshal may designate the location and specify the maximum quantity of explosives or blasting agents which may be loaded, unloaded, reloaded or temporarily retained at each terminal where such operations are permitted.
- F. Shipments of explosives or blasting agents delivered to carriers shall comply with Interstate Commerce Commission regulations.
- G. Carriers shall immediately notify the Chief Fire Marshal when explosives or blasting agents are received at terminals.

§ 30-72. Storage.

The manufacture, storage, transportation and use of all materials in this article shall be in accordance with the appropriate standards of the NFPA.

Article XIV. Combustible and Flammable Liquids

§ 30-78. Scope.

This article shall apply to liquids with a flash point below 200° F. and to liquids with flash points above 200° F. which, when heated, assume the characteristics of liquids with flash points below 200° F.

§ 30-79. Permit required.

A permit shall be obtained for any of the following:

- A. Storage, handling or use of Class I or Class II flammable liquids in excess of one gallon in a dwelling or other place of human habitation or in excess of six gallons in any other building or other occupancy or in excess of 10 gallons outside of any building, except that no permit shall be required for the following:
 - (1) For the storage or use of flammable liquids in the fuel tank of a motor vehicle, aircraft, motorboat, mobile power plant or mobile heating plant.
 - (2) For the storage or use of paints, oils, varnishes or similar flammable mixtures when such liquids are stored for maintenance, painting or similar purposes for a period of not more than 30 days.
- B. Storage, handling or use of Class III flammable liquids in excess of 25 gallons in a building or in excess of 60 gallons outside of a building, except for fuel oil used in connection with oil-burning equipment.
- C. For the installation of any tank or container, above or below ground, for the storage of more than 60 gallons of combustible or flammable liquid. This shall not apply to fuel oil tanks of 1,000 gallons' capacity or less which supply heating units only.

§ 30-80. General requirements.

The storage, handling, use and dispensing of flammable and combustible liquids within the scope of this Article **XIV** shall be in accordance with the appropriate standards of the NFPA.

§ 30-81. Automatic dispensing units.

The installation or use of coin-operated dispensing devices for Class I flammable liquids is prohibited.

§ 30-82. Dispensing into containers.

No delivery of any Class I or II flammable liquids shall be made into portable containers of five gallons' capacity or less unless the container is of sound metal construction, has a tight closure with screwed or spring cover and is fitted with a spout or so designed that the contents can be poured without spilling or said container is listed for such use.

§ 30-83. Transfer into tanks and containers.

Flammable and combustible liquids shall not be transferred from one tank or container to another tank or container, either above or below ground, fixed, buried, portable or mobile, unless all openings are securely plugged, capped, equipped with approved devices to prevent the discharge of the flammable or combustible liquid or connected for the actual transfer of said liquid and/or vapors.

§ 30-84. Fire protection.

[Amended 6-2-1992 by L.L. No. 5-1992, effective 6-8-1992]

- A. Every self-service gasoline dispensing area shall be equipped with an approved automatic fixed extinguishing system.
- B. Every new or altered service station gasoline dispensing area shall be equipped with an approved fixed extinguishing system.

§ 30-85. Parking and garaging.

- A. No tank vehicle containing flammable, combustible, corrosive, poisonous, toxic or hazardous liquids, gases or residues of the same shall be left unattended on any street, highway, avenue or alley, provided that this shall not prevent a driver from the necessary absence from the truck in connection with the delivery of his load, except that during actual discharge of the commodity, some responsible person shall be present at the vehicle, nor shall it prevent stops for meals during the day or night if the street is well lighted at point of parking.
- B. Tank vehicles as described above shall not be parked out-of-doors at any one point for longer than one hour, except off the streets and at least 25 feet from any building.
- C. Tank vehicles as described above shall not be parked or garaged in any building other than those specifically approved for such use by the Chief Fire Marshal.

Article XVI. Hazardous Chemicals and Materials

§ 30-89. Scope.

This article shall apply to materials not otherwise covered in this chapter which are highly flammable or which may react to cause fires or explosions or which, by their presence, create or augment a fire or explosion hazard or which, because of their toxicity, flammability or liability to explosion, render fire fighting abnormally dangerous or difficult, and also to flammable liquids which are chemically unstable and which may spontaneously form explosive compounds or undergo spontaneous reactions of explosive violence or with sufficient evolution of heat to be a fire hazard. Hazardous chemicals shall include such materials as flammable solids, corrosive liquids, radioactive materials, oxidizing materials, potentially explosive chemicals, highly toxic materials and poisonous gases, as defined in § 30-90. In addition, this article shall include all materials listed in

both Parts 112 and 261 of Title 40 of the Code of Federal Regulations.

§ 30-90. Definitions.

As used in this article, the following terms shall have the meanings indicated:

CORROSIVE LIQUIDS

Includes those acids, alkaline caustic liquids and other corrosive liquids which, when in contact with living tissue, will cause severe damage of such tissue by chemical action or, in case of leakage, will materially damage or destroy other containers or other hazardous commodities by chemical action and cause the release of their contents or are liable to cause fire when in contact with organic matter or with certain chemicals. Corrosive liquids are those that have a pH less than four or greater than 10.

FLAMMABLE SOLID

Includes a solid substance, other than one classified as an explosive, which is liable to cause fires through friction, through absorption of moisture, through spontaneous chemical change or as a result of retained heat from manufacturing or processing.

HIGHLY TOXIC MATERIAL

A material so toxic to man as to afford an unusual hazard to life and health during fire-fighting operations or during an unintended release of said material into the environment. Examples are parathion, TEPP (tetraethyl phosphate), HETP (hexaethyl tetraphosphate) and similar insecticides and pesticides.

OXIDIZING MATERIAL

Includes substances such as chlorates, permanganates, peroxides or nitrates that yield oxygen readily to stimulate combustion.

POISONOUS GAS

Includes any noxious gas of such nature that a small amount of the gas, when mixed with air, is dangerous to life. Examples are chlorpicrin, cyanogen, hydrogen cyanide, nitrogen peroxide and phosgene.

POTENTIALLY EXPLOSIVE CHEMICAL

Includes any chemical substance, other than one classified as an explosive or blasting agent, which has a tendency to be unstable and which can be exploded by heat or shock or a combination thereof.

RADIOACTIVE MATERIAL

Includes any material or combination of materials that spontaneously emits ionizing radiation.

SEALED SOURCE

A quantity of radiation so enclosed as to prevent the escape of any radioactive material but at the same time permitting radiation to come out for use.

§ 30-91. Permit required.

- A. A permit shall be required for the storage or handling of more than 55 gallons of corrosive liquids; or more than 100 pounds of oxidizing materials; or more than 10 pounds of organic peroxides; or more than 500 pounds of nitromethane; or 1,000 pounds or more of ammonium nitrate, ammonium nitrate fertilizers and fertilizer mixtures covered in § 30-95D; or any amount of highly toxic material or poisonous gas.

- B. A permit shall be required for the storage or handling at any installation of more than one microcurie of radium not contained in a sealed source or more than one millicurie of radium or other radioactive material in a sealed source or sources or any amount of radioactive material for which a specific license from the United States Atomic Energy Commission is required in accordance with nationally recognized good practice.
- C. Every permittee shall display on the premises storing, handling, manufacturing or using commodities within the scope of this article approved warning signs/symbols at all entrances to such premises, as directed by the Chief Fire Marshal.

§ 30-92. General requirements.

- A. The manufacture, storage, handling and use of hazardous chemicals shall be safeguarded with such protective facilities as public safety requires.
- B. The Chief Fire Marshal may require the separation or isolation of any chemical that, in combination with other substances, may bring about a fire or explosion or may liberate a flammable or poisonous gas. The Chief Fire Marshal may require separation from other storage, occupancies or buildings when the quantity stored constitutes a material hazard.
- C. The manufacture, storage, handling and use of hazardous chemicals and materials shall be in accordance with the appropriate standards of the NFPA, except that more restrictive requirements, as specified in this article, shall take precedence over any NFPA requirements.
- D. The Chief Fire Marshal may require the submission of additional documentation relating to the physical and chemical properties of hazardous chemicals and materials.
- E. The management or owner of any building or facility wherein hazardous chemicals or materials are stored or handled shall submit an inventory of such chemicals or materials at least annually or whenever the quantity of the same shall change substantially.
- F. Only chemicals or materials listed in the inventory required in Subsection **E** above shall be stored or handled unless the Chief Fire Marshal has first given written permission for the storage or handling of additional chemicals or materials.

§ 30-93. Oxidizing materials.

Packaged oxidizing materials shall be stored in dry locations and separated from stored organic materials. Bulk, oxidizing materials shall not be stored on or against wooden surfaces.

§ 30-94. Radioactive materials.

- A. Durable, clearly visible signs warning of radiation dangers shall be placed at all entrances to areas or rooms where radioactive materials are used or stored. In addition, each container in which radioactive materials are used, stored or transported shall bear a durable, clearly visible, appropriate warning sign. Such signs shall bear the three-bladed radiation symbol in magenta or purple on a yellow background in accordance with nationally recognized good practice.
- B. When not in use, radioactive materials shall be kept in adequately shielded fire-resistant containers of such design that the gamma radiation will not exceed 200 milliroentgens per hour or equivalent at any point of readily accessible surface.

§ 30-95. Potentially explosive materials.

A. Explosives and blasting agents shall not be stored in the same building or in close proximity to potentially explosive chemicals.

B. Organic peroxides.

- (1) A detached, well-isolated, ventilated and unheated storage building constructed with walls having a fire-resistance rating of not less than two hours, a noncombustible floor and lightweight insulated roof shall be provided for the storage of 50 pounds or more of organic peroxides. If not adequately protected by a fast-acting deluge-type automatic sprinkler system, the storage building shall be located the following minimum distances from flammable liquid storage, combustible materials in the open and from any other building or highway:

| Weight of Organic Peroxide (pounds) | Distance (feet) |
|------------------------------------------------|----------------------------|
| 50 to 100 | 75 |
| 100 to 500 | 100 |
| 500 to 1,000 | 125 |
| 1,000 to 3,000 | 200 |
| 3,000 to 5,000 | 300 |

- (2) The organic peroxides shall be stored in the original shipping containers (Interstate Commerce Commission containers). Care shall be taken to avoid rough handling or contamination of these chemicals. Readily legible warning signs and placards shall be prominently placed in the storage and processing areas.

C. Nitromethane.

- (1) A suitable isolated outdoor storage area shall be provided for nitromethane. Hazardous processing shall not be permitted in the vicinity of this storage area. Nitromethane shall be stored in drums in which it is received or in an underground tank with suitable corrosion protection and a minimum of two feet of earth over the tank or in barricaded tanks above ground. If the drum storage is not adequately protected by a fast-acting deluge-type automatic sprinkler system, the storage of 2,000 pounds or more shall be located the following minimum distances from inhabited buildings:

| Approximate Weight (pounds) | Number of Drums | Distance (feet) |
|----------------------------------------|------------------------|----------------------------|
| Beginning at 2,000 | 4 | 100 |
| Over 2,000 to 10,000 | 20 | 200 |
| Over 10,000 to 20,000 | 40 | 300 |
| Over 20,000 to 40,000 | 80 | 400 |
| Over 40,000 to 80,000 | 160 | 500 |

- (2) Care shall be taken to avoid rough handling or contamination of this chemical. Readily legible warning signs and placards shall be prominently placed in the storage and processing areas.

D. Ammonium nitrate.

Each storage pile of bags or other authorized packages and containers of such materials shall not exceed 12 feet in height, 12 feet in width and 30 feet in length. Such pile units shall be separated by a clear space of not less than 36 inches in width from the base to the top of the piles, serving as cross aisles. At least one service or main aisle in the storage area shall be not less than four feet in width. A clearance of not less than 30 inches shall be maintained from building walls and partitions and of not less than 36 inches from ceilings or roof structural members, with a minimum of 18 inches below sprinklers.

- (2) Ammonium nitrate storage areas shall be separated by a space of 30 feet or by a tight noncombustible partition from storages of organic chemicals, corrosive liquids, compressed gases, flammable and combustible materials or other contaminating substances such as sulphur, coal, flour and metallic powders such as zinc, copper and magnesium where storage of such materials is permitted with ammonium nitrate.
- (3) Quantities of ammonium nitrate or ammonium nitrate fertilizer, having no organic coating, in the form of crystals, flakes, grains or prills, including fertilizer grade, dynamite grade, nitrous oxide grade and technical grade ammonium nitrate and ammonium nitrate phosphate (containing 60% or more ammonium nitrate by weight) of more than 50 tons' total weight shall be stored in a well-ventilated building of fire-resistive or noncombustible construction or in buildings of other types of construction equipped with an approved automatic sprinkler system. In populated areas, quantities of 2,500 tons or more shall be stored in well-ventilated buildings of fire-restrictive or noncombustible construction equipped with an approved automatic sprinkler system, and no combustible materials or ammonium nitrate sensitizing contaminants shall be stored in this building.
- (4) Storage of ammonium nitrate, coated or mixed with organic anticaking materials, except compounded blasting agents, shall not be permitted in populated and congested areas. Outside such areas, quantities of 500 tons or less may be stored in well-ventilated buildings of fire-resistive or noncombustible construction equipped with an approved automatic sprinkler system.

§ 30-96. Highly toxic materials.

- A. Highly toxic materials shall be segregated from other chemicals and combustible and flammable substances by storage in a room or compartment separated from other areas by walls and floor and ceiling assemblies having a fire-resistance rating of not less than two hours. The storage room shall be provided with adequate natural or mechanical ventilation to the outside atmosphere. The floor of said room shall be impermeable to the materials being stored within.
- B. Legible warning signs and placards stating the nature and location of the highly toxic material shall be posted at all entrances to areas where such materials are stored or used.

§ 30-97. Poisonous gases.

- A. Storage of poisonous gases shall be in rooms of at least one hour's fire-resistant construction and having natural or mechanical ventilation adequate to remove leaking gas. Such ventilation shall not discharge to a point where the gases may endanger any person.
- B. Legible warning signs stating the nature of hazard shall be placed at all entrances to locations where poisonous gases are stored or used.

§ 30-98. Corrosive liquids.

Satisfactory provisions shall be made for containing and neutralizing or safely flushing away leakage of corrosive liquids which may occur during storage or handling.

§ 30-98.1. (Reserved)

[1] *Editor's Note: Former § 30-98.1, Penalties for offenses, was repealed 5-21-1991 by L.L. No. 2-1991, effective 5-28-1991.*

Article XVII. Liquefied Petroleum Gases

§ 30-99. General provisions.

- A. Application of article. The provisions of this article shall apply to all uses of liquefied petroleum gas and installation of all apparatus, piping and equipment pertinent to systems for such uses.
- B. Deviations. Deviations from the appropriate standards of the NFPA or the provisions of this article as otherwise prescribed, when it shall have been conclusively proven to the Chief Fire Marshal that such deviations meet the performance requirements of this article, shall constitute compliance with this article.

§ 30-100. Definitions.

As used in this article, the following items shall have the meanings indicated:

APPLIANCES

Includes all gas-burning appliances for use with liquefied petroleum gas.

LIQUEFIED PETROLEUM GAS EQUIPMENT

Includes all apparatus, appliances, piping and equipment pertinent to the use of liquefied petroleum gas.

LIQUEFIED PETROLEUM GAS SYSTEM

An assembly consisting of one or more containers with a means for conveying liquefied petroleum gas from the container(s) to dispensing or consuming devices, either continuously or intermittently, and which incorporates components intended to achieve control of quantity, flow, pressure or state, either liquid or vapor.

QUALIFIED PERSONNEL

Qualified persons holding a certificate of fitness issued by the Chief Fire Marshal of the Town of Brookhaven.

§ 30-101. Filing of plans and reports.

A. Plans.

- (1) Plans for all new fixed liquefied petroleum gas installations in excess of 100 gallons' water capacity must be submitted to the Chief Fire Marshal's office for approval prior to installation. The plan shall be a plot plan showing locations of buildings and property lines and all pertinent dimensions and including the proposed location of containers, vaporizers and equipment, with the capacities in gallons of water capacity and descriptions thereof, submitted in duplicate. Acceptance of plans for installation does not relieve the applicant

from meeting requirements of any other law or local law of any other authority having jurisdiction.

[Amended 9-20-2001 by L.L. No. 27-2001, effective 9-24-2001]

- (2) The installation of containers or tanks in excess of 100 gallons' water capacity shall require the issuance of written permission by the Chief Fire Marshal.
 - (3) All underground liquefied petroleum gas tanks and piping are to remain uncovered until the installation is approved by the Chief Fire Marshal.
 - (4) No liquefied petroleum gas system which requires written permission of the Chief Fire Marshal shall be utilized until an inspection of the same has been made by the Division of Fire Prevention and an appropriate certificate of compliance has been issued, except when the total aggregate capacity is 200 gallons' water capacity or less.
 - (5) All containers shall be installed so that all pertinent numbers and test dates are at all times legible and readily visible whenever possible.
 - (6) Any change of liquefied petroleum gas equipment from one company to another shall require the submission of plans for approval by the Chief Fire Marshal prior to such change of companies.
- B. Temporary heat location reports. Every installation of liquefied petroleum gas used for temporary heat must be reported to the Chief Fire Marshal prior to installation.

§ 30-102. Installation and maintenance of equipment.

- A. All equipment shall be installed and maintained in conformity with the rules and regulations of the Chief Fire Marshal of the Town of Brookhaven and the appropriate standards of the NFPA. It shall be unlawful to install, service, handle or offer for sale, in any form, liquefied petroleum gas and related equipment that does not conform to the rules and regulations of the Chief Fire Marshal of the Town of Brookhaven and the appropriate standards of the NFPA.
- B. No person, firm or corporation, except the owner or those authorized by the owner to do so, shall sell, fill, refill, deliver or permit to be delivered or use in any manner any liquefied petroleum gas container for any gas or compound or for any other purpose whatsoever. Only containers designed for liquefied petroleum gas may be filled with liquefied petroleum gas. Filling of liquefied petroleum gas containers with any other gas or compound is prohibited.
- C. Cylinders used for liquefied petroleum gas shall be painted white, silver or other light-reflecting color as approved by the Chief Fire Marshal. It shall be unlawful for any supplier to refill any container that has been painted any other color.
- D. The gas supplier shall have the right to refuse to fill any container that does not fully conform to all provisions of the Town of Brookhaven Fire Prevention Local Law or one that has been involved in a fire or is burned or scorched.
- E. Replacement of parts on containers, regulators or related equipment shall be made by qualified personnel only.
- F. Peening of weld leaks is prohibited.
- G. Tanks, cylinders or other storage vessels which previously contained gases other than liquefied petroleum gas, such as but not limited to freon, acetylene or hydrogen, shall not be revalved and used for liquefied petroleum gases.

§ 30-103. Portable cylinders and containers.

- A. Portable vapor withdrawal cylinders with water capacities greater than 2 1/2 pounds which are or will be owned by the user or intended user are not to be filled or refilled unless the cylinder has been properly tested or requalified in accordance with United States Department of Transportation regulations and has attached thereto a warning label approved by the Chief Fire Marshal. Cylinder(s) shall not be released to the owner or his representative by the seller or refiller until it has been determined that the cylinder has not been filled beyond acceptable limits (42% of its water weight capacity), is free of leaks and is safe for use or continued use.
- B. Containers, except those use in liquid withdrawal service up to and including 40 pounds' propane capacity, shall be checked for leaks immediately after filling. The test will be done by a qualified person who has a certificate of fitness by checking each connection with a soap-water solution or by total submersion in a water-filled container. Should a leak exist, the container shall be emptied immediately and marked with paint or indelible marker or other suitable means to positively identify a container that leaks. A leaking container shall not be transported from the filling site while it contains any product, either liquefied or vapor.
- C. All portable Department of Transportation and Interstate Commerce Commission containers shall have the date of manufacture permanently stamped on the collar; if permanently attached, on the cylinder; and, in the case of containers more than 12 years old, shall have the date of the most recent inspection, month/year, marked on the collar or cylinder.
- D. Every person, firm or corporation offering filled liquefied petroleum gas cylinders for sale or resale shall have a certified scale on the premises to ensure that each portable cylinder containing liquefied petroleum gas has not been filled beyond its safe capacity. Each such cylinder shall be weighed before delivery to the purchaser to ensure that the cylinder is not filled beyond acceptable limits.
- E. Container storage forbidden.
 - (1) No container of liquefied petroleum gas, either in use or in storage, will be permitted inside or on the roof or balcony of any occupied building or in or on any construction attached to an occupied building, except as permitted in Subsections **F** and **G** below.
 - (2) Industrial lift trucks will comply with the provisions of the appropriate standards of the NFPA.
 - (3) Storage of containers must be outside the building, at least 25 feet from any building. Storage is to be in either a noncombustible top and bottom vented structure or surrounded by a substantial metal fence enclosure, such enclosure to be adequately secured against access by unauthorized persons.
- F. Department of Transportation specification cylinders with a maximum water capacity of 2 1/2 pounds, used with completely self-contained hand torches and similar applications, may be stored or displayed in a building frequented by the public. The quantity of liquefied petroleum gas shall not exceed 200 pounds.
- G. Temporary or emergency use of liquefied petroleum gas equipment in occupied or unoccupied buildings shall be approved by the Chief Fire Marshal prior to use. Any tank used inside any building shall be equipped with an excess flow valve to shut off the flow of gas if a hose or connector is severed.

§ 30-104. Location of cylinders.

The Chief Fire Marshal shall establish standard rules and regulations as to the location of all containers installed for the purpose of transferring liquefied petroleum gas from one container to another. These rules and regulations shall prevent the establishment or proliferation of said facilities in congested areas or adjacent to important buildings or those with a moderate or high life hazard.

§ 30-105. Permit required.

- A. Permit required. Locations where propane is sold, stored for rental or resale and/or transferred from one vessel to another must secure a permit to operate from the Chief Fire Marshal of the Town of Brookhaven.
- B. Application for permit. Applications for permits shall be made to the Chief Fire Marshal on forms provided and shall include the applicant's answers in full to inquiries set forth on such forms. Applications for permits shall be accompanied by such data as may be required by the Chief Fire Marshal and fees as may be required by the Town of Brookhaven.
- C. Review and issuance. The Chief Fire Marshal shall review all applications submitted, determine compliance with applicable provision of the code and issue permits as required. If an application for a permit is rejected by the Chief Fire Marshal, he shall advise the applicant of the reasons for such rejection.
- D. Display of permits. A copy of the permit shall be posted or otherwise readily accessible at each place of operation or carried by the permit holder, as specified by the Chief Fire Marshal.
- E. Permits shall be given full force and effect for a period of one year.

§ 30-106. Transportation.

[Amended 11-20-1990 by L.L. No. 24-1990, effective 11-26-1990; 7-24-2001 by L.L. No. 19-2001, effective 7-27-2001; 3-25-2014 by L.L. No. 4-2014, effective 4-1-2014]

- A. The transportation of liquefied petroleum gas cylinders, either empty or full, is prohibited in the trunk of any passenger vehicle.
- B. Cylinders larger than 10 gallons' water capacity or an aggregate in excess of 25 gallons' water capacity shall not be transported in cars, vans or any type of enclosed vehicle or in the enclosed area of any vehicle.
- C. Every person, firm or corporation, whose main or corporate offices are located in the Town of Brookhaven, that uses or causes the use of a motor vehicle, tank truck, tank semi-trailer or tank truck trailer for the transportation of liquefied petroleum gas for the purpose of delivery within the Town of Brookhaven shall maintain an emergency response plan. This plan shall include not more than two telephone numbers for notification that will be available every day and at all times to a person, firm, corporation's customers, the Division of Fire Prevention, the Fire and Police Departments and the general public. Said plan shall ensure that a qualified service person will be at the location of any reported liquefied petroleum gas leak not more than one hour after notification. Failure to maintain said plan, or failure to have a qualified service person at the reported location of a leak within one hour of notification, shall be a violation of this section.

§ 30-107. Certificates of fitness.

- A. Certificates of fitness required. Except as set forth in Subsection **M** below, any person filling

containers at locations where liquefied petroleum gas is sold and/or transferred from one vessel into another shall hold a valid certificate of fitness issued by the Chief Fire Marshal. Such certificate is subject to revocation by the Chief Fire Marshal at any time where the certificate holder displays evidence of noncompliance with the provisions of this article.
[Amended 7-24-2001 by L.L. No. 19-2001, effective 7-27-2001]

- B. Application. All applications for a certificate of fitness shall be filed with the Chief Fire Marshal on forms provided by the Chief Fire Marshal and accompanied by the applicable fees.
- C. Proof of qualifications. Every person applying for a certificate of fitness shall furnish satisfactory proof to the Chief Fire Marshal that he is familiar with materials, formulas, tools, techniques, standards, laws, local laws, recognized good practices, safety precautions and manufacturer's recommendations pertaining to the particular system, materials, devices or operations he will be involved with and for which the certificate of fitness is issued. He shall further prove that he is physically competent to perform any and all actions necessary or incidental to the operation for which the certificate of fitness is issued.
- D. Investigation and examination. The Chief Fire Marshal shall investigate every new application for a certificate of fitness. The investigation shall include a written examination regarding the use, makeup and handling of liquefied petroleum gas, and such examination shall include a practical test. When the Chief Fire Marshal determines that the applicant conforms to all the requirements of this article, he shall issue the certificate of fitness.
- E. The certificate of fitness shall be given full force and effect for a period of three years.
- F. Refusal of certificate of fitness. When the Chief Fire Marshal determines that a candidate has failed an examination for a certificate of fitness, he shall refuse to issue the certificate of fitness. Any applicant may not apply again for the certificate of fitness within a ten-day period following the examination.
- G. Transferability. A certificate of fitness shall not be transferable.
- H. Renewal of certificate of fitness. Applications for renewal of a certificate of fitness shall be filed in the same manner as an application for an original certificate. Each such application shall be accompanied by applicable fees. The granting of a renewal of a certificate of fitness shall be accomplished in the same manner as for an original certification of fitness, except that any person continuously engaged in any activity for which a certificate of fitness is required will not, upon renewal, be required to take a written examination.
- I. Certificates of fitness issued. A certificate of fitness will be required of any person performing the following activities:
 - (1) Filling containers permanently located and installed outdoors and equipped with appurtenances for filling by a cargo vehicle at consumer sites.
 - (2) Selling liquefied petroleum gas or transferring liquefied petroleum gas from one vessel into another.
- J. Change of address. Each person holding a certificate of fitness shall notify the Chief Fire Marshal, in writing, of any change in his business, residential or other notification address within 10 days after such change. Failure on the part of a person to give such notification shall constitute grounds for revocation of said certificate of fitness.
- K. Contents of certificate of fitness. A certificate of fitness issued by the Chief Fire Marshal shall be in the form of an identification card. Said card shall contain the following information to be valid:

The purpose for which the certificate of fitness has been issued.

- (2) The date of certificate of fitness issuance and the date of expiration.
- (3) Other information as may be necessary to properly identify the person to whom the certificate of fitness is issued.
- (4) The signature of the person to whom the certificate of fitness is issued.
- (5) The name and signature of the Chief Fire Marshal who issued the certificate of fitness or the Chief Fire Marshal's name and the countersignature of his designated representative.
- (6) Printed thereon, in bold type, the following: "THIS CERTIFICATE DOES NOT EXCLUSIVELY RECOMMEND THE BEARER."

L. Requirement to display certificate of fitness. Any person to whom a certificate of fitness has been granted in conformance with this article shall, upon request, produce and show proper identification and his certificate of fitness to anyone for whom he seeks to render his services or to the Chief Fire Marshal.

M. A certificate of fitness, as otherwise required by this section, shall not be required for any person selling, filling or delivering liquefied petroleum gas who is the holder of a valid commercial driver's license with a hazardous material endorsement.

[Added 6-19-2001 by L.L. No. 17-2001, effective 6-25-2001]

§ 30-108. Reporting of incidents.

Any incident involving liquefied petroleum gas, including but not limited to leaks, fires, explosions or any other accidental discharge into the atmosphere in excess of 8.5 cubic feet (one pound propane) must be reported to the Chief Fire Marshal by the responsible party or his representative. The initial report may be made by telephone and followed by a written report. Under no circumstances shall a report be filed later than 24 hours after the incident.

§ 30-109. (Reserved)

[1] *Editor's Note: Former § 30-109, Penalties for offenses, was repealed 5-21-1991 by L.L. No. 2-1991, effective 5-28-1991.*

§ 30-110. Storage, handling, installation, use and transfer.

The storage, handling, installation, use and transfer of liquefied petroleum gas shall be in accordance with the appropriate standards of the NFPA, except that more restrictive requirements as specified in this article shall take precedence over any NFPA requirements.

Article XIX. Oil-Burning Equipment

§ 30-115. Scope.

This article applies to oil-burning equipment except internal combustion engines, oil lamps and portable devices such as blow torches, melting pots and weed burners.

§ 30-116. Definitions.

As used in this article, the following terms shall have the meanings indicated:

FUEL OIL

Kerosene or any hydrocarbon oil conforming to Specifications for Fuel Oils of the American Society of Testing Materials, having a flash point not less than 100° F.

OIL-BURNING EQUIPMENT

An oil burner of any type, together with its tank, piping, wiring, controls and related devices, and shall include all conversion oil burners, oil-fired units and heating and cooking appliances, but excluding those exempted by § 30-115.

§ 30-117. Permit required.

A permit shall be required for the installation of any oil burner that utilizes a fuel oil tank in excess of 25 gallons in a building or in excess of 60 gallons outside of a building, except for installations solely for space heating or water heating.

§ 30-118. Installation, operation and maintenance.

The installation, operation and maintenance of oil-burning equipment shall be in accordance with the appropriate standards of the NFPA.

Article XXI. Welding and Cutting

§ 30-125. Scope.

Welding or cutting shall include gas, electric-arc or flammable liquid welding or cutting or any combination thereof.

§ 30-126. Permit required.

- A. A permit shall be required of each company, corporation, copartnership or owner-operator performing welding or cutting operations, except as provided in Subsection **B** of this section. This permit shall not be required for each welding or cutting job location.
- B. A permit shall not be required of any company, corporation, copartnership or owner-operator when that entity has any valid permit from the Division of Fire Prevention and such welding or cutting is incidental to the purposes for which said permit is issued.
- C. Application for a permit required by this article shall be made by the company, corporation, copartnership or owner-operator performing the welding or cutting operation or by his duly authorized agent.

§ 30-127. Operations.

All welding and cutting operations shall be conducted in accordance with the appropriate standards

of the NFPA.

Article XXII. Electrical Systems

§ 30-128. Scope.

This article shall apply to the installation and alteration of wiring for electric light, heat or power and signal systems operating on 50 volts or more but shall not apply to the electrical installations in ships, railway cars, automotive equipment or the installations or equipment employed by a railway, electrical or communication utility in the exercise of its function as a utility and located outdoors or in buildings used exclusively for that purpose nor to any work involved in the manufacture, assembly, test or repair of electrical machinery, apparatus, materials and equipment by any person engaged in electrical manufacturing as his principal business.

§ 30-129. General requirements.

- A. All electrical installations shall be in accordance with the National Electrical Code.
[Amended 6-1-1999 by L.L. No. 7-1999, effective 6-8-1999; 12-20-2018 by L.L. No. 30-2018, effective 12-27-2018]
- B. It shall be unlawful for any person to install or cause to be installed or to alter or repair electrical wiring for light, heat or power until an application for inspection has been filed with the New York Board of Fire Underwriters or another approved electrical inspection service. It shall be unlawful for any person to connect or cause to be connected electrical wiring for light, heat or power to any source of electrical energy prior to the issuance of a temporary certificate or a certificate of compliance by the New York Board of Fire Underwriters or another approved electrical inspection service.
[Amended 1-17-1995 by L.L. No. 2-1995, effective 1-23-1995]

§ 30-130. Electrical inspector.

[Amended 6-6-1989 by L.L. No. 19-1989, effective 6-9-1989; 1-17-1995 by L.L. No. 2-1995, effective 1-23-1995]

The Chief Inspector and each of the duly appointed inspectors of the New York Board of Fire Underwriters or another approved electrical inspection service are hereby authorized to make inspections and reinspections of electrical wiring installation, devices, appliances and equipment in and on properties within the Town of Brookhaven where they deem it necessary for the protection of life and property and to approve or disapprove the same. The electrical inspectors shall make such inspections and reinspections as may be requested, in writing, by the Chief Fire Marshal and Chief Building Inspector and, in the event of an emergency, shall make such inspections as may be requested orally by an officer of the Town of Brookhaven. It shall be the duty of the electrical inspectors to furnish written reports to the Chief Fire Marshal and Chief Building Inspector and the owners and/or lessees of property where defective electrical installations and equipment are found on inspection and to authorize the issuance of a certificate of compliance when electrical installations and equipment are in conformity with this article. The Chief Building Inspector may authorize organizations other than the New York Board of Fire Underwriters to make inspections and reinspections of electrical wiring installation, devices, appliances and equipment, provided that said inspection organizations annually submit proof of insurance in such form and amounts as is deemed satisfactory by the Town Board, naming the Town of Brookhaven as a named insured.

§ 30-131. Exemption from liability.

[Amended 1-17-1995 by L.L. No. 2-1995, effective 1-23-1995]

This article shall not subject the New York Board of Fire Underwriters or any approved electrical inspection service or any inspector thereof to any civil or other liability for any damage to persons or property by reason of the inspection or reinspection authorized herein or failure to inspect or reinspect or the certificates issued as herein provided.

Article XXVI. Liquefied Natural Gas

[Added 11-15-2012 by L.L. No. 32-2012, effective 12-5-2012]

[1] *Editor's Note: Former Art. XXVI, Tank Vessel Operations, was repealed 3-7-2000 by L.L. No. 5-2000, effective 3-10-2000.*

§ 30-141. General provisions.

- A. Application of article. The provisions of this article shall apply to all uses of liquefied natural gas and installation of all apparatus, piping and equipment pertinent to systems for such uses.
- B. Deviations. Deviations from the appropriate standards of the NFPA or the provisions of this article as otherwise prescribed, when it shall have been conclusively proven to the Chief Fire Marshal that such deviations meet the performance requirements of this article, shall constitute compliance with this article.

§ 30-142. Storage, handling, installation, use and transfer.

The storage, handling, installation, use and transfer of liquefied natural gas shall be in accordance with NFPA 59A, except that more restrictive requirements as specified in this article shall take precedence over any NFPA requirements.

§ 30-143. Installation and maintenance of equipment.

All equipment shall be installed and maintained in conformity with the rules and regulations of the Chief Fire Marshal of the Town of Brookhaven and the appropriate standards of the NFPA. It shall be unlawful to install, service, handle or offer for sale, in any form, liquefied natural gas and related equipment that does not conform to the rules and regulations of the Chief Fire Marshal of the Town of Brookhaven and the appropriate standards of the NFPA.

§ 30-144. Permit required.

- A. Permit required. Locations where liquefied natural gas is stored and/or transferred from one vessel to another must secure a permit to operate from the Chief Fire Marshal of the Town of Brookhaven.
- B. A permit is required for the installation of any tank or container, above or below ground, for the storage of more than 100 gallons of liquefied natural gas.
- C. Application for permit. Applications for permits shall be made to the Chief Fire Marshal on forms provided and shall include the applicant's answers in full to inquiries set forth on such forms. Applications for permits shall be accompanied by such data as may be required by the Chief Fire Marshal and fees as may be required by the Town of Brookhaven.
- D. Review and issuance. The Chief Fire Marshal shall review all applications submitted, determine

compliance with applicable provision of the code and issue permits as required. If an application for a permit is rejected by the Chief Fire Marshal, he shall advise the applicant of the reasons for such rejection.

- E. Display of permits. A copy of the permit shall be posted or otherwise readily accessible at each place of operation or carried by the permit holder, as specified by the Chief Fire Marshal.
- F. Permits shall be given full force and effect for a period of one year.

§ 30-145. Reporting of incidents.

Any incident involving liquefied natural gas, including but not limited to leaks, fires, explosions or any other accidental discharge into the atmosphere in excess of 8.5 cubic feet, must be reported to the Chief Fire Marshal by the responsible party or his representative. The initial report may be made by telephone and followed by a written report. Under no circumstances shall a report be filed later than 24 hours after the incident.

§ 30-146. through § 30-153. (Reserved)

Article XXVII. Fire Protection Systems

[Amended 2-2-1993 by L.L. No. 4-1993, effective 2-12-1993; 10-5-1993 by L.L. No. 19-1993, effective 10-12-1993; 9-8-1994 by L.L. No. 8-1994, effective 9-16-1994; 12-6-1994 by L.L. No. 19-1994, effective 12-12-1994; 3-18-2003 by L.L. No. 5-2003, effective 5-2003]

[1] *Editor's Note: This article title was amended 3-25-2014 by L.L. No. 5-2014, effective 4-1-2014, to add the phrase "and Life Safety"; and amended 3-1-2018 by L.L. No. 6-2018, effective 3-12-2018, to delete said phrase.*

§ 30-154. Purpose.

[Amended 3-25-2014 by L.L. No. 5-2014, effective 4-1-2014; 3-1-2018 by L.L. No. 6-2018, effective 3-12-2018]

The purpose of this article is to provide regulations and standards applicable to the installation and maintenance of fire alarm systems, fire sprinkler systems, other fire protective systems that require Fire Department response so as to ensure competent standards of workmanship and thereby lessen the possibility of false alarms resulting from malfunctions of unrecognized installations and lack of maintenance.

§ 30-155. Definitions.

[Amended 3-10-2009 by L.L. No. 5-2009, effective 3-20-2009; 3-25-2014 by L.L. No. 5-2014, effective 4-1-2014; 3-1-2018 by L.L. No. 6-2018, effective 3-12-2018]

For the purpose of this article, the following terms, phrases and words shall have the meanings given herein:

CENTRAL ALARM STATION

Any entity which receives signals from fire alarm systems and relays information pertaining to such fire alarm systems to the appropriate Fire Department headquarters.

CONTACT LIST

A list of names and telephone numbers for five representatives, one of whom shall be capable

of reporting to the premises within 60 minutes of being contacted. This list shall be provided by the applicant.

EMERGENCY

An unforeseen occurrence or condition that calls for immediate action.

FALSE FIRE ALARM

An alarm of fire, other than a malicious false alarm, which causes the response of the Fire Department when there is no discernible fire, abnormal heat, smoke or other occurrence that constitutes an emergency.

FIRE ALARM DEVICE

Any device, including manually operated ones, which, when activated by fire, smoke or other emergency requiring Fire Department response, transmits a signal to local Fire Department headquarters or to a central alarm station and/or produces any audible or visible signal to which the local Fire Department is expected to respond. Excluded from this definition and from the provisions of this article are devices designed to alert the occupants of a building of an emergency condition therein and which do not produce any audible or visible signal which is perceptible outside of such building.

FIRE ALARM SYSTEM

Any arrangement of fire alarm devices, connected together and to a control panel or panels, designed so that the activation of any one device will cause an appropriate signal to operate.

FIRE ALARM TECHNICIAN

Any person, licensed by the State of New York, who maintains, installs, repairs, tests, inspects or otherwise performs work on fire alarm systems.

FIRE PROTECTION SYSTEM

Any fire alarm or any fire sprinkler system, fire mains, and fire hydrants. One or more single-station or interconnected smoke detectors, without central station monitoring or an exterior notification device, shall not be considered a fire protection system. In the case of one premises with more than one fire alarm control panel, each fire alarm control panel shall be considered a separate fire protection system. In the case of multiple sprinkler risers, each group of risers protecting the same tenancy shall be considered one fire protection system. The fire service main and fire hydrants connected thereto shall be considered one fire protection system.

FIRE SPRINKLER SYSTEM

Any arrangement of sprinkler heads, valves, piping and accessories connected together, installed within a building or structure and intended to discharge water in the event of a fire or abnormal heat condition within the building or structure.

MALICIOUS FALSE ALARM

The willful and knowing initiation or transmission of a signal, message or other notification of an event of fire, smoke or other emergency when no such danger exists.

REPORT OF TESTING

A report indicating that a licensed contractor has inspected a fire protection system in accordance with the applicable standard(s) of the NFPA. The report shall contain at least the name and location of the premises, any deficiencies noted and/or corrected, the name and original signature of the inspector, his/her certification that the inspection has been properly conducted and all statements related thereto are true and correct and additional information as may be deemed necessary by the Chief Fire Marshal.

§ 30-156. Registration.

[Amended 3-25-2014 by L.L. No. 5-2014, effective 4-1-2014; 3-1-2018 by L.L. No. 6-2018, effective 3-12-2018]

- A. Every fire protection system shall be registered with the Division of Fire Prevention by the owner of the system. With each application, the applicant must submit the fees as established by Town Board Resolution.

[Amended 11-20-2018 by L.L. No. 26-2018, effective 12-3-2018; 2-28-2019 by L.L. No. 7-2019, effective 3-12-2019]

- B. The effective period of a registration shall be three years, unless the registration is revoked for cause.
- C. All applications for registration of a fire protection system shall be made to the Chief Fire Marshal in such form and detail as he shall prescribe. Applications for registrations shall be accompanied by a valid report of testing of the fire protection system and a contact list.
- D. It shall be the responsibility of the registrant to maintain and insure the accuracy of the contact list and to notify the Division of Fire Prevention of any changes within one business day.
- E. Registrations shall not be assignable from one system owner to another.
- F. Registrations shall not be transferable from one system to another.
- G. Failure of the contact list to provide a representative at the premises within 60 minutes of the first call shall result in the revocation of the fire protection system registration.
- H. In the event of a revocation of a registration under this article, the applicant must submit a new application in accordance with the terms and condition of this Article **XXVII**.

§ 30-157. Licensing and standards.

- A. It shall be unlawful for any person, business, firm, corporation or other commercial entity to maintain, install, repair, test, inspect or otherwise perform work on any fire alarm system without first obtaining a fire alarm installer's license from the State of New York.
- B. All fire protection systems and associated equipment shall be installed, repaired, tested, inspected and maintained in accordance with the appropriate standards of the National Fire Protection Association.

§ 30-158. Repair notification.

- A. Prior to repairing, modifying, testing or inspecting any fire protection system, equipment or device, or any auxiliary system, equipment or device connected thereto, the person conducting such work shall notify all entities that would receive automatic notification of the activation of the fire alarm system, equipment or device.
- B. Upon completion of the repairing, modifying, testing or inspection of any fire protection system, equipment or device, or any auxiliary system, equipment or device connected thereto, the person conducting the work shall notify all entities that would receive automatic notification of the activation of the fire alarm system, equipment or device that the work is complete, as well as the operational status of the system, equipment or device.
- C. The entities to be notified shall include, but not be limited to, the Fire Department in whose district the premises is located, the central station monitoring agency and the occupants of the

building.

§ 30-159. Installation and maintenance.

[Amended 8-28-2012 by L.L. No. 23-2012, effective 9-11-2012; 3-25-2014 by L.L. No. 5-2014, effective 4-1-2014; 3-1-2018 by L.L. No. 6-2018, effective 3-12-2018]

- A. Every fire alarm system shall be thoroughly inspected and tested not less than once every 12 months. Inspection shall be only by a fire alarm technician. A report of testing shall be made on a form specified by the Chief Fire Marshal and shall be submitted to the Division of Fire Prevention.
- B. The owner shall be responsible for the maintenance and service of his or its fire alarm device equipment and shall be responsible for all malfunctions of his or its equipment.
- C. Devices which automatically transmit fire alarm signals to a Fire Department or the dispatching facilities for a Fire Department shall be prohibited unless specific written permission is issued by the Fire Commissioners of said Fire Department or by the dispatching facility. This shall not apply to signals transmitted to commercial central alarm stations.
- D. Taped message dialers. The use of taped message dialers to any Fire Department, Police Department, dispatching facility for any Fire Department or central station is hereby prohibited.

§ 30-160. False alarm procedures.

- A. Immediately after it has been determined that a false fire alarm has occurred, the owner of the fire protection system shall be given written notice of the occurrence by the Division of Fire Prevention. The fire protection system owner shall have 10 business days from the date of the notice of the false alarm to have the problem corrected and send a report of repairs to the Division of Fire Prevention. Failure to do so within 10 business days shall be deemed a violation of this article and shall cause the revocation of the fire protection system registration. To register the fire protection system after a revocation, the system shall be thoroughly inspected and tested, regardless of any previous inspection and testing that may have been performed. A report of such testing shall be made on a form specified by the Chief Fire Marshal.
- B. If the fire protection system is not properly registered with the Division of Fire Prevention within 30 business days after the initial notice of the false alarm, an appearance ticket returnable in a court of competent jurisdiction and subject to the penalty provisions of § 30-16B^[1] of this chapter shall be issued to the occupant and/or owner of the premises, and in addition no owner or occupant of the premise shall continue the use and occupancy of the premise until the fire protection system is registered as per Subsection A set forth above.

[1] *Editor's Note: Former § 30-16, Penalties for offenses, as amended, was repealed 1-16-2017 by L.L. No. 22-2017, effective 11-28-2017. See now Executive Law § 382, Subdivision (2).*

§ 30-161. (Reserved)

Article XXIX. Emergency Access Systems

[Adopted 2-23-1995 by L.L. No. 6-1995, effective 3-1-1995]

§ 30-165. Purpose.

The purpose of this article is to provide emergency access to specific areas of buildings, fire suppression equipment, fire alarm equipment, building systems and information specified by the Chief Fire Marshal, for use by the Fire Department at the time of an emergency or a reported emergency.

§ 30-166. Definitions.

As used in this article, the following terms shall have the meanings indicated:

INFORMATION STORAGE CABINET

A cabinet-style vault approved by the Chief Fire Marshal installed in an accessible location for the purpose of containing information and documents related to the: storage of hazardous materials, site plans, building plans, emergency notification information or any other information required by the Chief Fire Marshal, deemed to be pertinent to the operations of the responding Fire Department.

KEY LOCK BOX

A container of a type approved by the Chief Fire Marshal installed in an accessible location for the purpose of containing keys to gain necessary access to areas of premises.

§ 30-167. Survey by Fire Marshal; specification of required equipment.

The Chief Fire Marshal shall survey or cause to be surveyed each establishment, except the interior of one- and two-family dwellings and shall specify what key lock box or information storage cabinet shall be provided. In special occupancies more than one key lock box, information storage cabinet or combination thereof may be required.

§ 30-168. Permit required.

A permit shall be obtained from the Chief Fire Marshal prior to the installation or alteration of any key lock box, information storage cabinet or combination thereof.

§ 30-169. Inspection; certificate of compliance.

No equipment installed pursuant to § **30-168** shall be deemed acceptable or approved until an inspection of the same has been conducted by the Division of Fire Prevention and an appropriate certificate of compliance has been issued.

§ 30-170. Maintenance.

Key lock boxes, information storage cabinets or combinations thereof which have been installed in compliance with any permit or order, or because of any local law, shall be maintained in operative condition at all times, and it shall be unlawful for any owner or occupant to reduce the effectiveness of any emergency access system so required, except this shall not prohibit the owner or occupant from temporarily reducing the use of an emergency access system to make repairs or alterations.

The Division of Fire Prevention shall be notified before alterations or repairs are made.

§ 30-171. Fire Department lock cylinder.

All key lock boxes and information storage cabinets shall be equipped with dual-lock cylinders. In no case shall any person or entity, other than a Brookhaven Town Fire Marshal or a member of a Fire Department protecting the subject premises, be issued, possess or use any key intended to operate the Fire Department lock cylinder on any key lock box or information storage cabinet.

§ 30-172. Applicability.

This article shall not apply to: one- or two-family dwellings; shopping centers with fewer than four tenant spaces, unless served by a common fire alarm system, sprinkler system or any occupant is a hazardous materials permittee; freestanding Class C mercantile occupancies unless occupant is a hazardous materials permittee; other occupancies as determined by the Chief Fire Marshal.

Article XXX. Requirements for Installation, Testing, Inspection and Maintenance of Approved Carbon Monoxide Detection Systems and Devices

[Added 5-12-2016 by L.L. No. 11-2016, effective 5-25-2016]

§ 30-173. Purpose.

This article shall outline the requirements for the installation, testing, inspection and maintenance of carbon monoxide detection systems, alarms, and associated components and devices, as prescribed herein and shall pertain to all commercial structures, newly constructed and/or relocated into the Town of Brookhaven, as well as all existing commercial structures regardless of date of construction. Occupancies included; A, B, E, F, H, I (regardless of sleeping area locations), M, and S. Detection systems and alarms shall be in compliance with the New York State Uniform Fire Prevention and Building Code, but in the event of a conflict between the Uniform Code and the requirements of the Town of Brookhaven specified herein, the requirements of the Town of Brookhaven specified herein shall apply.

§ 30-174. Definitions.

A. As used in this article, the following terms shall have the meanings indicated:

APPROVED

Acceptable to the authority having jurisdiction.

CARBON MONOXIDE ALARM

A single- or multiple-station carbon monoxide alarm intended for the purpose of detecting carbon monoxide gas and alerting occupants by a distinct audible signal comprising an assembly that incorporates a sensor control component and an alarm notification appliance in a single unit operated from a power source either located in the unit or obtained at the point of installation.

CARBON MONOXIDE DETECTION CONTROL UNIT

A component of the carbon monoxide detection system, provided with primary and secondary power sources, which receives signals from initiating devices or other carbon monoxide detection control units, and processes these signals to determine part or all of the required carbon monoxide detection system output function(s).

CARBON MONOXIDE DETECTOR

A device connected to an alarm control unit having a sensor that responds to carbon monoxide.

CARBON MONOXIDE SAFETY FUNCTIONS

Building and carbon monoxide functions that are intended to increase the level of life safety for occupants or to control the spread of the harmful effects of carbon monoxide.

CHIEF FIRE MARSHAL

The Chief Fire Marshal of the Town of Brookhaven.

CONTROL UNIT

A system component that monitors inputs and controls outputs through various types of circuits.

FUEL-BURNING APPLIANCE

A device or equipment that burns solid, liquid or gaseous fuel or a combination thereof, for any process, including, but not limited to, heating, cooking, manufacturing and the like.

LISTED

A device, component and/or system which has been tested to an applicable standard and approved by a nationally recognized testing firm for a specific application/use. Carbon monoxide detectors and alarms installed in commercial buildings shall be listed in accordance with UL 2075. Where installation is permitted by these requirements, hard-wired carbon monoxide alarms shall be listed in accordance with UL 2034. A carbon monoxide control unit shall be listed for the purpose for which it is used. Where no carbon monoxide product standard exists, products listed for fire alarm service shall be permitted. A fire alarm control panel to which carbon monoxide detectors and alarms will be connected shall be listed in accordance with UL 864.

MULTI-PURPOSE ALARM

An alarm that incorporates detection capabilities for more than one hazardous condition, such as fire, fuel gas, or carbon monoxide.

MULTIPLE-STATION CARBON MONOXIDE ALARM

A single-station carbon monoxide detection alarm capable of being interconnected to one or more additional alarms so that the actuation of one causes the appropriate alarm signal to operate in all interconnected alarms.

NOTIFICATION APPLIANCE

A system component such as a bell, horn, speaker, light, or text display that provides audible, tactile, or visible outputs, or any combination thereof.

SINGLE-STATION CARBON MONOXIDE ALARM

A detector comprising an assembly that incorporates a sensor, control components, and an alarm notification appliance in one unit operated from a power source either located in the unit or obtained at the point of installation.

B. Signals:**CARBON MONOXIDE ALARM SIGNAL**

A signal indicating a concentration of carbon monoxide at or above the alarm threshold

that could pose a risk to the life safety of the occupants and that requires an immediate action.

SUPERVISORY SIGNAL

A signal indicating the need for action in connection with a pre-alarm condition, or in connection with the supervision of protected premises carbon monoxide safety functions or equipment, or the maintenance features of related systems.

TROUBLE SIGNAL

A signal initiated by a system or device indicative of a fault in a monitored circuit, system, or component.

C. Systems:

CARBON MONOXIDE DETECTION SYSTEM

A system or portion of a combination system that consists of a control unit, components, and circuits arranged to monitor and annunciate the status of carbon monoxide initiating devices and to initiate the appropriate response to those signals.

COMBINATION CARBON MONOXIDE DETECTION SYSTEM

A carbon monoxide detection system in which components are used, in whole or in part, in common with a non-carbon monoxide signaling system, and in which components are not used as part of a fire alarm system.

COMBINATION SYSTEM

A fire alarm system in which components are used, in whole or in part, in common with a non-fire signaling system, such as approved carbon monoxide devices.

§ 30-175. General requirements.

- A. Carbon monoxide detection alarms and systems installed within the Town of Brookhaven shall provide life safety protection and notification for the premises that requires said installation.
- B. All carbon monoxide detection systems and, where permitted, carbon monoxide alarms, installed and maintained within the Town of Brookhaven, shall be in compliance with these requirements, the New York State Uniform Fire Prevention and Building Code, NFPA 70, NFPA 72, and NFPA 720.
- C. All carbon monoxide detection devices, including but not limited to detectors, alarms, and associated components, shall be listed or approved as specified herein by a nationally recognized testing laboratory for the purpose for which they are used and shall be installed in conformity with nationally recognized standards and the manufacturer's installation specifications.
- D. Where an approved fire alarm system exists within a building that is capable of being interconnected to carbon monoxide detection devices, the carbon monoxide detection shall be interconnected to the existing fire alarm system. Activation of any carbon monoxide detector or alarm so connected shall neither cause activation of the fire alarm system and associated audible and visual devices, nor cause transmission of a fire alarm signal to the central station monitoring said system. Activation of any carbon monoxide detector or alarm so connected shall cause activation of a temporal 4 audible alarm, annunciation of a carbon monoxide activation at the control panel, the transmission of a carbon monoxide activation signal to the central station monitoring said system, and initiate the shut-down of all heating, ventilation and air-conditioning equipment, with the exception of exhaust systems related to cooking operations.

- E. In buildings without an existing fire alarm system where such system is not required, and buildings with an approved existing fire alarm system that is incapable of interconnection of carbon monoxide detection, carbon monoxide alarms may be permitted to be installed in a manner prescribed by the Chief Fire Marshal following a review of the existing conditions.
- F. Where carbon monoxide alarms are permitted, such alarms shall be hard-wired to the building electrical system and equipped with battery backup. Such work shall be performed by a licensed electrician.

§ 30-176. Design and installation specifications.

- A. All carbon monoxide detection and carbon monoxide systems installed and maintained within the Town of Brookhaven shall be in compliance with these requirements, the New York State Uniform Fire Prevention and Building Code, NFPA 70, NFPA 72 and NFPA 720.
- B. All carbon monoxide detection devices shall be listed or approved by a nationally recognized testing laboratory for the purpose for which they will be used and shall be installed in conformity with nationally recognized standards and the manufacturer's instructions and specifications. All initiating devices and/or circuits, when part of a carbon monoxide detection system or combination system, shall latch upon alarm activation. Non-latching system initiating devices or circuits shall not be permitted.
- C. Carbon monoxide detectors shall be located and installed on the ceiling in the same room as permanently installed fuel-burning appliances, in addition to other locations specified by these requirements.
- D. Carbon monoxide detectors shall be centrally located on every habitable level and in every heating, ventilation and air-conditioning (HVAC) zone of a building. Where multiple HVAC zones exist in the same open area, and said area is less than 10,000 square feet, one carbon monoxide detector centrally located in said area shall be permitted. Where a HVAC zone of a building is 10,000 square feet or more in area, additional carbon monoxide detectors shall be installed such that no point in said area is more than 100 feet from a carbon monoxide detector. In all instances, any spacing requirements specified by the manufacturer of the carbon monoxide detector(s) installed shall be complied with and take precedence over the area requirements of this section when such manufacturer's spacing requirements are more restrictive than those specified herein.
- E. In "I" occupancies, carbon monoxide detectors shall be installed on every story containing a sleeping area, within 15 feet of a sleeping area. More than one carbon monoxide detector shall be provided where necessary to assure that no sleeping area on such story is more than 15 feet away from a carbon monoxide detector. Carbon monoxide alarms shall be installed in each sleeping area containing a carbon monoxide source.
- F. Assembly occupancies shall require additional carbon monoxide detectors in every room accommodating 50 or more occupants, in addition to other locations specified by these requirements.
- G. Public waiting areas shall require carbon monoxide detection devices within the space, in addition to other locations specified by these requirements.
- H. Upon activation of any system or device detecting carbon monoxide, a temporal 4 audible signal separate and distinct from a fire alarm audible signal shall be initiated, advising the occupants of the presence of carbon monoxide.
- I. The activation of a carbon monoxide detection system shall initiate the shut-down of all

heating, ventilation and air-conditioning equipment, with the exception of exhaust systems related to cooking operations.

- J. Carbon monoxide detectors that are ceiling-mounted shall be located a minimum of 12 inches from any wall or as specified by manufacturer's specifications.
- K. Carbon monoxide detectors that are wall-mounted shall be a minimum of 80 inches off the finished floor and at least six inches from the ceiling or as specified by manufacturer's specifications.
- L. Carbon monoxide detectors shall be located a minimum of 36 inches from any HVAC supply or return register.
- M. Carbon monoxide detectors are considered life safety devices and therefore shall send trouble signals to the control panel and facilitate wiring supervision.
- N. Carbon monoxide detectors interconnected to fire alarm control panels shall initiate a temporal four alarm sequence upon activation of the carbon monoxide detector.
- O. Where an approved existing fire alarm control panel is not capable of a temporal four-alarm sequence, internal sounding bases for the carbon monoxide detectors may be an acceptable alternative, upon review and approval of the Chief Fire Marshal.
- P. All system-initiating devices and circuits shall latch upon alarm activation.

§ 30-177. Central station/supervising station.

All carbon monoxide detection systems shall be supervised by a UL-listed central station or, where permitted, a continuously staffed supervising station located on the premises, with means of initiating the notification sequence as prescribed below.

- A. Upon receipt of a carbon monoxide detection alarm signal by the central station or supervising station, the following notification sequence shall be followed:
 - (1) Local fire department/emergency response agency.
 - (2) Building occupants.
 - (3) Any other emergency contact; i.e., building management/owner.
- B. Upon receipt of a carbon monoxide detection supervisory or trouble signal by the central station or supervising station, the following notification shall be made: building management/owner and/or other emergency contact(s).

§ 30-178. Reference standards.

- A. The following reference standards shall be utilized for design, installation, testing, inspection and maintenance. The applicable edition of each reference standard specified herein shall be that as specified by the New York State Uniform Fire Prevention and Building Code.
 - (1) NFPA 70: National Electric Code.
 - (2) NFPA 72: National Fire Alarm and Signaling Code.
 - (3) NFPA 72: Installation of Carbon Monoxide (CO) Detection and Warning Equipment.

- B. Where a conflict exists between the reference standards and the requirements of the Town of Brookhaven specified herein, the requirements of the Town of Brookhaven as specified herein shall apply.

§ 30-179. Exceptions/Deviations.

A. Buildings/Structures exempted.

- (1) No carbon monoxide detection shall be required in buildings/structures that:
 - (a) Do not utilize fossil-fuel-burning equipment for cooking, heating or any other processes; and
 - (b) Do not have vehicles or other equipment which are powered by fossil fuel stored or located at any time within the building or structure; and
 - (c) Do not have attached parking garages.
- (2) Should, at any time, conditions change that cause a building/structure to not comply with any of the above exceptions, the building owner shall immediately make notification to the Division of Fire Prevention, and the appropriate carbon monoxide detection shall be installed in compliance with the requirements herein.

- B. The Chief Fire Marshal may allow deviations from the listed reference standards and/or these requirements in whole or in part, when it has been conclusively proven to the Chief Fire Marshal that such deviations are necessary and practical, while ensuring the performance intent of these requirements is met.

§ 30-180. License and manufacturer's certification required.

All persons, firms, business entities or corporations installing, inspecting, testing, and providing maintenance on any carbon monoxide detection system, combination carbon monoxide detection system or combination system shall possess a valid security or fire alarm systems installer license issued by the New York State Department of State, Division of Licensing Services, and shall possess a certification or approval from the system(s) manufacturer indicating the installer is factory-trained and/or certified/authorized for the specific brand/model of system and/or components being installed or maintained.

§ 30-181. Requirements for permit/plan submission.

- A. Prior to the commencement of any installation or modification of a carbon monoxide detection system, combination carbon monoxide detection system or combination system, a permit shall be obtained from the Division of Fire Prevention.
- B. All submissions shall comply with these requirements, applicable reference standards, and the New York State Uniform Fire Prevention and Building Code, and shall include the following:
 - (1) Fire prevention permit application (FP-10).
 - (2) Property owner/agent authorization form.
 - (3) A copy of the security or fire alarm installer's license issued by the NYS Department of State, Division of Licensing Services.

- (4) Permit submission shall include the required fee pursuant to the current fee schedule.
 - (5) Two sets of plans, bearing the stamp/seal of a New York State licensed design professional; ensure HVAC zones are clearly depicted on the submission. Exception: Buildings/Structures where carbon monoxide detection and associated components are being interconnected with an existing fire alarm system, and where the building is a single occupancy, and where installation of five or fewer carbon monoxide devices is required for adequate protection, a scope of work description submitted by the installer to the Division of Fire Prevention on a form prescribed by the Chief Fire Marshal will be accepted in lieu of plans.
 - (6) Manufacturer's documentation for all components of the system.
 - (7) Proof of installer's certification or approval from the system(s) manufacturer indicating the installer is factory-trained and/or certified/authorized for the specific brand/model of system and/or components being installed.
- C. Permit not required. Where carbon monoxide alarms are permitted pursuant to § 80-175 of these requirements, an affidavit of installation on a form prescribed by the Chief Fire Marshal shall be filed with the Division of Fire Prevention by the building owner, in lieu of the permit process and fee required herein.

§ 30-182. Compliance inspection.

- A. Once the installation or modification of a carbon monoxide detection system, combination carbon monoxide detection system or combination system has been completed in accordance with the approved permit submission and verified by the installer to be in full operating condition, the installer shall contact the Division of Fire Prevention to schedule a certificate of compliance inspection.
- B. A certificate of compliance inspection shall be conducted in the presence of a Fire Marshal from the Division of Fire Prevention, during which the following shall be witnessed and/or verified:
- (1) Testing of all systems/detection devices shall be performed by the introduction of carbon monoxide into the sensing chamber or element. Test/Activation by other means, such as magnets, is not acceptable.
 - (2) The result of each carbon monoxide detector test shall be confirmed through indication at the detector and the control panel.
 - (3) The operation of all occupant notification devices shall be witnessed.
 - (4) Circuit supervision, "Trouble," "Supervisory" and "Alarm" conditions, shall be witnessed.
 - (5) Receipt of alarm at central station or supervising station shall be verified.
- C. A certificate of completion shall be submitted to the Fire Marshal upon completion of the inspection.

§ 30-183. Periodic testing, inspection and maintenance.

- A. Testing of all systems/detection devices shall be performed by the introduction of carbon monoxide into the sensing chamber or element. Test/Activation by other means, such as

magnets, is not acceptable.

- B. Unless otherwise specified by the manufacturer's instructions/specifications, intervals of inspection, testing and maintenance shall be in compliance with the applicable reference standard.
- C. End of life. Replacement of detection devices shall be at intervals indicated by the applicable reference standards or manufacturer's instructions/specifications, whichever is more stringent.

Chapter 33. Flood Damage Prevention

[HISTORY: Adopted by the Town Board of the Town of Brookhaven 6-23-2009 by L.L. No. 14-2009, effective 6-29-2009.^[1]
Amendments noted where applicable.]

GENERAL REFERENCES

Building construction administration — See Ch. 16.

Grading — See Ch. 35.

Unsafe buildings and excavated lands — See Ch. 73.


Wetlands — See Ch. 81.

Zoning — See Ch. 85.

Subdivision regulations — See Appendix.

ATTACHMENTS

br0012-033a Floodplain Dev Permit App 

br0012-033b Cert of Compliance 

[1] *Editor's Note: This local law also repealed former Ch. 33, Flood Damage Prevention, adopted 7-11-1995 by L.L. No. 16-1995, effective 7-17-1995, as amended.*

§ 33-1. Statutory authorization and purpose.

- A. Findings. The Town Board of the Town of Brookhaven finds that the potential and/or actual damages from flooding and erosion may be a problem to the residents of the Town of Brookhaven and that such damages may include: destruction or loss of private and public housing, damage to public facilities, both publicly and privately owned, and injury to and loss of human life. In order to minimize the threat of such damages and to achieve the purposes and objectives hereinafter set forth, this chapter is adopted.
- B. Statement of purpose. It is the purpose of this chapter to promote the public health, safety, and general welfare, and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:
- (1) Regulate uses which are dangerous to health, safety and property due to water or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities;
 - (2) Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
 - (3) Control the alteration of natural floodplains, stream channels, and natural protective barriers which are involved in the accommodation of floodwaters;
 - (4) Control filling, grading, dredging and other development which may increase erosion or flood damages;
 - (5) Regulate the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards to other lands; and
 - (6) Qualify for and maintain participation in the National Flood Insurance Program.
- C. Objectives. The objectives of this chapter are to:
- (1) Protect human life and health;
 - (2) Minimize expenditure of public money for costly flood control projects;
 - (3) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
 - (4) Minimize prolonged business interruptions;
 - (5) Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone, sewer lines, streets and bridges located in areas of special flood hazard;
 - (6) Help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard so as to minimize future flood blight areas;

- (7) Provide that developers are notified that property is in an area of special flood hazard; and
- (8) Ensure that those who occupy the areas of special flood hazard assume responsibility for their actions.

§ 33-2. Definitions.

Unless specifically defined below, words or phrases used in this chapter shall be interpreted so as to give them the meaning they have in common usage and to give this chapter its most reasonable application.

APPEAL

A request for a review of the local administrator's interpretation of any provision of this chapter or a request for a variance.

AREA OF MODERATE WAVE ACTION

The portion of the SFHA landward of a V Zone or landward of an open coast without mapped V Zones, in which the principal sources of flooding are astronomical tides, storm surges, seiches, or tsunamis, not riverine sources. Areas of moderate wave action may be subject to wave effects, velocity flows, erosion, scour, or combinations of these forces and are treated as V Zones. The area of moderate wave action is an area within a Zone AE that is bounded by a line labeled "Limit of Moderate Wave Action."

AREA OF SHALLOW FLOODING

A designated AO, AH or VO Zone on a community's Flood Insurance Rate Map (FIRM) with a one-percent or greater annual chance of flooding to an average annual depth of one foot to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

AREA OF SPECIAL FLOOD HAZARD

Land in the floodplain within a community subject to a one-percent or greater chance of flooding in any given year. This area may be designated as Zone A, AE, AH, AO, A1-A30, A99, V, VO, VE, or V1-V30. It is also commonly referred to as the "base floodplain" or "100-year floodplain." For purposes of this chapter, the term "special flood hazard area (SFHA)" is synonymous in meaning with the phrase "area of special flood hazard."

BASE FLOOD

The flood having a one-percent chance of being equaled or exceeded in any given year.

BASEMENT

That portion of a building having its floor subgrade (below ground level) on all sides.

BREAKAWAY WALL

A wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces without causing damage to the elevated portion of the building or the supporting foundation system.

BUILDING

See "structure."

CELLAR

The same meaning as "basement."

COASTAL HIGH-HAZARD AREA

An area of special flood hazard extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high-velocity wave action from storms or seismic sources. The area is designated on a FIRM as Zone V1-V30, VE, VO or V. The coastal high-hazard area shall also include areas on a FIRM within a Zone AE that is bounded by a line labeled "Limit of Moderate Wave Action."

CRAWL SPACE

An enclosed area beneath the lowest elevated floor, 18 inches or more in height, which is used to service the underside of the lowest elevated floor. The elevation of the floor of this enclosed area, which may be of soil, gravel, concrete or other material, must be equal to or above the lowest adjacent exterior grade. The enclosed crawl space area shall be properly vented to allow for the equalization of hydrostatic forces which would be experienced during periods of flooding.

DEVELOPMENT

Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, paving, excavation or drilling operations or storage of equipment or materials.

ELEVATED BUILDING

A nonbasement building (i) built, in the case of a building in Zone A1-A30, AE, A, A99, AO, AH, B, C, X, or D, to have the top of the elevated floor, or in the case of a building in Zone V1-30, VE, or V, or area of moderate wave action, to have the bottom of the lowest horizontal structure member of the elevated floor, elevated above the ground level by means of pilings, columns (posts and piers), or shear walls parallel to the flow of the water and (ii) adequately anchored so as not to impair the structural integrity of the building during a flood of up to the magnitude of the base flood. In the case of Zone A1-A30,

AE, A, A99, AO, AH, B, C, X, or D, "elevated building" also includes a building elevated by means of fill or solid foundation perimeter walls with openings sufficient to facilitate the unimpeded movement of floodwaters. In the case of Zone V1-V30, VE, or V, "elevated building" also includes a building otherwise meeting the definition of "elevated building," even though the lower area is enclosed by means of breakaway walls that meet the federal standards.

FEDERAL EMERGENCY MANAGEMENT AGENCY

The federal agency that administers the National Flood Insurance Program.

FLOOD BOUNDARY AND FLOODWAY MAP (FBFM)

An official map of the community published by the Federal Emergency Management Agency as part of a riverine community's Flood Insurance Study. The FBFM delineates a regulatory floodway along watercourses studied in detail in the Flood Insurance Study.

FLOOD ELEVATION STUDY

An examination, evaluation and determination of the flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of flood-related erosion hazards.

FLOOD HAZARD BOUNDARY MAP (FHBM)

An official map of a community, issued by the Federal Emergency Management Agency, where the boundaries of the areas of special flood hazard have been designated as Zone A but no flood elevations are provided.

FLOOD INSURANCE RATE MAP (FIRM)

An official map of a community on which the Federal Emergency Management Agency has delineated both the areas of special flood hazard and the risk-premium zones applicable to the community.

FLOOD INSURANCE STUDY

See "flood elevation study."

FLOOD or FLOODING

- A. A general and temporary condition of partial or complete inundation of normally dry land areas from:
 - (1) The overflow of inland or tidal waters;
 - (2) The unusual and rapid accumulation or runoff of surface waters from any source.
- B. Flood or flooding also means the collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as a flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in Subsection **A** above.

FLOODPLAIN or FLOOD-PRONE AREA

Any land area susceptible to being inundated by water from any source (see definition of "flooding").

FLOODPROOFING

Any combination of structural and nonstructural additions, changes, or adjustments to structures, which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

FLOODWAY

The same meaning as "regulatory floodway."

FUNCTIONALLY DEPENDENT USE

A use which cannot perform its intended purpose unless it is located or carried out in close proximity to water, such as a docking or port facility necessary for the loading and unloading of cargo or passengers, shipbuilding, and ship repair facilities. The term does not include long-term storage, manufacturing, sales, or service facilities.

HIGHEST ADJACENT GRADE

The highest natural elevation of the ground surface, prior to construction, next to the proposed walls of a structure.

HISTORIC STRUCTURE

Any structure that is:

- A. Listed individually in the National Register of Historic Places (a listing maintained by the Department of the Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- B. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
- C. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or

D. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:

- (1) By an approved state program as determined by the Secretary of the Interior; or
- (2) Directly by the Secretary of the Interior in states without approved programs.

LOCAL ADMINISTRATOR

The person appointed by the community to administer and implement this chapter by granting or denying development permits in accordance with its provisions. This person is often the Building Inspector, Code Enforcement Officer, or employee of an engineering department.

LOWEST FLOOR

The lowest floor of the lowest enclosed area (including basement or cellar). An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access, or storage in an area other than a basement area, is not considered a building's lowest floor; provided that such enclosure is not built so as to render the structure in violation of the applicable nonelevation design requirements of this chapter.

MANUFACTURED HOME

A structure, transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term does not include a recreational vehicle.

MANUFACTURED HOME PARK OR SUBDIVISION

A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

MEAN SEA LEVEL

For purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929, the North American Vertical Datum of 1988 (NAVD 88), or other datum to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.

MOBILE HOME

The same meaning as "manufactured home."

NEW CONSTRUCTION

Structures for which the start of construction commenced on or after the effective date of a floodplain management regulation adopted by the community and includes any subsequent improvements to such structure.

ONE-HUNDRED-YEAR FLOOD or 100-YEAR FLOOD

The same meaning as "base flood."

PRIMARY FRONTAL DUNE

A continuous or nearly continuous mound or ridge of sand with relatively steep seaward and landward slopes immediately landward and adjacent to the beach and subject to erosion and overtopping from high tides and waves during major coastal storms. The inland limit of the primary frontal dune occurs at the point where there is a distinct change from a relatively steep slope to a relatively mild slope.

PRINCIPALLY ABOVE GROUND

At least 51% of the actual cash value of the structure, excluding land value, is above ground.

RECREATIONAL VEHICLE

A vehicle which is:

- A. Built on a single chassis;
- B. Four hundred square feet or less when measured at the largest horizontal projections;
- C. Designed to be self-propelled or permanently towable by a light-duty truck; and
- D. Not designed primarily for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

REGULATORY FLOODWAY

The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height as determined by the Federal Emergency Management Agency in a Flood Insurance Study or by other agencies as provided in § 33-4D(2) of this chapter.

SAND DUNES

Naturally occurring accumulations of sand in ridges or mounds landward of the beach.

START OF CONSTRUCTION

The date of permit issuance for new construction and substantial improvements to existing structures, provided that the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvement is within 180

days after the date of issuance. The "actual start of construction" means the first placement of permanent construction of a building (including a manufactured home) on a site, such as the pouring of a slab or footings, installation of pilings or construction of columns. Permanent construction does not include land preparation (such as clearing, excavation, grading, or filling), or the installation of streets or walkways, or excavation for a basement, footings, piers or foundations, or the erection of temporary forms, or the installation of accessory buildings such as garages or sheds not occupied as dwelling units or not part of the main building. For a substantial improvement, the "actual start of construction" means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

STRUCTURE

A walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.

SUBSTANTIAL DAMAGE

Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50% of the market value of the structure before the damage occurred.

SUBSTANTIAL IMPROVEMENT

Any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50% of the market value of the structure before the start of construction of the improvement. The term includes structures which have incurred substantial damage, regardless of the actual repair work performed. The term does not, however, include either:

- A. Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or
- B. Any alteration of an historic structure, provided that the alteration will not preclude the structure's continued designation as an historic structure.

VARIANCE

A grant of relief from the requirements of this chapter which permits construction or use in a manner that would otherwise be prohibited by this chapter.

§ 33-3. Applicability; basis for establishing areas of special flood hazard; interpretation; penalties for offenses; disclaimer of liability.

- A. Lands to which this chapter applies. This chapter shall apply to all areas of special flood hazard within the jurisdiction of the Town of Brookhaven, Suffolk County, New York.
- B. Basis for establishing the areas of special flood hazard.

- (1) The areas of special flood hazard for the Town of Brookhaven, Community Number 365334, are identified and defined on the following documents prepared by the Federal Emergency Management Agency:

- (a) Flood Insurance Rate Map Panel Numbers: 36103C0359H, 36103C0367H, 36103C0369H, 36103C03761-I, 36103C0377H, 36103C0378H, 36103C0379H, 36103C0383H, 36103C0384H, 36103C0390H, 36103C0395H, 36103C0403H, 36103C0404H, 36103C0408H, 36103C0409H, 36103C0415H, 36103C0420H, 36103C0428H, 36103C0437H, 36103C0439H, 36103C0440H, 36103C0443H, 36103C0444H, 36103C0461H, 36103C0462H, 36103C0463H, 36103C0464H, 36103C0660H, 36103C0680H, 36103C0685H, 36103C0690H, 36103C0693H, 36103C0694H, 36103C0695H, 36103C0705H, 36103C0710H, 36103C0713H, 36103C0715H, 36103C0716H, 36103C0717H, 36103C0718H, 36103C0719H, 36103C0730H, 36103C0731H, 36103C0735H, 36103C0736H, 36103C0737H, 36103C0738H, 36103C0739H, 36103C0741H, 36103C0742H, 36103C0743H, 36103C0744H, 36103C0751H, 36103C0752H, 36103C0753H, 36103C0761H, 36103C0763H, 36103C0884H, 36103C0894H, 36103C0895H, 36103C0905H, 36103C0906H, 36103C0907H, 36103C0908H, 36103C0909H, 36103C0911H, 36103C0912H, 36103C0913H, 36103C0914H, 36103C0916H, 36103C0917H, 36103C0926H, 36103C0927H, 36103C0928H, 36103C0929H, 36103C0931H, 36103C0932H, 36103C0933H, 36103C0934H, 36103C0936H, 36103C0951H, 36103C0952H, 36103C0956H, whose effective date is September 25, 2009, and any subsequent revisions to these map panels that do not affect areas under our community's jurisdiction.
- (b) A scientific and engineering report entitled "Flood Insurance Study, Suffolk County, New York, All Jurisdictions" dated September 25, 2009.
- (c) Letter of Map Revision, Case Number 10-02-1850P, amending Panel 36103C0753H of the Flood Insurance Rate Map.
[Added 11-22-2011 by L.L. No. 24-2011, effective 12-6-2011]
- (d) Letter of Map Revision, Case Number 15-02-0370P, effective July 16, 2015, amending Panel 36103C0751H and Panel 36103C0753H of the Flood Insurance Rate Map, and the Stillwater Elevation Table 6 of the Flood Insurance Study Report, effective September 25, 2009.

[Added 5-21-2015 by L.L. No. 9-2015, effective 6-2-2015]

- (2) The above documents are hereby adopted and declared to be a part of this chapter. The Flood Insurance Study and/or maps are on file at the office of the Town Clerk of the Town of Brookhaven, One Independence Hill, Farmingville, New York 11738.
- C. Interpretation and conflict with other laws.
- (1) This chapter includes all revisions to the National Flood Insurance Program through October 27, 1997 and shall supersede all previous laws adopted for the purpose of flood damage prevention.
- (2) In their interpretation and application, the provisions of this chapter shall be held to be minimum requirements, adopted for the promotion of the public health, safety, and welfare. Whenever the requirements of this chapter are at variance with the requirements of any other lawfully adopted rules, regulations, or ordinances, the most restrictive, or that imposing the higher standards, shall govern.
- D. Severability. The invalidity of any section or provision of this chapter shall not invalidate any other section or provision thereof.
- E. Penalties for noncompliance. No structure in an area of special flood hazard shall hereafter be constructed, located, extended, converted, or altered and no land shall be excavated or filled without full compliance with the terms of this chapter and any other applicable regulations. Any infraction of the provisions of this chapter by failure to comply with any of its requirements, including infractions of conditions and safeguards established in connection with conditions of the permit, shall constitute a violation. Any person who violates this chapter or fails to comply with any of its requirements shall, upon conviction thereof, be fined no more than \$250 or imprisoned for not more than 15 days, or both. Each day of noncompliance shall be considered a separate offense. Nothing herein contained shall prevent the Town of Brookhaven from taking such other lawful action as necessary to prevent or remedy an infraction. Any structure found not compliant with the requirements of this chapter for which the developer and/or owner has not applied for and received an approved variance under § 33-6 will be declared noncompliant and notification sent to the Federal Emergency Management Agency.
- F. Warning and disclaimer of liability. The degree of flood protection required by this chapter is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This chapter does not imply that land outside the area of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This chapter shall not create liability on the part of the Town of Brookhaven, any officer or employee thereof, or the Federal Emergency Management Agency, for any flood damages that result from reliance on this chapter or any administrative decision lawfully made thereunder.

§ 33-4. Local administrator; floodplain development permit.

- A. Designation of the local administrator. The Chief Building Inspector of the Town of Brookhaven is hereby appointed local administrator to administer and implement this chapter by granting or denying floodplain development permits in accordance with its provisions.
- B. The floodplain development permit.
- (1) Purpose. A floodplain development permit is hereby established for all construction and other development to be undertaken in areas of special flood hazard in this community for the purpose of protecting its citizens from increased flood hazards and insuring that new development is constructed in a manner that minimizes its exposure to flooding. It shall be unlawful to undertake any development in an area of special flood hazard, as shown on the Flood Insurance Rate Map enumerated in § 33-3B, without a valid floodplain development permit. Application for a permit shall be made on forms furnished by the local administrator and may include, but not be limited to, plans, in duplicate, drawn to scale and showing: the nature, location, dimensions, and elevations of the area in question; existing or proposed structures, fill, storage of materials, drainage facilities, and the location of the foregoing.
- (2) Fees. All applications for a floodplain development permit shall be accompanied by an application fee which shall be computed in the same manner as a fee for a building permit laid out in § 29-2 of the Town Code of the Town of Brookhaven. In addition, the applicant shall be responsible for reimbursing the Town of Brookhaven for any additional costs necessary for review, inspection and approval of this project. The local administrator may require a deposit of no more than \$500 to cover these additional costs.
- C. Application for a permit. The applicant shall provide the following information as appropriate. Additional information may be required on the permit application form.
- (1) The proposed elevation, in relation to mean sea level, of the lowest floor (including basement or cellar) of any new or substantially improved structure to be located in Zone A1-A30, AE or AH, or Zone A if base flood elevation data are available. Upon completion of the lowest floor, the permittee shall submit to the local administrator the as-built elevation, certified by a licensed professional engineer or surveyor.
- (2) The proposed elevation, in relation to mean sea level, of the bottom of the lowest structural member of the lowest floor

(excluding pilings and columns) of any new or substantially improved structure to be located in Zone V1-V30 or VE, or Zone V if base flood elevation data are available. Upon completion of the lowest floor, the permittee shall submit to the local administrator the as-built elevation, certified by a licensed professional engineer or surveyor.

- (3) The proposed elevation, in relation to mean sea level, to which any new or substantially improved nonresidential structure will be floodproofed. Upon completion of the floodproofed portion of the structure, the permittee shall submit to the local administrator the as-built floodproofed elevation, certified by a professional engineer or surveyor.
 - (4) A certificate from a licensed professional engineer or architect that any utility flood-proofing will meet the criteria in § **33-5B(3)**, Utilities.
 - (5) A certificate from a licensed professional engineer or architect that any nonresidential floodproofed structure will meet the floodproofing criteria in § **33-5E**, Nonresidential structures (except coastal high-hazard areas).
 - (6) A description of the extent to which any watercourse will be altered or relocated as a result of proposed development. Computations by a licensed professional engineer must be submitted that demonstrate that the altered or relocated segment will provide equal or greater conveyance than the original stream segment. The applicant must submit any maps, computations or other material required by the Federal Emergency Management Agency (FEMA) to revise the documents enumerated in § **33-3B**, when notified by the local administrator, and must pay any fees or other costs assessed by FEMA for this purpose. The applicant must also provide assurances that the conveyance capacity of the altered or relocated stream segment will be maintained.
 - (7) A technical analysis, by a licensed professional engineer, if required by the local administrator, which shows whether proposed development to be located in an area of special flood hazard may result in physical damage to any other property.
 - (8) In Zone A, when no base flood elevation data are available from other sources, base flood elevation data shall be provided by the permit applicant for subdivision proposals and other proposed developments (including proposals for manufactured home and recreational vehicle parks and subdivisions) that are greater than either 50 lots or five acres.
 - (9) In Zones V1-V30 and VE, and also Zone V if base flood elevation are available, or in an area of moderate wave action, designs and specifications, certified by a licensed professional engineer or architect, for any breakaway walls in a proposed structure with design strengths in excess of 20 pounds per square foot.
 - (10) In Zones V1-V30 and VE, and also Zone V if base flood elevation are available, or in an area of moderate wave action, for all new and substantial improvements to structures, floodplain development permit applications shall be accompanied by design plans and specifications, prepared in sufficient detail to enable independent review of the foundation support and connection components. Said plans and specifications shall be developed or reviewed by a licensed professional engineer or architect, and shall be accompanied by a statement, bearing the signature of the architect or engineer, certifying that the design and methods of construction to be used are in accordance with accepted standards of practice and with all applicable provisions of this chapter.
- D. Duties and responsibilities of the local administrator. Duties of the local administrator shall include, but not be limited to, the following:
- (1) Permit application review. The local administrator shall conduct the following permit application review before issuing a floodplain development permit:
 - (a) Review all applications for completeness, particularly with the requirements of § **33-4C**, Application for a permit, and for compliance with the provisions and standards of this chapter.
 - (b) Review subdivision and other proposed new development, including manufactured home parks, to determine whether proposed building sites will be reasonably safe from flooding. If a proposed building site is located in an area of special flood hazard, all new construction and substantial improvements shall meet the applicable standards of § **33-5**, Construction standards, and, in particular, § **33-5A(2)**, Subdivision proposals.
 - (c) Determine whether any proposed development in an area of special flood hazard may result in physical damage to any other property (e.g., stream bank erosion and increased flood velocities). The local administrator may require the applicant to submit additional technical analyses and data necessary to complete the determination. If the proposed development may result in physical damage to any other property or fails to meet the requirements of § **33-5**, Construction standards, no permit shall be issued. The applicant may revise the application to include measures that mitigate or eliminate the adverse effects and resubmit the application.
 - (d) Determine that all necessary permits have been received from those governmental agencies from which approval is required by state or federal law.
 - (2) Use of other flood data.
 - (a) When the Federal Emergency Management Agency has designated areas of special flood hazard on the community's Flood Insurance Rate Map (FIRM) but has neither produced water surface elevation data (these areas are designated Zone A or V on the FIRM) nor identified a floodway, the local administrator shall obtain, review and reasonably utilize any base flood elevation and floodway data available from a federal, state or other

source, including data developed pursuant to § **33-4C(7)**, as criteria for requiring that new construction, substantial improvements or other proposed development meet the requirements of this chapter.

- (b) When base flood elevation data are not available, the local administrator may use flood information from any other authoritative source, such as historical data, to establish flood elevations within the areas of special flood hazard, for the purposes of this chapter.
- (3) Alteration of watercourses.
 - (a) Notification to adjacent communities and the New York State Department of Environmental Conservation prior to permitting any alteration or relocation of a watercourse, and submittal of evidence of such notification to the Regional Director, Region II, Federal Emergency Management Agency.
 - (b) Determine that the permit holder has provided for maintenance within the altered or relocated portion of said watercourse so that the flood-carrying capacity is not diminished.
- (4) Construction stage.
 - (a) In Zones A1-A30, AE and AH, and also Zone A if base flood elevation data are available, upon placement of the lowest floor completion or floodproofing of a new or substantially improved structure, obtain from the permit holder a certification of the as-built elevation of the lowest floor or floodproofed elevation, in relation to mean sea level. The certificate shall be prepared by or under the direct supervision of a licensed land surveyor or professional engineer and certified by same. For manufactured homes, the permit holder shall submit the certificate of elevation upon placement of the structure on the site. A certificate of elevation must also be submitted for a recreational vehicle if it remains on a site for 180 consecutive days or longer (unless it is fully licensed and ready for highway use).
 - (b) In Zones V1-V30 and VE, and also Zone V if base flood elevation data are available, or in an area of moderate wave action, upon placement of the lowest floor of a new or substantially improved structure, the permit holder shall submit to the local administrator a certificate of elevation, in relation to mean sea level, of the bottom of the lowest structural member of the lowest floor (excluding pilings and columns). The certificate shall be prepared by or under the direct supervision of a licensed land surveyor or professional engineer and certified by same. For manufactured homes, the permit holder shall submit the certificate of elevation upon placement of the structure on the site. An elevation certificate must also be submitted for a recreational vehicle if it remains on a site 180 consecutive days or longer (unless it is fully licensed and ready for highway use).
 - (c) Any further work undertaken prior to submission and approval of the certification shall be at the permit holder's risk. The local administrator shall review all data submitted. Deficiencies detected shall be cause to issue a stop-work order for the project unless immediately corrected.
- (5) Inspections. The local administrator and/or the developer's engineer or architect shall make periodic inspections at appropriate times throughout the period of construction in order to monitor compliance with permit conditions and enable said inspector to certify, if requested, that the development is in compliance with the requirements of the floodplain development permit and/or any variance provisions.
- (6) Stop-work orders.
 - (a) The local administrator shall issue, or cause to be issued, a stop-work order for any floodplain development found ongoing without a development permit. Disregard of a stop-work order shall subject the violator to the penalties described in § **33-3E** of this chapter.
 - (b) The local administrator shall issue, or cause to be issued, a stop-work order for any floodplain development found noncompliant with the provisions of this chapter and/or the conditions of the development permit. Disregard of a stop-work order shall subject the violator to the penalties described in § **33-3E** of this chapter.
- (7) Certificate of compliance.
 - (a) In areas of special flood hazard, as determined by documents enumerated in § **33-3B**, it shall be unlawful to occupy or to permit the use or occupancy of any building or premises, or both, or part thereof hereafter created, erected, changed, converted or wholly or partly altered or enlarged in its use or structure until a certificate of compliance has been issued by the local administrator stating that the building or land conforms to the requirements of this chapter.
 - (b) A certificate of compliance shall be issued by the local administrator upon satisfactory completion of all development in areas of special flood hazard.
 - (c) Issuance of the certificate shall be based upon the inspections conducted as prescribed in § **33-4D(5)**, Inspections, and/or any certified elevations, hydraulic data, floodproofing, anchoring requirements or encroachment analyses which may have been required as a condition of the approved permit.
- (8) Information to be retained. The local administrator shall retain and make available for inspection, copies of the following:

- (a) Floodplain development permits and certificates of compliance;
- (b) Certifications of as-built lowest floor elevations of structures, required pursuant to Subsection **D(4)(a)** and (4)(b) of § **33-4**, and whether or not the structures contain a basement;
- (c) Floodproofing certificates required pursuant to Subsection **D(4)(a)** of § **33-4**, and whether or not the structures contain a basement;
- (d) Variances issued pursuant to § **33-6**, Variance procedures; and
- (e) Notices required under Subsection **D(3)**, Alteration of watercourses.

§ 33-5. Construction standards.

A. General standards. The following standards apply to new development, including new and substantially improved structures, in the areas of special flood hazard shown on the Flood Insurance Rate Map designated in § **33-3B**.

- (1) Coastal high-hazard areas. The following requirements apply within Zones V1-V30, VE and V or in an area of moderate wave action:
 - (a) All new construction, including manufactured homes and recreational vehicles on site 180 days or longer and not fully licensed for highway use, shall be located landward of the reach of high tide.
 - (b) The use of fill for structural support of buildings, manufactured homes or recreational vehicles on site 180 days or longer is prohibited.
 - (c) Man-made alteration of sand dunes which would increase potential flood damage is prohibited.
- (2) Subdivision proposals. The following standards apply to all new subdivision proposals and other proposed development in areas of special flood hazard (including proposals for manufactured home and recreational vehicle parks and subdivisions):
 - (a) Proposals shall be consistent with the need to minimize flood damage;
 - (b) Public utilities and facilities such as sewer, gas, electrical and water systems shall be located and constructed so as to minimize flood damage; and
 - (c) Adequate drainage shall be provided to reduce exposure to flood damage.
- (3) Encroachments.
 - (a) Within Zones A1-A30 and AE, on streams without a regulatory floodway, no new construction, substantial improvements or other development (including fill) shall be permitted unless:
 - [1] The applicant demonstrates that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any location; or
 - [2] The Town of Brookhaven agrees to apply to the Federal Emergency Management Agency (FEMA) for a conditional FIRM revision, FEMA approval is received and the applicant provides all necessary data, analyses and mapping and reimburses the Town of Brookhaven for all fees and other costs in relation to the application. The applicant must also provide all data, analyses and mapping and reimburse the Town of Brookhaven for all costs related to the final map revision.
 - (b) On streams with a regulatory floodway, as shown on the Flood Boundary and Floodway Map or the Flood Insurance Rate Map adopted in § **33-3B**, no new construction, substantial improvements or other development in the floodway (including fill) shall be permitted unless:
 - [1] A technical evaluation by a licensed professional engineer shows that such an encroachment shall not result in any increase in flood levels during occurrence of the base flood; or
 - [2] The Town of Brookhaven agrees to apply to the Federal Emergency Management Agency (FEMA) for a conditional FIRM and floodway revision, FEMA approval is received and the applicant provides all necessary data, analyses and mapping and reimburses the Town of Brookhaven for all fees and other costs in relation to the application. The applicant must also provide all data, analyses and mapping and reimburse the Town of Brookhaven for all costs related to the final map revisions.

B. Standards for all structures.

- (1) Anchoring. New structures and substantial improvement to structures in areas of special flood hazard shall be anchored to prevent flotation, collapse, or lateral movement during the base flood. This requirement is in addition to applicable state and local anchoring requirements for resisting wind forces.

(2) Construction materials and methods.

- (a) New construction and substantial improvements to structures shall be constructed with materials and utility equipment resistant to flood damage.
- (b) New construction and substantial improvements to structures shall be constructed using methods and practices that minimize flood damage.
- (c) For enclosed areas below the lowest floor of a structure within Zone A1-A30, AE or AH, and also Zone A if base flood elevation data are available, new and substantially improved structures shall have fully enclosed areas below the lowest floor that are useable solely for parking of vehicles, building access or storage in an area other than a basement, and which are subject to flooding, designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters.
 - [1] Designs for meeting this requirement must either be certified by a licensed professional engineer or architect or meet or exceed the following minimum criteria:
 - [a] A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding; and
 - [b] The bottom of all such openings no higher than one foot above the lowest adjacent finished grade.
 - [2] Openings may be equipped with louvers, valves, screens or other coverings or devices, provided they permit the automatic entry and exit of floodwaters. Enclosed areas subgrade on all sides are considered basements and are not permitted.
- (d) Within Zones V1-V30 and VE, and also within Zone V if base flood elevation are available, or in an area of moderate wave action, new construction and substantial improvements shall have the space below the lowest floor either free from obstruction or constructed with nonsupporting breakaway walls, open wood lattice-work or insect screening intended to collapse under wind and water loads without causing collapse, displacement, or other structural damage to the elevated portion of the building or supporting foundation system. The enclosed space below the lowest floor shall be used only for parking vehicles, building access or storage. Use of this space for human habitation is expressly prohibited. The construction of stairs, stairwells and elevator shafts are subject to the design requirements for breakaway walls.

(3) Utilities.

- (a) New and replacement electrical equipment, heating, ventilating, air conditioning, plumbing connections, and other service equipment shall be located at or above the base flood elevation or be designed to prevent water from entering and accumulating within the components during a flood and to resist hydrostatic and hydrodynamic loads and stresses. Electrical wiring and outlets, switches, junction boxes and panels shall be elevated to or above the base flood elevation unless they conform to the appropriate provisions of the electrical part of the Building Code of New York State or the Residential Code of New York State for location of such items in wet locations;
- (b) New and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system;
- (c) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters. Sanitary sewer and storm drainage systems for buildings that have openings below the base flood elevation shall be provided with automatic backflow valves or other automatic backflow devices that are installed in each discharge line passing through a building's exterior wall; and
- (d) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

C. Residential structures (except coastal high-hazard areas).

- (1) Elevation. The following standards apply to new and substantially improved residential structures located in areas of special flood hazard, in addition to the requirements in § 33-5A(2), Subdivision proposals, and § 33-5A(3), Encroachments, and § 33-5B, Standards for all structures.
 - (a) Within Zones A1-A30, AE and AH, and also Zone A if base flood elevation data are available, new construction and substantial improvements shall have the lowest floor (including basement) elevated to or above two feet above the base flood elevation.
 - (b) Within Zone A, when no base flood elevation data are available, new and substantially improved structures shall have the lowest floor (including basement) elevated at least three feet above the highest adjacent grade.
 - (c) Within Zone AO, new and substantially improved structures shall have the lowest floor (including basement) elevated above the highest adjacent grade at least as high as two feet above the depth number specified in feet on the community's Flood Insurance Rate Map enumerated in § 33-3B (at least two feet if no depth number is specified).

- (d) Within Zones AH and AO, adequate drainage paths are required to guide floodwaters around and away from proposed structures on slopes.
- D. Residential structures (coastal high-hazard areas). The following standards, in addition to the standards in § 33-5A(1), Coastal high-hazard areas, and § 33-5A(2), Subdivision proposals, and § 33-5B, Standards for all structures, apply to new and substantially improved residential structures located in areas of special flood hazard shown as Zone V1-V30, VE or V, or in an area of moderate wave action, on the community's Flood Insurance Rate Map designated in § 33-3B.
- (1) Elevation. New construction and substantial improvements shall be elevated on pilings, columns or shear walls such that the bottom of the lowest horizontal structural member supporting the lowest elevated floor (excluding columns, piles, diagonal bracing attached to the piles or columns, grade beams, pile caps and other members designed to either withstand storm action or break away without imparting damaging loads to the structure) is elevated to two feet above base flood elevation so as not to impede the flow of water.
 - (2) Determination of loading forces. Structural design shall consider the effects of wind and water loads acting simultaneously during the base flood on all building components.
 - (a) The structural design shall be adequate to resist water forces that would occur during the base flood. Horizontal water loads considered shall include inertial and drag forces of waves, current drag forces, and impact forces from waterborne storm debris. Dynamic uplift loads shall also be considered if bulkheads, walls, or other natural or man-made flow obstructions could cause wave run up beyond the elevation of the base flood.
 - (b) Buildings shall be designed and constructed to resist the forces due to wind pressure. Wind forces on the superstructure include windward and leeward forces on vertical walls, uplift on the roof, internal forces when openings allow wind to enter the house, and upward force on the underside of the house when it is exposed. In the design, the wind should be assumed to blow potentially from any lateral direction relative to the house.
 - (c) Wind loading values used shall be those required by the building code.
 - (3) Foundation standards.
 - (a) The pilings or column foundation and structure attached thereto shall be adequately anchored to resist flotation, collapse or lateral movement due to the effects of wind and water pressures acting simultaneously on all building components. Foundations must be designed to transfer safely to the underlying soil all loads due to wind, water, dead load, live load and other loads (including uplift due to wind and water).
 - (b) Spread footings and fill material shall not be used for structural support of a new building or substantial improvement of an existing structure.
 - (4) Pile foundation design.
 - (a) The design ratio of pile spacing to pile diameter shall not be less than 8:1 for individual piles (this shall not apply to pile clusters located below the design grade). The maximum center-to-center spacing of wood piles shall not be more than 12 feet on center under load-bearing sills, beams, or girders.
 - (b) Pilings shall have adequate soil penetration (bearing capacity) to resist the combined wave and wind loads (lateral and uplift) associated with the base flood acting simultaneously with typical structure (live and dead) loads, and shall include consideration of decreased resistance capacity caused by erosion of soil strata surrounding the piles. The minimum penetration for foundation piles is to an elevation of five feet below mean sea level (msl) datum if the BFE is +10 msl or less, or to be at least 10 feet below msl if the BFE is greater than +10 msl.
 - (c) Pile foundation analysis shall also include consideration of piles in column action from the bottom of the structure to the stable soil elevation of the site. Pilings may be horizontally or diagonally braced to withstand wind and water forces.
 - (d) The minimum acceptable sizes for timber piles are a tip diameter of eight inches for round timber piles and eight inches by eight inches for square timber piles. All wood piles must be treated in accordance with requirements of EPEE-C3 to minimize decay and damage from fungus.
 - (e) Reinforced concrete piles shall be cast of concrete having a twenty-eight-day ultimate compressive strength of not less than 5,000 pounds per square inch, and shall be reinforced with a minimum of four longitudinal steel bars having a combined area of not less than 1% nor more than 4% of the gross concrete area. Reinforcing for precast piles shall have a concrete cover of not less than 1 1/4 inches for No. 5 bars and smaller and not less than 1 1/2 inches for No. 6 through No. 11 bars. Reinforcement for piles cast in the field shall have a concrete cover of not less than two inches.
 - (f) Piles shall be driven by means of a pile driver or drop hammer, jetted, or augered into place.
 - (g) Additional support for piles in the form of bracing may include lateral or diagonal bracing between piles.
 - (h) When necessary, piles shall be braced at the ground line in both directions by a wood timber grade beam or a reinforced concrete grade beam. These at-grade supports should be securely attached to the piles to provide

support even if scoured from beneath.

- (i) Diagonal bracing between piles, consisting of two-inch by eight-inch (minimum) members bolted to the piles, shall be limited in location to below the lowest supporting structural member and above the stable soil elevation, and aligned in the vertical plane along pile rows perpendicular to the shoreline. Galvanized steel rods (minimum diameter 1/2 inch) or cable-type bracing is permitted in any plane.
 - (j) Knee braces, which stiffen both the upper portion of a pile and the beam-to-pile connection, may be used along pile rows perpendicular and parallel to the shore-line. Knee braces shall be two-by-eight lumber bolted to the sides of the pile/beam, or four-by-four or larger braces framed into the pile/beam. Bolting shall consist of two 5/8-inch galvanized steel bolts (each end) for two-by-eight members, or one 5/8-inch lag bolt (each end) for square members. Knee braces shall not extend more than three feet below the elevation of the base flood.
- (5) Column foundation design. Masonry piers or poured-in-place concrete piers shall be internally reinforced to resist vertical and lateral loads, and be connected with a movement-resisting connection to a pile cap or pile shaft.
- (6) Connectors and fasteners. Galvanized metal connectors, wood connectors, or bolts of size and number adequate for the calculated loads must be used to connect adjoining components of a structure. Toe nailing as a principal method of connection is not permitted. All metal connectors and fasteners used in exposed locations shall be steel, hot-dipped galvanized after fabrication. Connectors in protected interior locations shall be fabricated from galvanized sheet.
- (7) Beam to pile connections. The primary floor beams or girders shall span the supports in the direction parallel to the flow of potential floodwater and wave action and shall be fastened to the columns or pilings by bolting, with or without cover plates. Concrete members shall be connected by reinforcement, if cast in place, or (of precast) shall be securely connected by bolting and welding. If sills, beams, or girders are attached to wood piling at a notch, a minimum of two 5/8-inch galvanized steel bolts or two hot-dipped galvanized straps 3/16 inch by four inches by 18 inches each bolted with two 1/2-inch lag bolts per beam member shall be used. Notching of pile tops shall be the minimum sufficient to provide ledge support for beam members without unduly weakening pile connections. Piling shall not be notched so that the cross section is reduced below 50%.
- (8) Floor and deck connections.
- (a) Wood two- by four-inch (minimum) connectors or metal joist anchors shall be used to tie floor joists to floor beams/girders. These should be installed on alternate floor joists, at a minimum. Cross bridging of all floor joists shall be provided. Such cross bridging may be one- by three-inch members, placed eight feet on center maximum, or solid bridging of same depth as joist at same spacing.
 - (b) Plywood should be used for subflooring and attic flooring to provide good torsional resistance in the horizontal plane of the structure. The plywood should not be less than 3/4-inch total thickness, and should be exterior grade and fastened to beams or joists with 8d annular or spiral thread galvanized nails. Such fastening shall be supplemented by the application of waterproof industrial adhesive applied to all bearing surfaces.
- (9) Exterior wall connections. All bottom plates shall have any required breaks under a wall stud or an anchor bolt. Approved anchors will be used to secure rafters or joists and top and bottom plates to studs in exterior and bearing walls to form a continuous tie. Continuous 15/32-inch or thicker plywood sheathing, overlapping the top wall plate and continuing down to the sill, beam, or girder, may be used to provide the continuous tie. If the sheets of plywood are not vertically continuous, then two-by-four nailer blocking shall be provided at all horizontal joints. In lieu of the plywood, galvanized steel rods of 1/2-inch diameter or galvanized steel straps not less than one inch wide by 1/16 inch thick may be used to connect from the top wall plate to the sill, beam, or girder. Washers with a minimum diameter of three inches shall be used at each end of the 1/2-inch round rods. These anchors shall be installed no more than two feet from each corner rod, no more than four feet on center.
- (10) Ceiling joist/rafter connections.
- (a) All ceiling joists or rafters shall be installed in such a manner that the joists provide a continuous tie across the rafters. Ceiling joists and rafters shall be securely fastened at their intersections. A metal or wood connector shall be used at alternate ceiling joist/rafter connections to the wall top plate.
 - (b) Gable roofs shall be additionally stabilized by installing two-by-four blocking on two-foot centers between the rafters at each gable end. Blocking shall be installed a minimum of eight feet toward the house interior from each gable end.
- (11) Projecting members. All cantilevers and other projecting members must be adequately supported and braced to withstand wind and water uplift forces. Roof eave overhangs shall be limited to a maximum of two feet and joist overhangs to a maximum of one foot. Larger overhangs and porches will be permitted if designed or reviewed and certified by a registered professional engineer or architect.
- (12) Roof sheathing.
- (a) Plywood, or other wood material, when used as roof sheathing, shall not be less than 15/32 inch in thickness, and shall be of exterior sheathing grade or equivalent. All attaching devices for sheathing and roof coverings shall be galvanized or be of other suitable corrosion-resistant material.

- (b) All corners, gable ends, and roof overhangs exceeding six inches shall be reinforced by the application of waterproof industrial adhesive applied to all bearing surfaces of any plywood sheet used in the sheathing of such corner, gable end, or roof overhang.
 - (c) In addition, roofs should be sloped as steeply as practicable to reduce uplift pressures, and special care should be used in securing ridges, hips, valleys, eaves, vents, chimneys, and other points of discontinuity in the roofing surface.
- (13) Protection of openings. All exterior glass panels, windows, and doors shall be designed, detailed, and constructed to withstand loads due to the design wind speed of 75 miles per hour. Connections for these elements must be designed to transfer safely the design loads to the supporting structure. Panel widths of multiple-panel sliding glass doors shall not exceed three feet.
- (14) Breakaway wall design standards.
 - (a) The breakaway wall shall have a design-safe loading resistance of not less than 10 and not more than 20 pounds per square foot, with the criterion that the safety of the overall structure at the point of wall failure be confirmed using established procedures. Grade beams shall be installed in both directions for all piles considered to carry the breakaway wall load. Knee braces are required for front row piles that support breakaway walls.
 - (b) Use of breakaway wall strengths in excess of 20 pounds per square foot shall not be permitted unless a registered professional engineer or architect has developed or reviewed the structural design and specifications for the building foundation and breakaway wall components, and certifies that (1) the breakaway walls will fail under water loads less than those that would occur during the base flood; and (2) the elevated portion of the building and supporting foundation system will not be subject to collapse, displacement, or other structural damage due to the effects of wind and water loads acting simultaneously on all building components (structural and nonstructural). Water loading values used shall be those associated with the base flood. Wind loading values shall be those required by the building code.
- E. Nonresidential structures (except coastal high-hazard areas). The following standards apply to new and substantially improved commercial, industrial and other nonresidential structures located in areas of special flood hazard, in addition to the requirements in § 33-5A(2), Subdivision approvals, § 33-5A(3), Encroachments, and § 33-5B, Standards for all structures.
 - (1) Within Zones A1-A30, AE and AH, and also Zone A if base flood elevation data are available, new construction and substantial improvements of any nonresidential structure, together with attendant utility and sanitary facilities, shall either:
 - (a) Have the lowest floor, including basement or cellar, elevated to or above two feet above the base flood elevation; or
 - (b) Be floodproofed so that the structure is watertight below two feet above the base flood elevation with walls substantially impermeable to the passage of water. All structural components located below the base flood elevation must be capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy.
 - (2) Within Zone AO, new construction and substantial improvements of nonresidential structures shall:
 - (a) Have the lowest floor (including basement) elevated above the highest adjacent grade at least as high as two feet above the depth number specified in feet on the community's FIRM (at least two feet if no depth number is specified); or
 - (b) Together with attendant utility and sanitary facilities, be completely floodproofed to that level to meet the floodproofing standard specified in § 33-5B(3).
 - (3) If the structure is to be floodproofed, a licensed professional engineer or architect shall develop and/or review structural design, specifications, and plans for construction. A floodproofing certificate or other certification shall be provided to the local administrator that certifies the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of § 33-5E(1)(b), including the specific elevation (in relation to mean sea level) to which the structure is to be floodproofed.
 - (4) Within Zones AH and AO, adequate drainage paths are required to guide floodwaters around and away from proposed structures on slopes.
 - (5) Within Zone A, when no base flood elevation data are available, the lowest floor (including basement) shall be elevated at least three feet above the highest adjacent grade.
- F. Nonresidential structures (coastal high-hazard areas). In Zones V1-V30, VE, and also Zone V if base flood elevations are available, or in an area of moderate wave action, new construction and substantial improvements of any nonresidential structure, together with attendant utility and sanitary facilities, shall have the bottom of lowest member of the lowest floor elevated to or above two feet above the base flood elevation. Floodproofing of structures is not an allowable alternative to elevating the lowest floor to two feet above the base flood elevation in Zones V1-V30, VE and V.

- G. Manufactured homes and recreational vehicles. The following standards, in addition to the standards in § **33-5A**, General standards, and § **33-5B**, Standards for all structures, apply, as indicated, in areas of special flood hazard to manufactured homes and to recreational vehicles which are located in areas of special flood hazard.
- (1) Recreational vehicles placed on sites within Zones A1-A30, AE, AH, V1-V30, V, and VE shall either: (a) be on site fewer than 180 consecutive days, (b) be fully licensed and ready for highway use, or (c) meet the requirements for manufactured homes in Subsection **G(2), (3) and (4)**. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick-disconnect-type utilities and security devices and has no permanently attached additions.
 - (2) A manufactured home that is placed or substantially improved in Zones A1-A30, AE, AH, V1-V30, V, and VE shall be elevated on a permanent foundation such that the lowest floor is elevated to or above two feet above the base flood elevation and is securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement. Elevation on piers consisting of dry stacked blocks is prohibited.
 - (3) Within Zone A or V, when no base flood elevation data are available, new and substantially improved manufactured homes shall be elevated such that the manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above grade and are securely anchored to an adequately anchored foundation system to resist flotation, collapse or lateral movement. Elevation on piers consisting of dry stacked blocks is prohibited.
 - (4) Within Zone AO, the floor shall be elevated above the highest adjacent grade at least as high as the depth number specified on the Flood Insurance Rate Map enumerated in § **33-3B** (at least two feet if no depth number is specified). Elevation on piers consisting of dry stacked blocks is prohibited.

§ 33-6. Variance procedure.

A. Appeals board.

- (1) The Board of Zoning Appeals, as established by the Town of Brookhaven, shall hear and decide appeals and requests for variances from the requirements of this chapter.
- (2) The Board of Zoning Appeals shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the local administrator in the enforcement or administration of this chapter.
- (3) Those aggrieved by the decision of the Board of Zoning Appeals may appeal such decision to the Supreme Court pursuant to Article 78 of the Civil Practice Law and Rules.
- (4) In passing upon such applications, the Board of Zoning Appeals shall consider all technical evaluations, all relevant factors, standards specified in other sections of this chapter and:
 - (a) The danger that materials may be swept onto other lands to the injury of others;
 - (b) The danger to life and property due to flooding or erosion damage;
 - (c) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
 - (d) The importance of the services provided by the proposed facility to the community;
 - (e) The necessity to the facility of a waterfront location, where applicable;
 - (f) The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
 - (g) The compatibility of the proposed use with existing and anticipated development;
 - (h) The relationship of the proposed use to the comprehensive plan and floodplain management program of that area;
 - (i) The safety of access to the property in times of flood for ordinary and emergency vehicles;
 - (j) The costs to local governments and the dangers associated with conducting search and rescue operations during periods of flooding;
 - (k) The expected heights, velocity, duration, rate of rise and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and
 - (l) The costs of providing governmental services during and after flood conditions, including search and rescue operations, maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems and streets and bridges.
- (5) Upon consideration of the factors of § **33-6A(4)** and the purposes of this chapter, the Board of Zoning Appeals may

attach such conditions to the granting of variances as it deems necessary to further the purposes of this chapter.

- (6) The local administrator shall maintain the records of all appeal actions including technical information and report any variances to the Federal Emergency Management Agency upon request.

B. Conditions for variances.

- (1) Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood elevation, providing items in Subsection **A(4)(a)** through **(l)** in § **33-6** have been fully considered. As the lot size increases beyond the 1/2 acre, the technical justification required for issuing the variance increases.
- (2) Variances may be issued for the repair or rehabilitation of historic structures upon determination that:
 - (a) The proposed repair or rehabilitation will not preclude the structure's continued designation as an historic structure; and
 - (b) The variance is the minimum necessary to preserve the historic character and design of the structure.
- (3) Variances may be issued for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use, provided that:
 - (a) The criteria of Subsection **B(1), (4), (5)** and **(6)** of this section are met; and
 - (b) The structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threat to public safety.
- (4) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
- (5) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- (6) Variances shall only be issued upon receiving written justification of:
 - (a) A showing of good and sufficient cause;
 - (b) A determination that failure to grant the variance would result in exceptional hardship to the applicant; and
 - (c) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public or conflict with existing local laws or ordinances.
- (7) Any applicant to whom a variance is granted for a building with the lowest floor below the base flood elevation shall be given written notice over the signature of a community official that the cost of flood insurance will be commensurate with the increased risk resulting from lowest floor elevation.

Town of Brookhaven, NY
Thursday, October 3, 2019

Chapter 35. Grading

[HISTORY: Adopted by the Town Board of the Town of Brookhaven 6-16-1987 by L.L. No. 7-1987. Amendments noted where applicable.]

GENERAL REFERENCES

Building construction administration — See Ch. 16.

Flood damage prevention — See Ch. 33.

Highways — See Ch. 38.

Sand and gravel pits; excavated; removal of topsoil — See Ch. 53.

Unsafe buildings and excavated lands — See Ch. 73.

Zoning — See Ch. 85.

Subdivision regulations — See Appendix.

§ 35-1. Intent.

It is the purpose of this chapter to regulate and control the regrading of land throughout the Town in all use district classifications in order to prevent serious and irreparable damage to our natural resources, to minimize and retard the erosive effects of wind and water, to prevent the depreciation of property values, to prevent the removal of lateral support for abutting streets, lands and structures, to prevent damage to natural watersheds, to provide adequate drainage for surface water runoff, to protect persons and property from the hazards of periodic flooding and, in general, to protect the health, welfare and safety of the residents of the Town.

§ 35-2. Definitions; word usage.

- A. For the purpose of this chapter, the following terms, phrases, words and their derivations shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future, words used in the plural number include the singular number, and words used in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.
- B. As used in this chapter, the following terms shall have the meanings indicated:

DRAINAGE FACILITIES

Includes gutters, swales, pipes, conduits and superstructures for the collection and conducting of stormwater to an adequate facility for the storage and disposal of the stormwater.

[1]

GROUNDWATER TABLE

The elevation of the top of the water stored in the highest aquifer in the subsoils, at the location of the proposed structure, including but not limited to so-called "perched water," except that where it is demonstrated that removal of the impervious layer underlying the perched water will substantially lower the level of the water, the lower water surface shall be considered the groundwater table. In locations where the groundwater is subject to tidal action, the mean high elevation of the groundwater surface shall be considered the groundwater table.

[2]

LATERAL SUPPORT

The resistance to active horizontal pressure of soils provided by either the passive pressure of the adjoining soils or by a retaining wall or structure.

NATURAL DRAINAGE

The stormwater runoff resulting from topographical and geographical surface conditions prior to clearing, regrading or construction.

NATURAL WATERSHED

An area of land which, in its natural state and prior to any man-made change and due to its topography and geography, drains to a particular location within that area.

[3]

REGRADE

To change the elevation of the ground surface, either temporarily or permanently.

STABILIZATION

Treatment of subsoils to increase ability to resist lateral pressures and/or treatment of surface to resist wind and water erosion.

STORMWATER RUNOFF

The amount of rainwater which, due to topographical surface conditions and geology of the upstream land, drains to a particular location or the rate at which the rainfall passes through a particular location.

- [1] *Editor's Note: The definition of "flood-prone area," which immediately followed this definition, was repealed 7-11-1995 by L.L. No. 17-1995, effective 7-17-1995.*
- [2] *Editor's Note: The definition of "habitable," which immediately followed this definition, was repealed 7-11-1995 by L.L. No. 17-1995, effective 7-17-1995.*
- [3] *Editor's Note: The definition of "one-hundred-year flood level," which immediately followed this definition, was repealed 7-11-1995 by L.L. No. 17-1995, effective 7-17-1995.*

§ 35-3. Minimum standards.

The following standards for the development of land or the regrading thereof, or both, shall apply in all use district classifications as set forth in Chapter **85** of the Code of the Town of Brookhaven. In all use district classifications wherein site plan review and approval is required, the site plan submitted to the Planning Board shall indicate compliance with the following standards. In all other use district classifications, the procedure required by § **35-4** of this chapter shall be followed.

- A. Stormwater runoff or natural drainage shall not be diverted so as to overload existing drainage systems, create flooding or cause erosion or the need for additional drainage facilities on other private or public real property.
- B. Adequate drainage facilities for stormwater runoff shall be provided.
- C. Proposed slope embankments along adjoining property lines and street frontages shall have a slope not steeper than one foot on three feet (33 1/3%), unless an adequate stabilization or retaining wall is provided as approved by the Planning Board. All slopes shall be adequately stabilized with topsoil and seeding or other approved planting.
- D. The finished grade at a point not less than 10 feet from the building shall be at least one foot below the lowest exterior opening in the foundation of the habitable portion of the structure, except that the finished grade may be no less than six inches at a point no less than 10 feet opposite open porches, patios and pedestrian ramps.^[1]
 - [1] *Editor's Note: Former Subsection E, Floor elevation, which immediately followed this subsection, was repealed 7-11-1995 by L.L. No. 17-1995, effective 7-17-1995. This local law also provided for the renumbering of former Subsections F through I as Subsections E through H, respectively.*
- E. Front and rear yards shall have a grade of not more than 5% for a distance of 25 feet, as measured in a horizontal plane from the structure. Side yards shall have a grade of not more than 10% for a distance of 10 feet, as measured in a horizontal plane from the structure. All finished grades within 10 feet of the building shall pitch away from the building at a grade rate of not less than 2%.
- F. Where roof runoff from any building or structure will produce erosion or drainage problems with respect to adjoining properties, dry wells of adequate capacity shall be installed as an outfall for rainfall roof runoff.
- G. The driveway apron shall be at least one foot below the garage floor unless natural topography dictates grading away from the street and protective grading is provided for in the construction of the driveway with respect to adjoining structures and property.
- H. Notwithstanding the foregoing provisions of this section, the Planning Board may waive or modify compliance with any of the foregoing minimum standards, subject to appropriate conditions which, in its judgment, are not warranted by the special circumstances of any application or matter before it or required in the interest of the public health, safety and welfare.
- I. Stormwater pollution prevention plan.
 - [Added 1-22-2008 by L.L. No. 3-2008, effective 1-30-2008]
 - (1) A stormwater pollution prevention plan (SWPPP) consistent with the requirements of Chapter **86**, Stormwater Management and Erosion Control, shall be required for any disturbance of:
 - (a) One acre or larger; or
 - (b) Less than one acre that is part of a larger common plan of development, notwithstanding such disturbance may occur at different times and/or different schedules.
 - (2) The SWPPP shall meet the performance and design criteria and standards in Chapter **86**. Grading shall be consistent with the provisions of Chapter **86**.

§ 35-4. Applications for building permits and certificates of occupancy.

All applications for a building permit and a certificate of occupancy shall be referred to the Planning Board for its review and approval pursuant to this chapter. The Planning Board may approve, disapprove or approve with modification the application for a building permit and/or a certificate of occupancy and specify its reasons for taking such action based upon the standards set forth in § **35-3**. In the event that the Planning Board determines that the information required pursuant to § **85-13** of the Code of the Town of Brookhaven is inadequate to ascertain whether or not the applicant can or will comply or has complied with this chapter, it may require the applicant to submit to the Planning Board a topographical survey prepared by a registered land surveyor or registered professional engineer showing:

- A. The existing topography.
- B. A proposed regrading plan.
- C. Test borings.
- D. The proposed structure or other on-site improvements in sufficient detail to determine compliance with Chapter **85** or any other information which may be required to determine compliance with this chapter.
- E. Elevations of the proposed structures.

§ 35-5. Penalties for offenses.

- A. No person shall regrade or cause to be regraded any property which, when regraded, shall be in violation of the standards set forth in § **35-3** of this chapter. Any person violating this section shall be guilty of an offense punishable by a fine not to exceed \$500 or by imprisonment for a period not to exceed six months, or both. Any corporation violating this section shall be guilty of an offense punishable by a fine not to exceed \$1,000 or imprisonment for a period not to exceed six months, or both.
- B. No person shall erect or alter any building or structure which violates or causes a violation of the minimum standards specified in § **35-3** of this chapter. Any person violating this section shall be guilty of any offense punishable by a fine not to exceed \$1,000 or by imprisonment for a period not to exceed six months, or both.

Town of Brookhaven, NY
Thursday, October 3, 2019

Chapter 38. Highways

Article I. Alteration or Excavation of Highways; Erection of Poles

§ 38-1. Written consent of Superintendent required; replacement of damaged poles.

[Amended 8-17-2010 by L.L. No. 13-2010, effective 8-25-2010]

- A. No person, firm or corporation shall change or alter the grade of any Town highway or of any sidewalk upon or in a Town highway of the Town of Brookhaven nor in any manner alter or change the line or height of any curb in any Town highway in said Town nor open the surface of any Town highway of the Town of Brookhaven nor make any excavation under the surface thereof for any purpose nor place or erect any pole for any purpose in or upon any Town highway of said Town nor alter or change the location of any existing pole in any Town highway of said Town without first having obtained the written consent of the Town Superintendent of Highways.
- B. No person, firm or corporation shall install a new or replacement utility pole directly next to or in close proximity to an existing damaged utility pole in or upon any Town highway or right-of-way, or adjacent to any Town highway or right-of-way, without removing the existing damaged utility pole.

§ 38-1.1. Sufficient indemnity required.

The Town Superintendent of Highways shall not give his written consent that any act or acts set forth in § 38-1 be performed unless there shall have been furnished by the applicant a sufficient indemnity or performance bond as determined by the Superintendent of Highways as a condition precedent thereto. Said bond or indemnity shall be for a reasonable amount and may cover one or more than one of the acts specified in § 38-1 of this article, and said bond or indemnity may cover any period of time necessary to include the accomplishment of one or more of the aforesaid acts, all as shall be determined by the Town Superintendent of Highways. The approval of the Superintendent of Highways as to amount, form, manner of execution and sufficiency of surety or sureties shall be endorsed on said bond before it shall be filed in the Town Clerk's office, and said bond shall be so filed before said consent shall be effective.

§ 38-1.2. Removal of damaged or double utility poles.

[Added 3-12-2013 by L.L. No. 10-2013, effective 3-22-2013]

When the Superintendent of Highways, or his/her designee, determines that a utility pole in a highway or right-of-way is damaged and/or a double pole or plant, the Superintendent, or his/her designee, shall notify the utility that owns or operates the pole that it must remove said pole within 60 days of written notice or be subject to the penalty contained in § 38-2 below.

§ 38-2. Penalties for offenses.

[Amended 3-12-2013 by L.L. No. 10-2013, effective 3-22-2013]

- A. Any person, firm, corporation or public utility convicted of a violation of the provisions of § 38-1, 38-1.1 or 38-1.2 shall be guilty of a violation, for a first conviction, punishable by a fine not exceeding \$250 or by imprisonment not exceeding 15 days, or both; and a misdemeanor, for a second or subsequent conviction, punishable by a fine not exceeding \$500 or by imprisonment for not less than 15 days nor more than 30 days, or both.

[Amended 6-26-2018 by L.L. No. 14-2018, effective 7-9-2018]

- B. Any person, firm or corporation or public utility that violates this article and fails to remove its damaged and/or double pole or plant from a damaged pole within 60 days of receiving notification shall be subject to a civil penalty not to exceed \$250 for each such violation. Each thirty-day period that the violation continues shall be deemed a separate violation.
- C. If a person, firm or corporation or public utility violates the provisions of this article and fails to remove its damaged and/or double pole or plant from a damaged pole in accordance with the provisions of this article, the Town Attorney may commence an action in the name of the Town of Brookhaven in a court of competent jurisdiction for necessary relief, which may include imposition of civil penalties as authorized by this article, in order to remove the double pole or plant from a damaged utility pole and/or to remove the damaged pole, the recovery of costs of the action and such other remedies as

may be necessary to prevent or enjoin a dangerous condition from existing on a Town highway.

Article II. Obstructions or Injuries to Highways

§ 38-3. Written permission and bond required.

No person shall disturb, break, mar, injure, remove or deface or cause to be disturbed, broken, marred, injured, removed or defaced any surface or any part of any highway, street, road, sidewalk, sidepath, passway or other public way of the Town of Brookhaven or maintained by it, in any manner whatsoever except with the written consent of the Superintendent of Highways of said Town. The Town Superintendent of Highways shall not give his written consent that any such act be performed unless there shall have been furnished by the applicant a sufficient indemnity or performance bond as a condition precedent thereto, and said bond shall be for a reasonable amount which shall be determined by the Town Superintendent of Highways, whose approval thereof as to amount, form, manner of execution and sufficiency of surety or sureties shall be endorsed thereon before said bond shall be filed in the Town Clerk's office, and said bond shall be so filed before said consent shall be effective.

§ 38-4. Obstructions prohibited.

No person shall do or cause to be done any act or thing which shall cause or contribute to a condition in, within or upon any highway, street, road, sidewalk, sidepath, passway or other public way of the Town of Brookhaven or maintained by it, which shall be dangerous to the health, safety or welfare of persons using the same or impair the public use thereof or obstruct or tend to obstruct or render the same dangerous for passage.

§ 38-5. Certain devices prohibited.

No person shall operate, drive, propel or tow in, within or upon any highway, street, road, sidewalk, sidepath, passway or other public way of the Town of Brookhaven or maintained by it, any object, vehicle or machinery equipped with metal lugs, teeth, discs or other devices which shall in any way disturb, break, mar or injure, remove or deface the surface or any other part of any such highway, street, road, sidewalk, sidepath, passway or other public way of the Town of Brookhaven or maintained by it, except that this section shall not be construed to prohibit the use of carbon-, ceramic- or tungsten-studded tires by motor vehicles, provided that a person using said studded tires does not willfully or maliciously disturb, break, mar, injure, remove or deface the surface of any other part of highway, street, road, sidewalk, sidepath, passway or public way of the Town of Brookhaven or maintained by it.

§ 38-6. Each day a separate violation.

Each period of 24 hours, that is, each calendar day, during which or any part of which any violation of this article continues shall constitute a separate violation hereof.

§ 38-7. Definitions.

As used in this article, the following terms shall have meanings as indicated:

PERSON

Includes any firm, partnership or corporation.

§ 38-8. Action for damages.

The enactment hereof or any prosecution hereunder shall not be deemed to prevent or prohibit an action for the collection of damages or penalties by or on behalf of the Town of Brookhaven or the Superintendent of Highways.

§ 38-9. Removal of snow, ice and obstructions.

[Added 5-18-2010 by L.L. No. 6-2010, effective 5-28-2010^[1]]

- A. The owner, tenant and/or occupant of any real property, building or structure adjacent to any street, highway, roadway, public lane, alley or square in any zoning district shall keep any sidewalk adjacent to said real property, building or structure free and clear of snow, ice and all other obstructions, and keep such sidewalk in a clean condition and free from filth, and dirt.

[1] *Editor's Note: This section was originally adopted 1-26-2010 by L.L. No. 1-2010, effective 2-23-2010, but was readopted as L.L. No. 6-2010 to correct procedural errors.*

§ 38-10. Penalties for offenses.

Any person convicted of a violation of any of the provisions of § **38-3**, **38-4** or **38-5** shall be guilty of the following:

- A. A violation, for a first conviction, punishable by a fine not exceeding \$250 or by imprisonment not exceeding 15 days, or both.
- B. A misdemeanor, for a second or subsequent conviction, punishable by a fine not exceeding \$500 or by imprisonment for not less than 15 days nor more than 30 days, or both.
[Amended 6-26-2018 by L.L. No. 14-2018, effective 7-9-2018]

*Town of Brookhaven, NY
Thursday, October 3, 2019*

Chapter 45. Sanitation

[HISTORY: Adopted by the Town Board of the Town of Brookhaven 6-16-1987 by L.L. No. 7-1987. Amendments noted where applicable.]

GENERAL REFERENCES

Dumps and disposal areas — See Ch. **24**.

Disposition of petroleum substances — See Ch. **47**.

Property maintenance — See Ch. **49**.

Disposition of trees and debris — See Ch. **72**.

§ 45-1. Title.

This chapter shall be known and may be cited as the "Sanitary Code of the Town of Brookhaven."

§ 45-2. Definitions.

- A. When not inconsistent with the context, words in the present tense include the future, words used in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.
- B. For the purposes of this chapter, the following terms, phrases, words and their derivations shall have the meanings given herein:

ABANDONED HOUSEHOLD CONTENTS

Furniture, furnishings, housewares, appliances and other personal property customarily found in and used in residential dwellings, which are deposited at, or along said dwelling's street frontage, in part or in whole, pursuant to a duly executed warrant of eviction by legally authorized law enforcement officers and/or personnel.

[Added 9-20-2001 by L.L. No. 26-2001, effective 9-24-2001; amended 4-16-2002 by L.L. No. 1-2002, effective 4-25-2002]

AUTHORIZED COMMERCIAL RECEPTACLE

A litter storage and collection container which is durable, rust-resistant, nonabsorbent, watertight and capable of being closed to prevent scattering of the contents and which is used for the storage of litter emanating from nonresidential sources.

AUTHORIZED PRIVATE RECEPTACLE

A litter storage and collection container which is durable, rust-resistant and capable of being tightly sealed. Receptacles used for storage of garbage shall, in addition thereto, be nonabsorbent, watertight and equipped with handles and shall not exceed 32 gallons in capacity or 50 pounds in weight. Plastic bags that are heavy enough to contain garbage without breaking or not easily torn open by scavengers are permitted, provided that they are tightly sealed. Paper bags shall be deemed "authorized private receptacles" for the storage and collection of grass cuttings and leaves. Grass cuttings, leaves and other inoffensive materials may be stored in heaps or piles within barriers constructed of boards,

slats or wire for reduction to compost for use on the premises, provided that no odors are permitted to emanate therefrom nor other nuisances to develop.

[Amended 8-2-2018 by L.L. No. 18-2018, effective 8-20-2018]

COMMERCIAL HANDBILL

Any printed or written matter, any sample or device, dodger, circular, leaflet, pamphlet, paper, booklet or any other printed or otherwise reproduced original or copies of any matter or literature which:

- (1) Advertises for the sale of any merchandise, produce, commodity or thing;
- (2) Directs attention to any business or mercantile or commercial establishment or any other activity for the purpose of either directly or indirectly promoting the interest thereof by sales;
- (3) Directs attention to or advertises any meeting, theatrical performance, exhibition or event of any kind for which an admission fee is charged for the purpose of private gain or profit; or
- (4) While containing reading matter other than advertising matter, is predominantly and essentially an advertisement and is distributed or circulated for advertising purposes or for the private benefit and gain of any person so engaged as advertiser or distributor.

COMMISSIONER

The Commissioner of the Department of Recycling and Sustainable Materials Management of the Town of Brookhaven.

[Amended 7-7-1987 by L.L. No. 13-1987; 6-29-2017 by L.L. No. 16-2017, effective 7-13-2017]

DUMPSTER

A litter storage and collection container of two cubic yards or greater in capacity, which is designed to be emptied by a forklift or forklift truck.

[Added 11-17-1987 by L.L. No. 31-1987]

EXPLOSIVES

Any chemical compound or a mechanical mixture that is commonly used or intended for the purpose of producing an explosion and which contains any oxidizing and combusive units or other ingredients in such proportions, quantities or packing that an ignition by fire, by friction, by concussion, by percussion or by detonator of any part of the compound or mixture may cause such a sudden generation of highly heated gases that the resultant gaseous pressures are capable of producing destructive effects on contiguous objects or of destroying life or limb.

FRONTAGE

The boundary line of a lot or parcel of land abutting a public or private street or road to a distance of six feet on either side thereof.

[Added 9-20-2001 by L.L. No. 26-2001, effective 9-24-2001]

GARBAGE

Putrescible animal and vegetable wastes resulting from the handling, preparation, cooking and consumption of food.

HAZARDOUS WASTE

[Amended 7-7-1987 by L.L. No. 13-1987]:

- (1) A solid waste or a combination of solid wastes which, because of its quantity,

concentration or physical, chemical or infectious characteristics, may:

- (a) Cause or significantly contribute to an increase in mortality or an increase in serious, irreversible or incapacitating reversible illness; or
 - (b) Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported or disposed of or otherwise managed.
- (2) Such wastes shall include but are not limited to explosives, hazardous radioactive materials, toxic substances and those substances which the Commissioner has identified as hazardous wastes pursuant to the above criteria and has included on a list of hazardous waste promulgated by the Department

LIQUID WASTE

The liquid and waste solids contained in subsurface sewage disposal systems and appurtenances, waste sludges generated at sewage treatment plants and wastewater from laundry operations and industrial wastewater.

LITTER

All waste material, including plastic six-pack holders, rubbish, liquid waste and garbage, which tends to create a danger to public health, safety and welfare and/or which creates an unsightly condition.

[Amended 11-21-2000 by L.L. No. 15-2000, effective 11-27-2000]

NEWSPAPER

Any newspaper of general circulation as defined by general law, any newspaper duly entered with the Post Office Department of the United States in accordance with federal statute or regulation and any newspaper filed and recorded with any recording officer as provided by general law and, in addition thereto, shall mean and include any periodical or current magazine regularly published in not less than four issues per year and sold to the public.

NONCOMMERCIAL HANDBILL

Any printed or written matter, any sample or device, dodger, circular, leaflet, pamphlet, newspaper, magazine, paper booklet or any other printed or otherwise reproduced original or copy of any matter of literature which does not constitute a commercial handbill or newspaper as these items are defined in this section.

PERSON

Any person, firm, partnership, association, private or municipal corporation, company or organization of any kind.

PRIVATE PROPERTY

Any vacant land held in private ownership and any yard, grounds, walk, driveway or private parking area belonging to or appurtenant to any other privately owned dwelling, house, building or other structure.

PUBLIC DISPOSAL FACILITY

An area or facility designated for disposal, storage and/or collection of solid or liquid waste, which is owned and/or maintained by the Town of Brookhaven or other municipal agencies and which has been designated as being for the use of the public. A Town solid waste management facility is a public disposal facility.

[Amended 7-7-1987 by L.L. No. 13-1987]

PUBLIC PROPERTY

Any and all streets, sidewalks, boulevards, alleys or other public ways and any and all

public parks, squares, spaces, grounds and buildings which are owned and/or maintained by any federal, state, county or municipal authority.

PUBLIC RECEPTACLE

A litter disposal, storage and/or collection container which is owned and/or maintained by any federal, state, county or municipal authority and which has been designated as being for the use of the general public.

RESOURCE RECOVERY

The separation, extraction and recovery of usable materials (including, without limitation, methane), energy or heat from solid waste through source separation, recycling centers or other programs, projects or facilities.

[Amended 7-7-1987 by L.L. No. 13-1987]

ROLL-OFF CONTAINER SERVICE

That service of providing open-top refuse containers of a capacity of 20 cubic yards or greater on a temporary basis for the collection of construction, renovation or demolition materials.

RUBBISH

Nonputrescible solid wastes consisting of both combustible and noncombustible wastes, including but not limited to paper, wrappings, cigarettes, cardboard, tin cans, yard clippings, wood, glass, bedding, crockery and similar materials, and the carbon component of energy waste, whether in solid or gaseous form.

[Amended 7-9-2009 by L.L. No. 15-2009, effective 7-20-2009]

SOLID WASTE

All putrescible and nonputrescible materials or substances discarded or rejected as having served their original intended use or as being spent, useless, worthless or in excess to the owner at the time of such discard or rejection, including, without limitation, garbage, refuse, litter, rubbish, industrial waste, commercial waste, sludges, ashes, contained gaseous material, incinerator residue, construction and demolition debris, discarded automobiles and offal, but not including solid or dissolved material in domestic sewage or substances and materials in noncontainerized gaseous form. Materials intended for recycling are also solid waste within the meaning of this chapter.

[Amended 7-7-1987 by L.L. No. 13-1987]

SOLID WASTE MANAGEMENT

The purposeful and systematic transportation, storage, recycling, treatment, processing, separation, reduction, recovery or disposal of solid waste.

[Amended 7-7-1987 by L.L. No. 13-1987]

SOLID WASTE MANAGEMENT FACILITY

Any facility for the storage, transportation, recycling, processing, separation, reduction, recovery, treatment or disposal of solid waste, including but not limited to transfer stations, baling facilities, rail haul or barge haul facilities, processing systems, source separation facilities, sanitary landfills, plants and facilities for compacting, composting or pyrolyzation of solid wastes, incinerators and other solid waste disposal, reduction or conversion facilities.

[Amended 7-7-1987 by L.L. No. 13-1987]

SOURCE SEPARATION

The segregation of usable and recyclable materials from the solid waste stream for separate collection, sale or other disposition.

[Amended 7-7-1987 by L.L. No. 13-1987]

SUPERINTENDENT OF HIGHWAYS

The Superintendent of Highways of the Town of Brookhaven.
[Added 4-16-2002 by L.L. No. 1-2002, effective 4-25-2002]

TOWN

All unincorporated areas within the boundaries of the Town of Brookhaven.

TOWN CLERK

The Town Clerk of the Town of Brookhaven.

TOWN SOLID WASTE MANAGEMENT FACILITY

A solid waste management facility which is owned and/or maintained by the Town of Brookhaven.

[Amended 7-7-1987 by L.L. No. 13-1987]

UNREGISTERED MOTOR VEHICLE

Any motor vehicle not currently registered in the State of New York or in any other competent jurisdiction. Failure to have a current license or registration tags affixed to said vehicle shall be presumptive evidence that such vehicle is not registered.

VEHICLE

Every device in, upon or by which any person or property is or may be transported or drawn upon a highway, including devices used exclusively upon stationary rails or tracks.

§ 45-3. Inspection of premises.

The Commissioner or his representative shall have the power to enter, at reasonable times, upon any private property for the purpose of inspecting and investigating conditions relating to the enforcement of the provisions of this chapter.

§ 45-4. Littering and dumping.

[Amended 11-17-1987 by L.L. No. 31-1987; 5-16-1989 by L.L. No. 18-1989, effective 5-22-1989; 11-19-1991 by L.L. No. 8-1991, effective 11-25-1991; 2-22-1996 by L.L. No. 5-1996, effective 3-4-1996; 9-20-2001 by L.L. No. 26-2001, effective 9-24-2001]

- A. Litter on private property. No person shall cause litter to be thrown or deposited in or upon private property within the Town except in authorized private and commercial receptacles. Persons placing or removing litter in or from authorized private and commercial receptacles shall do so in such manner as to prevent it from being scattered, carried or deposited upon private property.

[Amended 1-19-2012 by L.L. No. 3-2012, effective 1-31-2012]

- B. Litter on public property. No person shall cause litter to be thrown or deposited in or upon public lands or roadways within the Town except in public receptacles or in public disposal facilities. Persons placing or removing litter in or from public receptacles shall do so in such manner as to prevent it from being scattered, carried or deposited upon any street, sidewalk or other public roadway.

[Added 1-19-2012 by L.L. No. 3-2012, effective 1-31-2012^[1]]

[1] *Editor's Note: This local law also redesignated former Subsections B through J as Subsections C through K, respectively.*

- C. Litter from vehicles. No person shall drive or move any truck or other vehicle within the Town unless such vehicle is so constructed or loaded to prevent any load, contents or litter from being blown or deposited upon any street, alley or other public or private property, nor shall any

person drive or move any vehicle or truck within the Town, the wheels or tires of which carry onto or deposit upon any street, alley or other public or private property mud, dirt, sticky substances, litter or foreign matter of any kind.

- D. Duty to keep private property free of litter, and Town's authority to remove. Any person owning, occupying or in control of private property shall maintain such property, including the sidewalk in front thereof, free of litter. In the event that the owner, occupant or person in control of private property located within the Town shall fail to remove litter located on such property, the Town shall have the authority, as provided for herein, to enter upon such property, to remove the litter so located, to assess the cost and expense of such action against the property and to establish a lien in the manner provided hereinbelow.

[Amended 4-16-2002 by L.L. No. 1-2002, effective 4-25-2002; 8-2-2018 by L.L. No. 18-2018, effective 8-20-2018]

- (1) Notice. If the Commissioner shall find that litter exists upon such private property, the Commissioner may make an order, directing notice to be served upon the owner of said property as shown by the records of the Receiver of Taxes of the Town.
- (2) Contents of notice. The notice shall contain a general description of the property, a statement of the particulars with regard to the littered condition of the property and an order requiring the litter existing on the property to be removed. The notice shall specify a time, not less than 10 days after the service thereof, within which the owner served with such notice must complete the removal of the litter from the property specified in the notice. The notice shall state that, in the event that the littered condition on the property is not eliminated within the time specified in the notice, the Town shall undertake to enter the property, remove the litter and assess the cost of such removal against the property.
- (3) Service of notice. The notice may be served either personally or by certified mail, addressed to the last known address, if any, of the owner as the same may appear on the records of the Receiver of Taxes of the Town; provided, however, that if such service is made by certified mail, a copy thereof shall also be posted on the property where the litter is located. Service of the notice by mail and posting shall be deemed completed on the day on which both the mailing and the posting will have been accomplished.
- (4) Failure to comply. Upon failure of the owner of the property to comply with the notice within the time provided therein, the Commissioner or such other official of the Town as may be designated by the Commissioner shall provide such labor and materials as are necessary for cleaning the litter from the property and shall cause such work to be performed as will remove the litter from the property.
- (5) Assessment of costs and expenses. All costs and expenses incurred by the Town in connection with the removal of the litter from the property shall be assessed against the land on which said litter was located. An itemization of such costs shall be provided to the Town by the Commissioner. The total costs and expenses shall then be determined by the Town Board and shall be reported to the Assessor of the Town as an amount to be liened and assessed against the property, and the expense so assessed shall constitute a lien and charge on the property on which it is levied until paid or otherwise satisfied or discharged and shall be collected in the same manner and at the same time as other Town charges. That portion of said collected funds which shall represent costs and expenses incurred by any department of the Town with regard to alleviating the littered condition shall be returned to that department's operational budget.

- E. Duty to keep private property free of brush, grass, weeds, fire hazards and health hazards, and Town's authority to remove.

[Added 11-10-2009 by L.L. No. 22-2009, effective 11-17-2009; amended 8-2-2018 by L.L. No. 18-2018, effective 8-20-2018]

Any person owning, occupying or in control of private property shall cut, trim or remove brush, grass or weeds, and eliminate fire hazards and health hazards, upon said property.

- (2) In the event that the owner, occupant or person in control of property which is vacant or upon which an unoccupied building, uninhabited building, vacant building or a foreclosed building is situated shall fail to cut, trim or remove brush, grass or weeds, or fail to eliminate fire hazards and health hazards from said property, the Town shall have the authority, as provided for herein, to enter upon such property to cut, trim or remove said brush, grass or weeds, and to eliminate health and fire hazards. The cost and expense of such action shall be assessed against the property and a lien established in the manner provided hereinbelow.
 - (a) Notice. If the Commissioner shall find brush, grass or weeds, or fire hazards and health hazards, upon property which is vacant or upon which an unoccupied building, uninhabited building, vacant building, abandoned building or a foreclosed building is situated, the Commissioner may make an order, directing notice to be served upon the owner of said property as shown by the records of the Receiver of Taxes of the Town.
 - (b) Contents of notice. The notice shall contain a general description of the property, a statement of the particulars with regards to the condition of the property and an order requiring the cutting, trimming or removal of brush, grass or weeds, and elimination of fire hazards and health hazards. The notice shall specify a time, not less than 10 days after the service thereof, within which the owner served with such notice must complete the cutting, trimming or removal of brush, grass or weeds, and elimination of fire hazards and health hazards from the property specified in the notice. The notice shall state that, in the event that the condition on the property is not eliminated within the time specified in the notice, the Town shall undertake to enter the property to cut, trim or remove brush, grass or weeds, and eliminate fire hazards and health hazards, and assess the cost of same against the property.
 - (c) Service of notice. The notice may be served either personally or by regular and certified mail, addressed to the last known address, if any, of the owner as the same may appear on the records of the Receiver of Taxes of the Town; provided, however, that if such service is made by certified mail, a copy thereof shall also be posted on the property where the brush, grass or weeds, and fire hazards and health hazards, are located. Service of the notice by mail and posting shall be deemed completed on the day on which both the mailing and the posting will have been accomplished.
 - (d) Failure to comply. Upon failure of the owner of the property to comply with the notice within the time provided therein, the Commissioner or such other official of the Town as may be designated by the Commissioner shall provide such labor and materials as are necessary for cutting, trimming or removal of brush, grass or weeds, and elimination of fire hazards and health hazards, and shall cause such work to be performed as will cut, trim or remove brush, grass or weeds, and eliminate fire hazards and health hazards from the property.
 - (e) Assessment of costs and expenses. All costs and expenses incurred by the Town in connection with the cutting, trimming or removal of brush, grass or weeds and elimination of fire hazards and health hazards from the property, plus an administrative fee of \$500, shall be assessed against the land on which said brush, grass or weeds, and fire hazards and health hazards, were located. An itemization of such costs shall be provided to the Town Board by the Commissioner. The total costs and expenses shall then be determined by the Town Board, plus an administrative fee of \$500, and shall be reported to the Assessor of the Town as an amount to be liened and assessed against the property, and the expense so assessed shall constitute a lien and charge on the property on which it is levied until paid or otherwise satisfied or

discharged and shall be collected in the same manner and at the same time as other Town charges. That portion of said collected funds which shall represent costs and expenses incurred by any department of the Town with regard to alleviating the condition shall be returned to that department's operational budget.

- F. Duty to keep frontage of residential property free and clear of abandoned household contents, and Town's authority to remove. Any person owning and/or in control of a residential dwelling which is/was subject to a residential leasehold shall maintain such property frontage, including but not limited to the front yard, and frontage, and/or the contiguous right-of-way, free of abandoned household contents as defined in this chapter. In the event that abandoned household contents as defined in this chapter are located upon or contiguous with the frontage and/or abutting right-of-way of a lot or parcel of land, for a period in excess of 48 hours, the Town is hereby authorized as provided for herein to enter upon such property, if necessary, to remove said abandoned household contents so located, to assess the cost and expense of such undertaking against the property and to establish a lien as herein provided.

[Amended 4-16-2002 by L.L. No. 1-2002, effective 4-25-2002]

- (1) Inspection and report. Upon notification that abandoned household contents are located on or along a parcel of private property's frontage and/or the right-of-way contiguous thereto, the Town Attorney or Superintendent of Highways may make an inspection thereof and report his/her findings concerning the same to the Town Board.
- (2) Notice. If the Town Attorney or Superintendent of Highways shall find that abandoned household contents are located on or contiguous with the frontage of such private property, the aforesaid official may make an order, directing notice to be served upon the owner of said property as appears in the records of the Receiver of Taxes of the Town.
- (3) Contents of notice. The notice shall contain a general description of the property, a statement of the particulars with regard to the violative condition(s) existing at the subject property and an order requiring that the said abandoned household contents existing on or contiguous with the property, and/or its frontage, be removed. The notice shall specify a time, not less than 48 hours after the service thereof, within which the owner served with such notice shall complete the removal of the litter and/or the abandoned household contents from the property or along the frontage or the contiguous right-of-way as specified in the notice. The notice shall further state that, in the event that the cited condition is not eliminated within the time specified in the notice, the Town shall undertake to enter upon the property, if necessary, to remove the litter and/or abandoned household contents, and assess the cost of such removal against the property.
- (4) Service of notice. The notice may be served either personally or by certified mail, addressed to the last known address, if any, of the owner as the same may appear on the records of the Receiver of Taxes of the Town; provided, however, that if such service is made by certified mail, a copy thereof shall also be posted on the property where the litter and/or abandoned household contents are located. Service of the notice by mail and posting shall be deemed completed on the day on which both the mailing and the posting will have been accomplished.
- (5) Failure to comply. Upon failure of the owner of the property to comply with the notice within the time provided therein, the Town Attorney or Superintendent of Highways shall provide such labor and materials as are necessary for clearing the litter from the said property and/or the abandoned household contents from said property or its frontage or contiguous right-of-way and shall cause such work to be performed as will remove either the litter and/or the abandoned household contents from the property.
- (6) Assessment of costs and expenses. All costs and expenses incurred by the Town in connection with the removal of the material and/or items, as set forth hereinabove, from the property, shall be assessed against the subject land or lot. An itemization of such costs

shall be provided to the Town by the Town Attorney or Superintendent of Highways. The total costs and expenses shall then be determined by the Town Board and shall be reported to the Assessor of the Town as the amount to be liened and assessed against the property, and the expense so assessed shall constitute a lien and charge on the property on which it is levied until paid or otherwise satisfied or discharged and shall be collected in the same manner and at the same time as other Town charges. That portion of said collected funds representing costs and expenses incurred by any department of the Town with regard to alleviating the violative condition(s) shall be allocated and/or restored to that department's operational budget.

G. (Reserved)^[2]

[2] *Editor's Note: Former Subsection G, Removal of litter and/or abandoned household contents, was repealed 8-2-2018 by L.L. No. 18-2018, effective 8-20-2018.*

H. Records search fee. The Department of Recycling and Sustainable Materials Management of the Town of Brookhaven may provide research entities, and other third parties, with public information regarding cleanup costs that have been assessed against a property as determined by the Board of the Town of Brookhaven and reported to the Assessor as provided in § 45-4. [Added 11-23-2010 by L.L. No. 30-2010, effective 12-7-2010; 6-29-2017 by L.L. No. 16-2017, effective 7-13-2017]

- (1) An administrative fee set by the Commissioner shall be charged for a search of the records of the Department of Recycling and Sustainable Materials Management in the Town of Brookhaven for violations of § 45-4 and any subsequent assessments levied against a property.
- (2) An administrative fee shall not apply to the owner of said property as shown by the records of the Receiver of Taxes who has received a notice from the Commissioner regarding a violation or assessment against a property in accordance with § 45-4 within 180 days of the notice of violation or assessment against the property.

I. Enclosure of dumpsters. All dumpsters shall be fully enclosed by an enclosure of not more than eight feet in height and in conformance with Chapter 85 of the Town Code of the Town of Brookhaven. [Amended 6-18-2002 by L.L. No. 14-2002, effective 6-24-2002; 8-2-2018 by L.L. No. 18-2018, effective 8-20-2018]

J. Protection of stormwater recharge areas. [Amended 6-18-2002 by L.L. No. 14-2002, effective 6-24-2002]

- (1) Designation of recharge basins. The Town Board hereby finds that the groundwater recharge basins located within the Town of Brookhaven provide an important function in the hydrogeologic cycle and should be protected. Stormwater recharge basins facilitate the recharge of rainwater in developed areas and are of extreme importance in sole-source aquifer systems such as the Town of Brookhaven. It is the intent of this legislation to strictly prohibit the dumping of litter and/or hazardous wastes within stormwater recharge basins and to provide an efficient means of cleaning up illegally dumped litter and/or hazardous wastes in order to aid in the protection of the groundwater aquifer.
- (2) Litter and hazardous waste. No person shall cause litter and/or hazardous waste to be thrown or deposited in or upon public or private stormwater runoff recharge basins, whether said recharge basins be privately or publicly owned.
- (3) Maintenance. The owners of private stormwater recharge basins shall maintain such property free of litter and/or hazardous waste, shall maintain all required fencing in a safe manner, shall maintain all buffers and landscaping and shall otherwise maintain said stormwater runoff recharge basin in such a manner that it shall continue to function as a

recharge basin.

- (4) Posting. The owners of all stormwater runoff recharge basins shall promptly post a notice in such form and design as shall be approved by the Commissioner of the Department of Planning, Environment and Land Management, designating the area as a water recharge protection area, containing a statement of the site's function and importance in groundwater recharge, prohibiting dumping of any litter and/or hazardous waste within the area or around its perimeter, stating the penalties imposed for dumping.

[Amended 9-7-2004 by L.L. No. 22-2004, effective 11-1-2004]

- (5) (Reserved)^[3]

[3] *Editor's Note: Former Subsection J(5), Penalties, was repealed 8-2-2018 by L.L. No. 18-2018, effective 8-20-2018. See now § 45-12D and E.*

- (6) Cleanup of litter and hazardous waste. For purposes of ensuring the prompt cleanup of litter and/or hazardous waste which may threaten stormwater recharge areas, the Commissioner of the Department of Recycling and Sustainable Materials Management may proceed in the same manner as the Chief Building Inspector is authorized to proceed under Article III of Chapter 73 of the Code of the Town of Brookhaven to render the site safe and free of litter and/or hazardous waste.

[Amended 6-29-2017 by L.L. No. 16-2017, effective 7-13-2017]

- K. Dumping prohibited. It shall be unlawful for any person, his or her agent, employee or any person under his or her control to suffer or permit any garbage, hazardous waste, liquid waste, litter, rubbish, solid waste, construction or demolition debris, whether processed or not or debris of any sort or any other organic or inorganic material or other offensive matter being transported in a dump truck or other vehicle to be dumped, deposited or otherwise disposed of in or upon any street, lot, park, public place or other area whether publicly or privately owned, except for the disposing of solid waste at a public disposal facility or a private disposal facility permitted and licensed by the Town of Brookhaven and when in accordance with the rules and regulations governing the use of said public or private disposal facility. Causing a quantity of litter, measuring less than 10 square feet in area, to be placed or thrown upon the ground shall not be deemed dumping.

[Amended 6-18-2002 by L.L. No. 14-2002, effective 6-24-2002]

§ 45-5. Distribution of handbills.

- A. Distribution on public property. No person shall throw or deposit any commercial or noncommercial handbill in or upon any sidewalk, street or other public property within the Town, nor shall any person hand out or distribute or sell any commercial handbill in or on any public property; however, it shall be lawful for any person to hand out or distribute a noncommercial handbill on public property, provided that there is no charge to the recipient thereof and that the recipient is willing to accept the handbill.

[Amended 6-18-2002 by L.L. No. 14-2002, effective 6-24-2002]

- B. Distribution to vehicles. No person shall throw or deposit any commercial or noncommercial handbill in or upon any vehicle; provided, however, that it shall not be unlawful on any public property for a person to hand out or distribute, without charge to the receiver thereof, a noncommercial handbill to any occupant of a vehicle who is willing to accept it.
- C. Distribution on uninhabited or vacant private property. No person shall throw or deposit any commercial or noncommercial handbill in or upon any private property which is temporarily or continuously unoccupied or vacant.
- D. Distribution on inhabited private property. No person shall throw, deposit or distribute any

commercial or noncommercial handbill in or upon private property within the Town unless the person distributing such handbill obtains the written consent of the person owning or occupying the property. However, this prohibition shall not apply to the distribution of advertising materials through the mail nor to newspapers nor to the distribution of advertising material by any charitable organization and/or for nonprofit organizations, except that these newspapers and all such advertising materials shall be placed on private property in such a manner as to prevent their being carried or deposited by the elements upon any street, sidewalk or other public property or upon private property.

§ 45-6. Unregistered vehicles on private property.

[Amended 9-20-1988 by L.L. No. 20-1988; 9-1-1992 by L.L. No. 11-1992, effective 9-8-1992]

An owner of private property, lessee, tenant or occupant of property situated within the Town may store not more than one unregistered motor vehicle which, if registered, could be registered as a motor vehicle, provided that said motor vehicle is stored in a suitably enclosed location inside a building or behind a fence which suitably screens such unregistered motor vehicle from view, or said motor vehicle may be stored in the rear yard or in the driveway of said property, provided that said vehicle is at all times covered with a completely opaque fabric car covering. The car covering shall be kept in good repair and shall cover the entire car at all times, extending to the lower edge of the bumpers or to the lower edge of the fenders if said motor vehicle is not equipped with bumpers.

§ 45-7. Commercial collection of solid wastes.

[Amended 11-21-1989 by L.L. No. 29-1989, effective 11-27-1989; 8-5-1997 by L.L. No. 12-1997, effective 8-7-1997; 6-18-2002 by L.L. No. 14-2002, effective 6-24-2002; 8-23-2005 by L.L. No. 22-2005, effective 8-29-2005]

A. Solid waste collection; permit required.

- (1) Restrictions. It shall be unlawful for any person to engage in the business of collecting solid waste of any kind in the Town or of transporting the same through or upon any street within the Town without first having procured an annual permit as hereinafter provided.

§ 45-7.1. Application requirements.

[Added 8-23-2005 by L.L. No. 22-2005, effective 8-29-2005]

Permits shall be issued by the Commissioner to qualified applicants and shall expire on the 31st day of December each year. The following requirements shall apply to persons engaged in collecting and transporting solid wastes from residential and commercial establishments and those persons engaged in the business of providing roll-off container service.

A. Identification. Applicants shall file the items set forth herein with said application, unless specifically waived by the Commissioner of Recycling and Sustainable Materials Management upon a showing of facts, which, in the discretion of the Commissioner of Recycling and Sustainable Materials Management, warrant the waiving of said requirements.

[Amended 6-29-2017 by L.L. No. 16-2017, effective 7-13-2017]

B. Fingerprints.

- (1) Upon receipt of a sworn application for a permit, a copy thereof and a fingerprint card taken in duplicate shall be referred to the Commissioner of the Department of Public Safety or his designee for appropriate fingerprinting of said applicant, and a copy of such completed fingerprint card shall thereafter be forwarded by the same to the New York State Division of Criminal Justice Services for a full search.

- (2) The application shall be accompanied by an appropriate fee, the amount and payment instrument to be determined by the Commissioner of Public Safety or his designee, pursuant to the requirements of, and payable to, the New York State Division of Criminal Justice Services, which amount shall be in addition to the permit fees stated herein, for such investigation of the applicant as is deemed necessary or advisable for the protection of the public good and welfare.
- (3) The New York State Division of Criminal Justice Services shall return such criminal history record information as may exist in its files or a statement that no such relevant information exists, such record to be filed with the Commissioner of Public Safety or his designee.
- (4) Upon its return by the New York State Division of Criminal Justice Services to the Commissioner of Public Safety or his designee, if the application is approved by the Commissioner or his designee and upon payment of the prescribed permit fee, the Commissioner of Recycling and Sustainable Materials Management shall prepare and deliver to the applicant therefor the permit required by this chapter.
[Amended 6-29-2017 by L.L. No. 16-2017, effective 7-13-2017]
- (5) New fingerprints for each renewal period may be waived by the Commissioner of Recycling and Sustainable Materials Management, unless the license issued under the provisions of this chapter has lapsed for a period of time in excess of one year.
[Amended 6-29-2017 by L.L. No. 16-2017, effective 7-13-2017]

C. Photographs.

- (1) Two identical photographs of the applicant shall be submitted, taken no longer than 60 days prior to submission of the application; and
- (2) Said photographs shall be up to but not to exceed two inches by two inches in size, showing both the head and shoulders of the applicant.
- (3) Digital photos may be taken at the time of application by the Department of Public Safety.

D. Examinations. At the discretion of the Commissioner of Public Safety or his designee, before the issuance of a permit, the Commissioner or his designee may require the applicant, and any others having knowledge of any facts, to submit to an examination, under oath, and to produce evidence relating thereto.

E. Modification. Any change in circumstance with regard to the information required hereinabove shall be reported in writing to the Commissioner within 30 days of occurrence.

F. New applicants for a permit must possess a qualified route, which must consist of the following:

- (1) Three hundred houses within the Town;
- (2) Fifty commercial stops within the Town; or
- (3) Three thousand dollars worth of business per month in the Town.

G. The applicant must answer all questions on the permit application, sign the application, have said signature acknowledged by a notary public and provide any other information required by any applicable law or ordinance or deemed necessary by the Commissioner to determine the fitness of the applicant.

H. The applicant must complete any and all forms requiring the applicant to indicate thereon his entire collection route within the Town, including all residential dwellings and commercial businesses serviced and the days of service.

- I. Any vehicular tag issued with a permit shall be affixed by the permittee to all vehicles designated in the permit application and in such manner as directed by the Commissioner.

§ 45-7.2. Permit fees.

[Added 8-23-2005 by L.L. No. 22-2005, effective 8-29-2005; amended 8-2-2018 by L.L. No. 18-2018, effective 8-20-2018]

For each vehicle to be used by the permittee for the collection of solid waste, a fee as established by Town Board Resolution shall be due the Town upon issuance or renewal of the permit.

§ 45-7.3. Vehicle requirements; roll-off containers.

[Added 8-23-2005 by L.L. No. 22-2005, effective 8-29-2005]

- A. Vehicle requirements. Every vehicle used for the collection of solid waste within the Town shall:

- (1) Have an enclosed body or suitable provisions for covering the body.
- (2) Have a watertight body.
- (3) Be kept clean, sanitary and in good working order.
- (4) Have the permittee's name plainly displayed on each side of the vehicle in letters at least four inches high.
- (5) Have both the vehicle's unladen vehicle weight in pounds and its capacity in cubic yards displayed on the driver's side.

- B. Roll-off container service for demolition and construction material.

- (1) It shall be unlawful for any person to engage in the business of collecting or transporting construction or demolition materials within the Town in open roll-off containers without first having procured either a permit to transport solid waste in the Town of Brookhaven or a roll-off container permit.
- (2) All applicants for a roll-off container permit shall comply with all requirements for obtaining a permit to transport solid waste in the Town of Brookhaven, except for those requirements stipulated in §§ **45-7.1F**, **45-7.1H**.

[Amended 8-2-2018 by L.L. No. 18-2018, effective 8-20-2018]

- (3) Any person who has obtained a roll-off container permit without having also obtained a permit to transport solid waste in the Town of Brookhaven shall not collect within the Town any solid waste other than construction and demolition debris and shall not transport such debris other than within roll-off containers.
- (4) All roll-off containers used within the Town shall be in suitable condition so as to prevent the scattering or deposit of their contents during collection and transportation. Each container and each vehicle used to transport the container shall bear the name of the permittee on each side of the vehicle and container in letters at least four inches in height. In addition, each container shall bear the capacity of the container in cubic yards.

- C. Inspections. The Commissioner or his representative may make inspections of the contents of solid waste collection vehicles and roll-off containers whenever he deems it necessary to do so.

- D. Authorized commercial receptacles. All permittees shall display their names on all authorized commercial receptacles used by them for the collection of solid waste within the Town.

§ 45-7.4. Revocation, suspension, refusal of permit.

[Added 8-23-2005 by L.L. No. 22-2005, effective 8-29-2005]

- A. The Commissioner, in addition to the grounds set forth in this chapter or any other law or ordinance, after notice and hearing, may suspend and/or revoke a permit issued under the provisions of this chapter where one or more of the following grounds are found to exist:
- (1) The applicant has not been found to be fit, willing and able to properly perform the service proposed and the applicant is unable to provide sufficient and suitable equipment to meet the requirements of the business.
 - (2) Issuance of the permit is deemed not to be in the best interests of the Town or its residents after an investigation by the Commissioner of Public Safety or his designee into the applicant's business and moral character, which may include a police record check.
 - (3) The permittee has failed and refused, without reasonable cause, to collect and dispose of solid waste, except in a situation where a contract between the permittee and his customer has been lawfully terminated.
 - (4) The applicant or permittee has failed to account for or pay, without reasonable cause, any fees or bills due to the Town.
 - (5) The permittee has failed to reasonably fulfill his obligations to a customer as a commercial refuse collector.
 - (6) The applicant or permittee is insolvent or has made a general assignment for the benefit of creditors or has been adjudged bankrupt or a money judgment has been secured against him upon which an execution has been returned wholly or partly unsatisfied.
 - (7) The applicant or permittee has failed to keep and maintain any records required by the Town or has refused to allow the inspection thereof.
 - (8) The applicant or permittee has violated any of the provisions of this chapter or has failed to comply with any of the requirements stipulated herein.
 - (9) The applicant or permittee has ceased to operate as a commercial solid (or liquid waste) collector, for which a permit was previously issued.
 - (10) The applicant or permittee has made a false statement in his permit application.
 - (11) The applicant or permittee has been found, after investigation by the Commissioner, to have collected waste from outside the Town and to have disposed of the same in a Town disposal facility without permission therefor from the Commissioner or Town Board.
 - (12) The circumstances of the permittee have been altered to the extent that the permittee would not be qualified to obtain a permit if the circumstances as altered existed at the time the permittee had applied for the permit. Failure of the permittee to notify the Commissioner, in writing, of such an alteration in circumstances shall likewise constitute grounds for revocation or refusal to recommend.
 - (13) The permittee has been found, after investigation by the Commissioner, to have disposed of liquid waste upon the surface of the ground within the Town or within the waterways of

the Town or in a disposal facility not approved for such use by the New York State Department of Environmental Conservation.

- (14) The permittee has been found, after investigation by the Commissioner, to have violated any of the posted rules pertaining to safe operation of the Town-owned and/or maintained public disposal facilities.
- B. Notice of the hearing for the suspension and/or revocation of a permit must be given in writing, expressly setting forth the grounds of the complaint and the time and place of the hearing. Such notice shall be executed by the Commissioner and shall be mailed to the permittee at the address supplied to the Commissioner during the application process at least five business days prior to the hearing date.
- C. Hearings shall be held before a designee of the Commissioner and a record of the proceeding must be made. Said hearing shall be conducted in a manner in which the accused permittee is afforded an opportunity to be heard. Thereafter, and within 21 business days of the conclusion of the hearing, the Commissioner shall mail a written decision to the accused holder that includes the determination of the Commissioner's designee.
- D. Upon revocation of any permit under this chapter, no refund of any portion of the permit fee paid pursuant to § **45-7.2** shall be made to the permittee and permittee shall immediately return any vehicular tag issued with the permit and shall immediately cease any and all business activity formerly authorized by the permit.
- E. The Commissioner, in addition to the grounds set forth in this chapter or any other law or ordinance, may refuse to issue a permit where one or more of the grounds listed in § **45-7.4** are found to exist.
- F. The refusal, revocation, and/or suspension of a permit issued under the provision of this chapter shall be subject to review by any court of competent jurisdiction.

§ 45-7.5. Roll-off containers/dumpsters on public roads prohibited.

[Added 4-28-2009 by L.L. No. 9-2009, effective 5-7-2009]

- A. Any point of any roll-off container or dumpster shall not be located upon public roads, within six feet from public roads, upon rights-of-ways or upon sidewalks at any time.
- B. Responsible parties. Upon discovery of a roll-off container or dumpster in violation of § **45-7.5**, the following parties may be held responsible for the violation:
- (1) Any person or entity causing, ordering, placing, requesting or directing the subject roll-off container or dumpster to be placed upon the public road; or
 - (2) Any persons or entity using, maintaining, owning, leasing, renting, or in control of the subject roll-off container or dumpster.
- C. Presumptions.
- (1) Any person or entity identified in any manner by markings on the subject roll-off container or dumpster in violation of § **45-7.5** shall be presumed to be responsible for its placement; and
 - (2) Any person or entity having a valid permit on file with the Town of Brookhaven Department of Department of Recycling and Sustainable Materials Management for the subject roll-off

container or dumpster at the time of any alleged violation of § **45-7.5** shall be presumed responsible for its placement; and

[Amended 6-29-2017 by L.L. No. 16-2017, effective 7-13-2017]

- (3) The owner or occupant of any real property adjacent to the subject roll-off container or dumpster in violation of § **45-7.5** shall be presumed responsible for its placement.
- (4) The above stated presumptions shall be rebuttable.

§ 45-8. Failure to perform collection of solid waste.

[Amended 6-18-2002 by L.L. No. 14-2002, effective 6-24-2002]

It shall be the duty of each permittee authorized to collect solid waste pursuant to § **45-7A** to effect the collection of solid waste on the days and at the places as specified on the permit application. In the event that the permittee fails to effect said collections for a period of 48 hours after the due date of said collection, exclusive of Saturdays, Sundays or holidays, the Town shall have the right to provide for substitute collection. The imposition of substituted collection shall be subject to the following:

- A. The Town shall give to the permittee written notice by certified mail of his failure to collect and of the Town's intention to invoke substituted collection. The Town shall take no action until 24 hours after said notice has been mailed to the permittee.
- B. In the event that the failure to effect collections is caused by a strike, an act of God or a state of emergency, the penalties imposed by virtue of substituted collection shall not be applicable.
- C. The fee to be charged against the deposit of the permittee shall be \$75 for every hour of labor required to effect substituted collection, with a required minimum of four hours of labor.
- D. A permittee appointed by the Town to make substituted collection shall be paid only upon receipt by the Town of a voucher submitted by the substituted permittee and of written verification thereof to be issued by the Department of Recycling and Sustainable Materials Management of the Town of Brookhaven.
[Amended 6-29-2017 by L.L. No. 16-2017, effective 7-13-2017]
- E. The Town Attorney is hereby authorized to recover any costs incurred by the Town as a result of effecting substituted collection, by commencement of an action in the appropriate court against the permittee, property owner or such other responsible person as may be appropriate.

§ 45-9. Hours of collection.

[Amended 6-18-2002 by L.L. No. 14-2002, effective 6-24-2002]

It shall be unlawful for any person engaged in the business of collecting solid or liquid waste within the Town of Brookhaven to make such collection before 6:00 a.m. or after 10:00 p.m. of any day.

§ 45-10. Waste disposal regulations.

[Amended 7-7-1987 by L.L. No. 13-1987; 11-21-1989 by L.L. No. 29-1989, effective 11-27-1989; 11-19-1991 by L.L. No. 8-1991, effective 11-25-1991; 6-18-2002 by L.L. No. 14-2002, effective 6-24-2002]

- A. Disposal facility fees, failure to pay. The Commissioner or his representative is hereby empowered to collect fees for the use of all public disposal facilities. The amount of the fees

and the manner of their collection is to be determined by resolution of the Town Board of the Town of Brookhaven. All persons disposing of solid waste at a public disposal facility shall pay the fee therefor, unless said fee is waived by the Commissioner or the Town Board. The failure or refusal to pay disposal facility fees unless said fees have been waived as set forth herein, shall constitute a violation of this chapter. A person to whom a permit has been issued pursuant to § 45-7 of this chapter and who disposes of solid waste at a public disposal facility may deposit with the Department of Recycling and Sustainable Materials Management a surety bond or other guarantee of payment in a form and amount satisfactory to the Commissioner.

[Amended 6-29-2017 by L.L. No. 16-2017, effective 7-13-2017]

- B. Any person who shall dispose of any liquid or solid waste in any public disposal facility shall do so only during the times designated by the Commissioner, in a manner directed by the Commissioner or his representative and in compliance with any and all rules and regulations established by the Commissioner for the safe operation of such facility.
- C. Discretion of Commissioner. Notwithstanding any other provision of this chapter, the Commissioner may refuse to permit the disposal of waste products at a disposal area, the disposal of which he determined may endanger the environment, property or the health and welfare of the general public. The Commissioner may also designate which public disposal facility is to be used for the disposal of certain categories of waste product. No person shall make use of any public disposal facility in contravention of such refusal or designation of the Commissioner.
- D. Hazardous waste prohibited. No person shall dispose of any hazardous waste at or on any public disposal facility.
- E. Foreign materials prohibited. It shall be unlawful to dispose of, deposit, dump or store solid or liquid waste generated or collected from outside the Town in any public disposal facility unless specifically authorized, in writing, by the Commissioner. Disposal, depositing, dumping or storing of solid or liquid waste pursuant to such authorization shall be performed subject to such conditions and safeguards as the Commissioner may deem appropriate.
- F. Private disposal areas prohibited. No person shall establish or maintain a privately owned solid or liquid waste disposal area or facility within the Town except when authorized by special permit from the Town Board subsequent to a public hearing, subject to any applicable provisions of Chapter 85, Zoning, of the Code of the Town of Brookhaven and to such other conditions and safeguards as the Town Board may deem appropriate.
- G. It shall be unlawful to transport, carry or convey solid waste collected from outside of the Town or a hazardous waste into or within a Town solid waste management facility except pursuant to the express prior written authorization of the Commissioner.
- H. Only residents of the Town and persons holding permits issued by the Commissioner shall be permitted to bring or send solid wastes to the Town solid waste management facilities. Nothing herein contained shall prohibit schools, religious organizations or similar institutions located within the Town which are tax-exempt from bringing or sending solid wastes to the Town solid waste management facilities, provided that the institutions enumerated herein possess Suffolk County Department of Health Services approval for any vehicle used to transport solid waste. All persons in the business of collecting and disposing of solid waste or who are collecting and disposing of solid waste for hire or profit must secure the proper permits from the Commissioner and the Suffolk County Department of Health Services to be entitled to bring or send solid waste to a Town solid waste management disposal facility.
- I. No government entity shall bring or send solid waste to any Town solid waste management facility without approval of the Town Board upon such terms as the Town Board shall deem appropriate.

§ 45-11. Establishment of Sanitation Advisory Committee.

[Amended 6-18-2002 by L.L. No. 14-2002, effective 6-24-2002]

The Town Board is hereby empowered to establish a Sanitary Advisory Committee and to appoint members and assign duties thereto.

§ 45-12. Penalties for offenses.

[Amended 6-18-2002 by L.L. No. 14-2002, effective 6-24-2002; 4-16-2009 by L.L. No. 7-2009, effective 4-27-2009]

- A. Any person violating any of the provisions of this chapter shall be deemed guilty of a violation and, upon conviction thereof, shall be fined in an amount not exceeding \$2,000 or be imprisoned for a period not to exceed 15 days, or be both so fined and imprisoned. A separate offense shall be deemed committed upon each day during or on which a violation occurs or continues.
- B. Any corporation violating any of the provisions of this chapter shall be deemed guilty of a violation and, upon conviction thereof, shall be fined in an amount not exceeding \$2,000. A separate offense shall be deemed committed upon each day during or on which a violation occurs or continues.
- C. Any person violating any provisions of § **45-4B** shall be punished as follows: upon a first conviction by a fine of \$1,000 to \$5,000 or by imprisonment not exceeding 15 days, or by both such fine and imprisonment; upon a second or subsequent conviction, by a fine of \$2,000 to \$10,000 or by a maximum period of imprisonment not less than 15 days nor more than six months, or by both such fine and imprisonment. For purposes of this subsection, a second violation or subsequent offense shall be prosecuted as a misdemeanor. Each day's continued violation shall constitute a separate additional violation.

[Added 1-19-2012 by L.L. No. 3-2012, effective 1-31-2012^[1]; amended 8-2-2018 by L.L. No. 18-2018, effective 8-20-2018; 6-27-2019 by L.L. No. 15-2019; 7-18-2019 by L.L. No. 19-2019]

[1] *Editor's Note: This local law also redesignated former Subsections C and D as Subsections D and E, respectively.*

- D. Any person violating any provisions of § **45-4J**, except 45-4J(2), shall be punished as follows: upon a first conviction by a fine of \$500 to \$2,000 or by imprisonment not exceeding 15 days, or by both such fine and imprisonment; upon a second or subsequent conviction, by a fine of \$1,000 to \$3,000 or by a maximum period of imprisonment not less than 15 days nor more than six months, or by both such fine and imprisonment. For purposes of this subsection, a second violation or subsequent offense shall be prosecuted as a misdemeanor. Each week's continued violation shall constitute a separate additional violation.

[Amended 8-2-2018 by L.L. No. 18-2018, effective 8-20-2018]

- E. Any person or corporation violating any of the provisions of § **45-4J(2)** pertaining to throwing or depositing litter shall be deemed guilty of a violation and, upon conviction thereof, shall be fined in an amount not exceeding \$2,000 or be imprisoned for a period not to exceed 15 days, or be both so fined and imprisoned. Any person or corporation violating any of the provisions of this subsection pertaining to hazardous wastes shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined in an amount not exceeding \$10,000 or be imprisoned for a period not less than 15 days nor more than 30 days, or be both so fined and imprisoned. A separate offense shall be deemed committed upon each day during or on which a violation occurs or continues. In addition, any person or corporation violating any of the provisions of this subsection shall be liable for a civil penalty for a sum equal to twice the actual costs incurred by reason of the Town of Brookhaven causing the cleanup of said litter and/or hazardous waste.^[2]

[Added 4-28-2009 by L.L. No. 9-2009, effective 5-7-2009; amended 8-2-2018 by L.L. No. 18-2018, effective 8-20-2018]

[2] *Editor's Note: Former § 45-13, Search and seizure of evidence, as amended, which immediately followed this subsection, was repealed 6-18-2002 by L.L. No. 14-2002, effective 6-24-2002.*

- F. In addition to the penalties authorized in this section, the Town Attorney is authorized to ask the court for restitution and reparation in accordance with Penal Law § 60.27.

[Added 6-29-2017 by L.L. No. 16-2017, effective 7-13-2017]

*Town of Brookhaven, NY
Friday, August 21, 2020*

Chapter 46. Recycling

[HISTORY: Adopted by the Town Board of the Town of Brookhaven 11-15-1988 by L.L. No. 27-1988. Amendments noted where applicable.]

GENERAL REFERENCES

Dumps and disposal areas — See Ch. **24**.

Sanitation — See Ch. **45**.

Disposition of petroleum substances — See Ch. **47**.

§ 46-1. Title.

This chapter shall be known as the "Town of Brookhaven Recycling Law."

§ 46-2. Legislative findings.

The Town Board of the Town of Brookhaven finds that the reduction of the amount of solid waste and the conservation of recyclable materials are important public concerns. The separation and collection of newspaper, paper, cardboard, glass, cans, plastic containers, vegetative yard waste and other materials for recycling from the residential, commercial, industrial and institutional establishments in the Town will protect and enhance the Town's physical and visual environment as well as promote the health, safety and well-being of persons and property within the Town by minimizing the potential adverse effects of landfilling through reduction of the need for landfills and conservation of existing landfill capacity, facilitating the implementation and operation of other forms of solid waste management, conserving natural resources, assisting the Town in complying with the mandates of the Long Island Landfill Law, codified in New York State Environmental Conservation Law § 27-0704, ensuring conformance with the New York State Solid Waste Management Plan and facilitating the development and implementation of a solid waste management plan for the Town. The promotion and use of recyclable materials, goods produced from recyclable materials and goods which facilitate recycling will further serve the same purposes by encouraging and facilitating recycling.

§ 46-3. Statutory authority.

This chapter is adopted pursuant to § 10 of the Municipal Home Rule Law of the State of New York.

§ 46-4. Definitions.

As used in this chapter, the following definitions shall apply:

CANS

Containers comprised of aluminum, tin, steel or a combination thereof, which contain or formerly contained only food and/or beverage substances.

CARDBOARD

All corrugated cardboard normally used for packing, mailing, shipping or containerizing goods, merchandise or other material, but shall not mean wax-coated or soiled cardboard.

COMMINGLED

Source-separated, nonputrescible, noncontaminated recyclable materials that have been placed in the same container.

COMMISSIONER

The Commissioner of the Department of Recycling and Sustainable Materials Management.
[Amended 6-29-2017 by L.L. No. 16-2017, effective 7-13-2017]

DEPARTMENT OF RECYCLING AND SUSTAINABLE MATERIALS MANAGEMENT

The Town of Brookhaven Department of Recycling and Sustainable Materials Management.
[Amended 6-29-2017 by L.L. No. 16-2017, effective 7-13-2017]

DESIGNATED RECYCLABLE MATERIALS or DESIGNATED RECYCLABLES

Those recyclable materials designated by this chapter, and/or by resolution of the Town Board pursuant to this chapter, to be source separated. The term includes, but is not limited to, newspaper, glass, paper, cardboard, cans, plastic containers

and vegetative yard waste.

DISPOSITION or DISPOSITION OF DESIGNATED RECYCLABLE MATERIALS

The transportation, placement or arrangement for transportation or placement of designated recyclable materials for all possible end uses.

GARBAGE

Putrescible animal and vegetable wastes resulting from the handling, preparation, cooking and consumption of food.

GARBAGE DISTRICT

A refuse and garbage district within the Town established, consolidated or extended under Article 3-A, Article 12 and/or Article 12-A of the New York Town Law or such other laws governing the establishment of improvement districts, and shall include, without limitation, the Town-Wide Brookhaven Refuse and Recycling Improvement District.

GLASS

All clear (flint), green and brown (amber) colored glass containers, crystal, ceramics and plate, window, laminated, or mirrored glass, but shall not mean wired glass.

HAZARDOUS MATERIAL or HAZARDOUS WASTE

A solid waste, or a combination of solid wastes, which, because of its quantity, concentration or physical, chemical or infectious characteristics, may cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported or disposed of or otherwise managed. Such materials or wastes shall include, but are not limited to, explosives, hazardous radioactive materials, toxic substances and those substances which the Commissioner has identified as a hazardous waste pursuant to the above criteria and has included on a list of hazardous waste promulgated by the Department of Recycling and Sustainable Materials Management.

[Amended 6-29-2017 by L.L. No. 16-2017, effective 7-13-2017]

MULTIRESIDENTIAL COMPLEX

Four or more residential units located on a single property or continuous properties under common ownership, control or management. For this purpose, "residential unit" shall mean an enclosed space consisting of one or more rooms designed for use as a separate residence, and shall include, but not be limited to, an apartment, condominium unit, townhouse cooperative unit, mobile home, living unit in a group home and room or set of rooms in a boardinghouse, but shall not include rooms within a single-family residence, motel or hotel.

NEWSPAPER

Includes newsprint and all newspapers and newspaper advertisements, supplements, comics and enclosures.

PAPER

All high-grade office paper, fine paper, bond paper, office paper, xerographic paper, mimeo paper, duplication paper, magazines, paperback books, school paper, catalogs, junk mail, computer paper, telephone books and similar cellulosic material, but shall not mean newspaper, wax paper, plastic or foil-coated paper, styrofoam, wax-coated food and beverage containers, carbon paper, blueprint paper, food-contaminated paper, soiled paper and cardboard.

PERSON

Any individual, firm, partnership, company, corporation, association, joint venture, cooperative enterprise, trust, municipality, other governmental agency or any other entity or any group of such persons which is recognized by law as the subject of rights and duties. In any provisions of this chapter prescribing a fine, penalty or imprisonment, the term "person" shall include the officers, directors, partners, managers or persons in charge of a company, corporation or other legal entity having officers, directors, partners, managers or other persons in charge.

PLASTIC CONTAINERS

Containers composed of high-density polyethylenes, polyethylene terephthalate or other specific plastics as the Town Board may designate, which contain or formerly contained only food and/or beverage substances.

RECYCLABLE MATERIAL

A material which would otherwise become solid waste, which can be collected, separated and/or processed, treated, reclaimed, used or reused to produce a raw material or product.

RECYCLING

Any process by which materials, which would otherwise become solid waste, are collected, separated and/or processed, treated, reclaimed, used or reused to produce a raw material or products.

RECYCLING COLLECTION AREA

Any facility designed and operated solely for the receiving and storing of source-separated designated recyclable materials.

RESIDENT

Any person residing within the Town on a temporary or permanent basis, but excluding persons residing in hotels or motels. For purposes of this chapter, "resident" does not include commercial, industrial or institutional establishments.

RUBBISH

Nonputrescible solid wastes consisting of both combustible and noncombustible wastes, including but not limited to nonrecyclable paper, wrappings, cigarettes, wood, wires, glass, bedding, furniture and similar materials which are not designated recyclable materials.

SOLID WASTE

All putrescible and nonputrescible materials or substances discarded or rejected as having served their original intended use or as being spent, useless, worthless or in excess to the owner at the time of such discard or rejection, including garbage, refuse, litter, rubbish, industrial waste, commercial waste, sludges, ashes, contained gaseous material, incinerator residue, construction and demolition debris, discarded automobiles and offal, but not including designated recyclable materials, solid or dissolved matter in domestic sewage or substances, materials in noncontainerized gaseous form or hazardous materials or waste.

SOURCE SEPARATE

To separate recyclable materials from the solid waste stream at the point of waste generation.

TOWN

The Town of Brookhaven located within the County of Suffolk, State of New York.

TOWN BOARD

The Town Board of the Town of Brookhaven.

VEGETATIVE YARD WASTE

Organic yard and garden waste, leaves, grass clippings and brush.

§ 46-5. Curbside program established.

- A. Upon the effective date of this chapter, there is established within existing garbage districts in the Town a program ("curbside program") for separate collection of newspaper from all non-physically-disabled residents of the districts. Said curbside program shall apply to multiresidential complexes in accordance with § 46-7 of this chapter and to commercial, industrial and institutional establishments in accordance with § 46-9 of this chapter.
- B. Collection of newspaper pursuant to the curbside program established by this section shall be made once each week. Collection shall occur in accordance with a schedule advertised by the Town.
- C. The curbside program established pursuant to this section shall apply to any new garbage district in the Town immediately upon the formation of such district and shall also be applied to other geographic areas within the Town designated by resolution of the Town Board at all times 30 days after enactment of the resolution and publication of notice in a newspaper of general circulation within the Town.
- D. Expansion of program.
 - (1) The Town Board, by resolution, may expand the curbside program to include, in addition to newspaper, the collection in separate containers, bundles or packages, as appropriate, of one or more of the following designated recyclable materials:
 - (a) Paper;
 - (b) Cardboard;
 - (c) Commingled glass, cans and plastic containers;
 - (d) Vegetative yard waste;
 - (e) Other recyclable materials as designated by resolution of the Town Board.
 - (2) Said expanded curbside program shall be established at all times 30 days after designation and publication of notice in an official newspaper of the Town or a newspaper of general circulation within the Town. Said expanded curbside program shall apply to multiresidential complexes in accordance with § 46-7 of this chapter and to commercial, industrial and institutional establishments in accordance with § 46-9 of this chapter.
- E. Collection of designated recyclable materials added to the curbside program pursuant to Subsection D above shall be made once each week. Collection shall occur in accordance with a schedule advertised by the Town.
- F. All residents of the Town within the areas serviced by the curbside programs established pursuant to this section shall, upon the applicable effective date, source separate newspaper and other designated recyclables and, in the manner designated by the Commissioner pursuant to § 46-6 of this chapter and on the date specified for collection by the schedule published by the Town, place them at the side of the road fronting their residences or at such other location at or near the residence agreeable to the person who is collecting the material.

§ 46-6. Preparation of recyclables for collection.

All designated recyclables placed at the roadside, or other location, by residents for collection pursuant to § 46-5 of this chapter shall be prepared for collection in accordance with regulations promulgated by the Commissioner.

§ 46-7. Private collection programs for multiresidential complexes.

- A. In any garbage district or area designated by the Town Board subject to a curbside program established pursuant to § 46-5 of this chapter, there is also established a program ("private collection program") for the source separation, collection and delivery of newspaper and any other designated recyclable material included in the curbside program from all non-physically-disabled residents of multiresidential complexes.
- B. The owner, manager or superintendent of every multiresidential complex subject to Subsection **A** above shall provide and maintain, in a neat and sanitary condition, recycling collection areas to receive newspaper and other designated recyclables included in the curbside program which are generated by residents of the complex. In cases where a condominium, cooperative, homeowners' or similar association exists, the association shall be responsible for provision and maintenance of the recycling collection areas. Said recycling collection areas shall be constructed and capable of receiving newspaper within 180 days of the establishment of the curbside program and any and all other designated recyclables as may be included in or added to the curbside program within 180 days of such inclusion or in addition to the curbside program.
- C. Once the recycling collection area for a particular multiresidential complex has been constructed and is capable of receiving newspaper and other designated recyclables as may be included in or added to the curbside program, all non-physically-disabled residents of such complex shall source separate such materials by placing them in the appropriate containers or areas within the collection area.
- D. The owner, manager or superintendent of each multiresidential complex subject to Subsection **A** above shall arrange for the collection for recycling of newspaper and other designated recyclables from the recycling collection areas.
- E. The number and design of the recycling collection areas required by this section for each multiresidential complex shall be consistent with guidelines provided by the Commissioner.

§ 46-8. Placement of recyclables in recycling collection areas.

Designated recyclables required to be placed in recycling collection areas pursuant to § 46-7 of this chapter shall be prepared for collection in accordance with regulations promulgated by the Commissioner.

§ 46-9. Mandatory commercial, industrial and institutional source separation program.

- A. All commercial, industrial and institutional establishments within a garbage district or an area of the Town subject to a curbside program established pursuant to § 46-5 of this chapter shall source separate and arrange for the collection for recycling of: newspaper within 180 days of the establishment of the curbside program and any and all other designated recyclables as may be included in or added to such curbside program within 180 days of such inclusion in or addition to the curbside program.
- B. Designated recyclables for the mandatory commercial, industrial and institutional source separation program may consist of the following materials:
 - (1) Newspaper.
 - (2) High-grade paper, including but not limited to white letterhead paper, white bond paper, white typing paper, white copier paper, white notepad paper, white writing paper, white envelopes without glassine windows, other nonglossy white office paper without plastic, computer printout paper, computer tab cards and white onion skin paper.
 - (3) Corrugated cardboard.
 - (4) Glass containers, plastic containers and cans generated by food and beverage service establishments;
 - (5) Vegetative yard waste.
 - (6) Other recyclable materials as designated by resolution of the Town Board at all times 30 days after said designation and publication of notice in an official newspaper of the Town or a newspaper of general circulation within the Town.
- C. The arrangement for collection of designated recyclables for disposition hereunder shall be the responsibility of the person who owns, manages or operates the commercial, industrial or institutional establishment at which the recyclables are generated ("generator") or the person contractually obligated to the generator to arrange for collection and disposal of its solid waste. Said arrangements may include, without limitation, direct marketing of recyclables, contracts with permitted solid waste collector/haulers for separate collection of any or all designated recyclables, contracts with other persons for separate collection of any or all designated recyclables or direct delivery to a designated processing facility.

§ 46-10. Use of vegetative yard waste for certain purposes permitted.

Nothing in this chapter shall be construed as preventing any person from utilizing vegetative yard waste for compost, mulch or other agricultural, horticultural, silvicultural, gardening or landscaping purposes.

§ 46-11. Enforcement; promulgation of additional rules and regulations.

[Amended 6-29-2017 by L.L. No. 16-2017, effective 7-13-2017]

The Department of Recycling and Sustainable Materials Management is authorized to enforce the provisions of this chapter and to administer the recycling programs established herein. The Commissioner of said Department may adopt and promulgate, amend and repeal rules and regulations implementing this chapter in order to carry out and enforce the intent and purposes thereof.

§ 46-12. Unlawful activities.

A. It shall be unlawful for:

- (1) Any person, other than those persons so authorized, to collect any designated recyclable which has been placed at the roadside for collection or within a recycling collection area pursuant to this chapter.
- (2) Any person to violate or to cause or to assist in the violation of any provision of this chapter or any implementing rule or regulation promulgated of the Commissioner of the Department of Recycling and Sustainable Materials Management.
[Amended 6-29-2017 by L.L. No. 16-2017, effective 7-13-2017]
- (3) Any person to place or to cause to be placed any material other than a designated recyclable in or near a recycling collection area.
- (4) Any person to hinder, obstruct, prevent or interfere with this Town, Department of Recycling and Sustainable Materials Management employees or any other authorized persons in the performance of any duty under this chapter or in the enforcement of this chapter.
[Amended 6-29-2017 by L.L. No. 16-2017, effective 7-13-2017]

B. All unlawful conduct set forth in this section shall constitute a violation.

§ 46-13. Solid waste unseparated from recyclables not to be collected.

The Town or any other person collecting solid waste generated within this Town may refuse to collect solid waste from any person who has clearly failed to source separate recyclables designated under an applicable section of this chapter, and the Town may refuse to accept solid waste containing recyclables designated under an applicable section of this chapter at any solid waste disposal facility owned or operated by the Town.

§ 46-14. Existing contracts to remain in force; nonrenewal of nonconforming contracts.

- A. Nothing contained in this chapter shall be construed to interfere with or in any way modify the provisions of any existing contract in force in the Town on the effective date of this chapter.
- B. No renewal of any existing contract upon the expiration of the original term thereof and no new contract for the collection, transportation, processing or purchase of solid waste or recyclables shall be entered into after the effective date of this chapter unless renewal of such contract shall conform to the requirements of this chapter.

§ 46-15. Penalties for offenses.

- A. Any person who engages in unlawful conduct as defined in this chapter may, upon conviction thereof in a proceeding before a court of competent jurisdiction, be sentenced to imprisonment for a term not to exceed 15 days or to a term of community service related to the purposes of this chapter or to pay a fine of not more than \$500 and not less than \$25, or any combination of the above penalties.
[Amended 6-29-2017 by L.L. No. 16-2017, effective 7-13-2017]
- B. Each continuing day of violation of this chapter shall constitute a separate offense.

§ 46-16. Injunction to restrain violation; remedies to be concurrent.

- A. In addition to any other remedy provided in this chapter, the Town may institute a suit in equity where unlawful conduct exists as defined in this chapter for an injunction to restrain a violation of this chapter.
- B. The penalties and remedies prescribed by this chapter shall be deemed concurrent. The existence or exercise of any remedy shall not prevent this Town from exercising any other remedy provided by this chapter or otherwise provided at law or equity.

§ 46-17. Construal.

The terms and provisions of this chapter are to be liberally construed so as best to achieve and effectuate the goals and purposes hereof.

§ 46-18. Severability.

The provisions of this chapter are severable. If any provision of this chapter or its application to any person or circumstances is held invalid, said invalidity shall not affect any other provision or application of this chapter which can be given effect without the invalid provision or application of the chapter.

§ 46-19. Repealer.

All provisions of any other chapter or ordinance which are inconsistent with the provisions of this chapter are hereby repealed.

§ 46-20. Effective date.

This chapter shall become effective January 1, 1989.

Chapter 50. Noise Control

[HISTORY: Adopted by the Town Board of the Town of Brookhaven 6-16-1987 by L.L. No. 7-1987. Amendments noted where applicable.]

GENERAL REFERENCES

Parks and recreation areas — See Ch. 10.

Building construction — See Ch. 16.

Dog control and animal welfare — See Ch. 23.

Peddlers — See Ch. 36.

Highways — See Ch. 38.

Excavating and topsoil removal — See Ch. 53.

ATTACHMENTS

050a Table I 

§ 50-1. Findings; applicability.

- A. Whereas excessive sound is a serious hazard to the public health, welfare, safety and the quality of life; and whereas a substantial body of science and technology exists by which excessive sound may be substantially abated; and whereas the people have a right to and should be ensured of an environment free from excessive sound; now, therefore, it is the policy of the Town of Brookhaven to prevent excessive sound that may jeopardize the health, welfare or safety of the citizens or degrade the quality of life.
- B. This chapter shall apply to the control of sound originating from stationary and certain mobile sources within the limits of the Town of Brookhaven.

§ 50-2. Definitions; word usage.

- A. All terminology defined herein which relates to the nature of sound and the mechanical detection and recordation of sound is in conformance with the terminology of the American National Standards Institute or its successor body.
- B. As used in this chapter, the following terms shall have the meanings indicated:

A-WEIGHTED SOUND PRESSURE LEVEL

The sound pressure level measured in decibels with a sound level meter set for A-weighting, abbreviated "dBA."

COMMERCIAL AREA

A group of commercial properties and the abutting public rights-of-way and public spaces.

COMMERCIAL PROPERTY

Any property currently or hereinafter zoned for any classification of business or commercial zoning according to the Zoning Map of the Town of Brookhaven or any facility or property used for activities involving the furnishing or handling of goods or services, including but not limited to:

- (1) Commercial dining.
- (2) Off-road vehicle operation, such as repair, maintenance and terminaling.
- (3) Retail services.
- (4) Wholesale services.
- (5) Banking and office activities.
- (6) Recreation and entertainment.
- (7) Community services.
- (8) Public services.
- (9) Other commercial activities.

CONSTRUCTION

Any site preparation, assembly, erection, repair, alteration or similar action, but excluding demolition, of buildings or structures.

DECIBEL (dB)

The practical unit of measurement for sound pressure level. The number of decibels of a measured sound is equal to 20 times the logarithm of the base 10 of the ratio of the sound pressure of the measured sound to the sound pressure of a standard sound (20 micropascals), abbreviated "dB."

DEMOLITION

Any dismantling, intentional destruction or removal of buildings or structures.

EMERGENCY WORK

Any work or action necessary to deliver essential services, including but not limited to repairing water, gas, electricity, telephone and sewer facilities and public transportation, removing fallen trees on public rights-of-way and abating life-threatening conditions.

INDUSTRIAL PROPERTY

Any facility or property used for activities involving the production, fabrication, packaging, storage, warehousing, shipping or distribution of goods, including any property currently or hereinafter zoned for any classification of industrial zoning according to the Zoning Map of the Town of Brookhaven.

MOTOR VEHICLE

Any vehicle which is propelled or drawn on land by an engine or motor.

MULTIDWELLING BUILDINGS

Any building wherein there are two or more dwelling units.

NOISE

Any airborne sounds of such level and duration as to be or tend to be injurious to human health or welfare or that would unreasonably interfere with the enjoyment of life or property.

NOISE CONTROL ADMINISTRATOR

The noise control officer designated as the official liaison with all municipal departments, empowered to grant permit for variances.

NOISE CONTROL OFFICER

Any employee of the Town of Brookhaven trained in the measurement of sound and empowered to issue a summons for violations of this chapter.

NOISE DISTURBANCE

Any sound that:

- (1) Endangers the safety or health of any person;
- (2) Disturbs a reasonable person of normal sensitivities; or
- (3) Endangers personal or real property.

PERSON

Any individual corporation, company, association, society, firm, partnership, joint-stock company, the state or any political subdivision, agency or instrumentality of the state.

PUBLIC RIGHT-OF-WAY

Any street, avenue, boulevard, road, highway, sidewalk, alley or similar place that is owned or controlled by a governmental entity.

PUBLIC SPACE

Any real property or structures thereon that are owned or controlled by a governmental entity.

REAL PROPERTY LINE

Either:

- (1) The imaginary line, including its vertical extension, that separates one parcel of real property from another; or
- (2) The vertical and horizontal boundaries of a dwelling unit that is one in a multi-dwelling-unit building.

RESIDENTIAL AREA

A group of residential properties and the abutting public rights-of-way and public spaces.

RESIDENTIAL PROPERTY

Any property used for human habitation.

SOUND LEVEL

The sound pressure level measured in decibels with a sound level meter set for A-weighting. Sound level is expressed in dBA.

SOUND LEVEL METER

An instrument for the measurement of sound levels.

SOUND PRESSURE LEVEL

The level of a sound measured in decibel units with a sound level meter which has a uniform response over the band of frequencies measured.

WEEKDAY

Any day, Monday through Friday, that is not a legal holiday.

§ 50-3. Enforcement; powers and duties of Noise Control Administrator.

- A. The provisions of this chapter shall be enforced by the noise control officers.
- B. The Noise Control Administrator shall have the power to:
 - (1) Coordinate the noise control activities of all municipal departments and cooperate with all other public bodies and agencies to the extent practicable.
 - (2) Review the actions of other municipal departments and advise such departments of the effect, if any, of such actions on noise control.
 - (3) Review public and private projects, subject to mandatory review or approval by other departments, for compliance with this chapter.
- C. The Noise Control Administrator shall have the authority to grant permit for variances as provided in § 50-8 of this chapter.
- D. The Noise Control Administrator shall not use this chapter in situations within the jurisdiction of the Federal Occupational Safety and Health Act.

§ 50-4. Responsibility of departments.

- A. All departments and agencies of the Town of Brookhaven shall, to the fullest extent consistent with other law, carry out their programs in such a manner as to further the policy of this chapter and shall cooperate with the Noise Control Administrator in the implementation and enforcement of this chapter.
- B. All departments charged with new projects or changes to existing projects that may result in the production of noise shall consult with the Noise Control Administrator prior to the approval of such projects to ensure that such activities comply with the provisions of this chapter.

§ 50-5. Maximum permissible sound pressure levels.

- A. No person shall cause, suffer, allow or permit the operation of any source of sound on a particular category of property or any public land or right-of-way in such a manner as to create a sound level that exceeds the particular sound level limits set forth in **Table I**^[1] when measured at or within the real property line of the receiving property, except those acts specifically prohibited in § 50-6 of this chapter for which no measurement of sound is required.

^[1] *Editor's Note: Table I is included at the end of this chapter.*
- B. When measuring noise within a multidwelling unit, all doors and windows shall be closed, and the measurements shall be taken in the center of the room.
- C. The following are exempt from the A-weighted sound pressure level limits of **Table I**:
 - (1) Noise from domestic power tools, lawn mowers and agricultural equipment, when operated with a muffler, between the hours of 8:00 a.m. and 8:00 p.m. on weekdays and 9:00 a.m. and 8:00 p.m. on weekends and legal holidays, provided that they produce less than 85 dBA at any real property line of a residential property.
 - (2) Sound from church bells and church chimes when part of a religious observance or service.
 - (3) Noise from construction activity, except as provided in § 50-6B(7).
 - (4) Noise from snowblowers, snow throwers and snowplows, when operated with a muffler, for the purpose of snow removal.

- (5) Noise from stationary emergency signaling devices owned and operated by any public utility, municipal subdivision, Fire Department or ambulance corps when used in connection with an emergency or for testing purposes.
- (6) Noise from a burglar alarm of any building or motor vehicle, provided that such burglar alarm shall terminate its operation within 15 minutes after it has been activated and shall not be operated more than 15 minutes in any one-hour period.

§ 50-6. Prohibited acts.

- A. No person shall cause, suffer, allow or permit to be made verbally or mechanically any noise disturbance. Noncommercial public speaking and public assembly activities conducted on any public space or public right-of-way shall be exempt from the operation of this section.
- B. No person shall cause, suffer, allow or permit the following acts:
 - (1) Sound reproduction systems: operating, playing or permitting the operation or playing of any radio, television, phonograph or similar device that reproduces or amplifies sound in such a manner as to create a noise disturbance for any person other than the operator of the device. However, the playing of bands or other music on any commercial property shall be governed by § 50-5.
[Amended 3-19-1996 by L.L. No. 10-1996, effective 3-22-1996]
 - (2) Loudspeakers and public address systems: use or operation of any loudspeaker public address system or similar device between the hours of 10:00 p.m. and 7:00 a.m. in the following day during weekdays and between 10:00 p.m. and 11:00 a.m. in the following day on Saturdays and Sundays, except when used in connection with a public emergency by officers of any Police Department, Fire Department or of any municipal entity.
 - (3) Animals and birds: owning, possessing or harboring any pet animal or pet bird that frequently or for continued duration makes sounds that create a noise disturbance across a residential real property line. For the purpose of this section, a "noise disturbance from a barking dog" shall be defined as that created by a dog barking continuously or intermittently for 15 minutes.
[Amended 5-5-1998 by L.L. No. 11-1998, effective 5-11-1998]
 - (4) Loading and unloading: loading, unloading, opening, closing or other handling of boxes, crates, containers, building materials, liquids, garbage cans, refuse or similar objects or the pneumatic or pumped loading or unloading of bulk materials in liquid, gaseous, powder or pellet form or compacting refuse by persons engaged in the business of scavenging or garbage collection, whether private or municipal, between the hours of 10:00 p.m. and 6:00 a.m. and the following day when the latter is a weekday and between the hours of 10:00 p.m. and 7:00 a.m. the following day when the latter is on a holiday, except by permit, when the sound therefrom creates a noise disturbance across a residential real property line.
 - (5) Standing motor vehicles: operating or permitting the operation of any motor vehicle or any auxiliary equipment attached to such a vehicle, for a period of longer than three minutes in any hour while the vehicle is stationary, for reasons other than traffic congestion or emergency work, on a public right-of-way or public space within 150 feet (46 meters) of a residential area between the hours of 8:00 p.m. and 8:00 a.m. in the following day.
 - (6) Motor vehicle repairs and testing: repairing, rebuilding, modifying or testing any motor or engine in such a manner as to exceed any applicable limit in **Table I**^[1] across a residential area property line.
[1] *Editor's Note: Editor's Note: Table I is included at the end of this chapter.*
 - (7) Construction: operating or permitting the operation of any tools or equipment used in construction, drilling, earth moving, excavating or demolition work between the hours of 6:00 p.m. and 7:00 a.m. the following day on weekdays or at any time on weekends or legal holidays, except:
[Amended 12-15-1992 by L.L. No. 15-1992, effective 12-24-1992]
 - (a) For emergency work.
 - (b) By special variance issued pursuant to § 50-3.
 - (c) (Reserved)
 - (d) When the result of the operation of any of said equipment by or for any municipal agency.

§ 50-7. Exceptions.

- A. The provisions of this chapter shall not apply to:
 - (1) The emission of sound for the purpose of alerting persons to the existence of an emergency, except as provided in § 50-5C(5) or (6).

(2) The emission of sound in the performance of emergency work.

B. Noise from municipally sponsored celebrations or events shall be exempt from the provisions of this chapter.

§ 50-8. Variances.

A. Any person who owns or operates any stationary noise source may apply to the Noise Control Administrator for a variance from one or more of the provisions of this chapter. Applications for a variance shall supply information, including but not limited to:

(1) The nature and location of the facility or process for which such application is made.

(2) The reason for which the variance is requested.

(3) The nature and intensity of noise that will occur during the period of the variance.

(4) A description of interim noise control measures to be taken by the applicant to minimize noise and the impacts occurring therefrom.

(5) A specific schedule of the noise control measures which shall be taken to bring the source into compliance.

B. Failure to supply the information required by the Noise Control Administrator shall be cause for rejection of the application.

C. The Noise Control Administrator shall charge fees as established by Town Board resolution.

[Amended 11-23-2010 by L.L. No. 44-2010, effective 12-7-2010; 2-14-2019 by L.L. No. 2-2019, effective 2-25-2019]

D. The Noise Control Administrator may, at his/her discretion, limit the duration of the variance, which shall never be longer than 15 days. Any person holding a variance and requesting an extension of time may apply for a new variance under the provisions of this section. No person shall be entitled to variances totalling more than 30 days during any calendar year.

E. The variance shall operate as a stay of prosecution.

F. The variance may be revoked by the Noise Control Administrator if the terms of the variance are violated.

§ 50-9. Penalties for offenses.

[Amended 2-15-1994 by L.L. No. 2-1994, effective 2-22-1994]

A. Any person who violates any provision of this chapter shall be guilty of a violation and shall be punishable as follows: upon a first conviction, by a fine of not less than \$25 and not exceeding \$100; upon a second conviction, by a fine of not less than \$50 and not exceeding \$150; upon a third or subsequent conviction, by a fine of not less than \$100 and not exceeding \$250.

B. Each two-hour period of violation of any provision of this chapter shall constitute a separate violation.

§ 50-10. Abatement.

A. Except as provided in Subsection **B**, in lieu of issuing a summons, the Noise Control Administrator may issue an order requiring abatement of any source of sound alleged to be in violation of this chapter within a reasonable time period and according to guidelines which the Noise Control Administrator may prescribe.

B. An abatement order shall not be issued when the Noise Control Administrator has reason to believe that there will not be compliance with the abatement order, when the alleged violator has been served with a previous abatement order or has previously been convicted for a violation of this chapter.

§ 50-11. Construal.

[Amended 12-7-1993 by L.L. No. 21-1993, effective 12-13-1993]

No provision of this chapter shall be construed to impair any common law or statutory cause of action, or legal remedy therefrom, of any person for injury or damage arising from any violation of this chapter or from other law. Nothing herein shall be construed to abridge the emergency powers of any health department or the right of such department to engage in any necessary or proper activities. Nothing herein shall abridge the powers and responsibilities of any police department or law enforcement agency to enforce the provisions of this chapter.

§ 50-12. (Reserved)

§ 50-13. (Reserved)

NOISE CONTROL

Ch. 50 Attachment 1

Town of Brookhaven

Table I

Maximum Permissible A-Weighted Sound Pressure Levels by Receiving Property Category, in dBA

| Sound Source Property Category | Receiving Property Category | | | | | |
|------------------------------------------------------|----------------------------------------------------------|------------------|-----------------|------------------|-------------------------|-------------------------|
| | Another Apartment Within Multidwelling Building | | Residential | | Commercial All Times | Industrial All Times |
| | 7:00 a.m. to | 10:00 p.m. to | 7:00 a.m. to | 10:00 p.m. to | | |
| | 10:00 p.m. | 7:00 a.m. | 10:00 p.m. | 7:00 a.m. | | |
| | | | | | | |
| Apartment within multidwelling building | 45 | 40 | 55 | 50 | 65 | 75 |
| Residential | -- | -- | 55 | 50 | 65 | 75 |
| Commercial or public lands or rights-of-way | -- | -- | 65 | 50 | 65 | 75 |
| Industrial | -- | -- | 65 | 50 | 65 | 75 |

Town of Brookhaven, NY
Thursday, October 3, 2019

Chapter 53. Sand and Gravel Pits; Excavation; Removal of Topsoil

[HISTORY: Adopted by the Town Board of the Town of Brookhaven 7-7-1987 by L.L. No. 14-1987;^[1] amended in its entirety 5-21-2015 by L.L. No. 8-2015, effective 6-2-2015. Subsequent amendments noted where applicable.]

GENERAL REFERENCES

Building construction — See Ch. 16.

Zoning — See Ch. 85.

Subdivision regulations — See Appendix.

[1] *Editor's Note: This local law also repealed former Ch. 53, Sand and Gravel Pits; Excavations; Removal of Topsoil, adopted 6-16-1987 by L.L. No. 7-1987.*

§ 53-1. Intent.

The Town Board of the Town of Brookhaven recognizes that sand and gravel are valuable natural resources of property owners within certain areas of the Town and that in past years the excavation of sand and gravel has proceeded in an unsatisfactory manner resulting in the elimination of ground cover, natural vegetation and the degradation of slopes, radical changes in stormwater runoff and other problems which, in all likelihood, will lead to the permanent sterilization of property within the Town; therefore, the purpose and intent of this chapter is to restrict the removal of sand and gravel to those instances where it is absolutely essential to remove said raw materials from a site in connection with the residential, commercial or industrial development of the premises, and further that the purpose and intent of this chapter is to encourage development which utilizes existing slope contours wherever possible so that drainage patterns and existing vegetation will be subjected to the least disturbance as is practicable.

§ 53-2. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

MINING

The extraction of overburden and minerals from the earth; the preparation and processing of minerals, including any activities or processes or parts thereof for the extraction or removal of minerals from their original location and the preparation, washing, cleaning, crushing, stockpiling or other processing of minerals at the mine location so as to make them suitable for commercial, industrial, or construction use; exclusive of manufacturing processes, at the mine location; the removal of such materials through sale or exchange, or for commercial, industrial or municipal use; and the disposition of overburden, tailings and waste at the mine location. "Mining" shall not include the excavation, removal and disposition of minerals from construction projects, exclusive of the creation of water bodies, or excavations in aid of agricultural activities.

§ 53-3. Operations regulated; fees.

- A. No lands or other premises shall be operated or used for mining operations unless the premises is zoned L-2 Industrial and has a DEC mining permit or is a legal preexisting mine with a DEC permit.
- B. "Mining operations" does not include the removal of sand, gravel, stone, or other materials for: the construction of roads, drainage structures, recharge basins, sanitary systems, drywells, foundations, pools, parking lot construction, including cross access. In the event a subdivision, site plan or other land use application includes the removal of materials for the construction of roads, drainage structures, recharge basins, sanitary systems, drywells or foundations, the applicant must submit a materials removal plan. The materials removal plan shall be reviewed by the Department of Planning, Environment and Land Management. The least amount of material to allow for construction shall be approved by the Department of Planning, Environment and Land Management. The Department shall accept, reject or accept with modification each materials removal plan. The final determination of the amount of material subject to the fees set forth in § 29-7C shall rest with the Commissioner of the Department of Planning, Environment and Land Management. Topsoil may not be removed and shall remain on site for landscaping purposes.
- C. The materials removal plan shall:
 - (1) Be prepared by a New York State (NYS) licensed professional engineer (PE) with the objective of ensuring the least amount of material is removed from the premises; and
 - (2) Include a PE-certified estimate of the amount of material to be removed for the construction of roads, drainage

structures, recharge basins, sanitary systems, drywells, foundations or pools; and

- (3) Include a PE-certified engineer's analysis of the amount of materials to be removed; and
 - (4) Include the reasons for material removal and an explanation as to why other engineering techniques that would eliminate the need for removal of soils cannot be accomplished on the subject site, including, but not limited to, cutting and filling, the import of soil backfill approved by an environmental regulatory agency and certified by the PE to be clean [meet 6 NYCRR Subpart 375-6.8(b) soil cleanup objectives for residential land use and protection of groundwater], use of retaining walls and/or grading.
- D. In the event a subdivision, site plan or other land use application includes removal of excess material, other than for construction of roads, recharge basins, drainage structures, sanitary systems, drywells, foundations or pools, the applicant may appeal to the Board of Zoning Appeals for permission to conduct said activities. The appeal shall be made in the form of a use variance and the Board of Zoning Appeals shall review the application as a use variance in conformance with Town Code § **85-57C** and Town Law § 267-b. The application shall be on a form prescribed by the Board of Zoning Appeals and shall include a materials removal plan indicated above. The Board of Zoning Appeals shall hold a public hearing and shall make a determination as to approval, deny or approve with conditions the proposed mining operations. In addition to the criteria contained herein, the Board of Zoning Appeals shall consider the following criteria in making its determination:
- (1) The location of the premises relative to sensitive environmental areas, including, but not limited to, groundwater deep recharge zones (Zones I and III, Long Island Comprehensive Waste Treatment Management Plan, Koppelman, 1978), wetlands, wild and scenic rivers, and critical environmental areas (CEAs). Excess material removal in sensitive environmental areas shall not be permitted.
 - (2) The proposed changes in topographic slopes and elevations of the premises relative to existing slopes and elevations on the premises and all abutting properties. Excess material removal that changes the topographic elevations or slopes of the premises in a manner so as to alter drainage patterns, groundwater recharge, viewsheds, or vegetation patterns on the premises or abutting properties or that may result in increased soil erosion, groundwater degradation, or other negative impacts shall not be permitted.
 - (3) The proposed elevations throughout the premises following materials removal and prior to any backfilling, relative to the elevation of the water table surface beneath the premises, as determined from maps most recently published by the U.S. Geological Survey or Suffolk County Department of Health Services. Excess materials removal shall not be permitted if the vertical separation between the water table and the lowest proposed elevation is less than 15 feet. Materials removal plans shall maximize the vertical separation between the water table and the proposed elevations to protect groundwater.
 - (4) The nature and extent of vegetation removal. Vegetation removal shall be minimized, particularly the removal of native vegetation and mature forest. Vegetation removal shall not be permitted within the lot line setbacks applicable under the zoning of the premises, and in no case within 50 feet of the premises' lot lines.
 - (5) The applicant's proposed restoration of the premises following materials removal; the proposed restoration must be detailed in a restoration plan. The restoration plan must include slope stabilization measures, drainage design, backfill placement as needed (consistent with soil import requirements in § **53-3C**), revegetation with native plant materials in kind with native plant materials on the premises and abutting properties, and other measures as needed to restore the topographic slopes, natural drainage, and vegetative cover of the premises following materials removal. The restoration plan shall include a monitoring plan. The monitoring plan shall be implemented over a minimum of five years following restoration and shall include, at a minimum, an annual inspection of the topographic slopes, drainage, and vegetative cover of the premises by a NYS-licensed PE, who shall recommend any measures needed to repair any deficiencies in the restoration. Any identified deficiencies shall be corrected within three months of identification and monitoring shall be continued for not less than five years following any corrective measures.
 - (6) At no time shall any backfill be placed on the premises that includes suspect materials, including but not limited to historic fill, construction and demolition debris, asbestos-containing materials, asphalt, or other deleterious materials, regardless of the backfill chemical composition. "Suspect materials" shall include, but not be limited to, solid waste and materials that contain hazardous substances as listed in 6 NYCRR Part 597, "Hazardous Substances Identification, Release Prohibition, and Release Reporting."
 - (7) The least amount of material to allow for construction shall be approved by the Zoning Board of Appeals.
- E. No sand mine, gravel mine or sand and gravel mine shall be used for a sanitary or other landfill.
- F. Fees. There shall be the following fees payable to the Town of Brookhaven pursuant to an approved grading plan under authority of this chapter:
[Amended 11-20-2018 by L.L. No. 26-2018, effective 12-3-2018]
- (1) Fees shall be as established by Town Board resolution.
 - (2) All fees required pursuant to this chapter and as established by Town Board resolution shall be due upon final conditional approval of each subdivision section and/or each site plan and/or site plan phase.

§ 53-4. Time limitations.

The removal of excess material covered hereunder shall not exceed a period of one year from the date of issuance of the site plan approval or subdivision approval. The Board of Zoning Appeals shall have the authority to grant one-year extensions of permits for any operation, if the activity was approved pursuant to Board of Zoning Appeals grant, provided that the applicant can demonstrate that the extension is necessitated by construction delays caused by acts of nature or other catastrophic events outside of the applicant's control.

§ 53-5. Bond to be posted.

The applicant, prior to commencing removal of excess material, must post a bond in such form as shall be approved by the Town Attorney and in an amount to be specified by the Planning Board to guarantee performance in accordance with the approved site plan or the approved subdivision plan. In the event that the regulated operations authorized pursuant to this chapter are not completed within the time permitted, the bond may be defaulted to cover the cost of restoration of the premises. In the event that there is an existing bond, which otherwise conforms to the requirements set forth herein, which was issued to secure performance to the State of New York or any of its agencies, the Town may be added as additional named insured thereunder.

§ 53-6. Documentation to be provided.

The permittee or applicant for all operations authorized by this chapter shall provide to the Planning Board the following documentation, in a form approved by the Planning Board:

- A. At least annually, a photogrammetric aerial survey of the subject premises.
- B. At least every three years, a complete topographic survey, to the same scale as the photogrammetric survey, of the subject premises.

§ 53-7. Revocation of permit.

Any deviation in operations permitted pursuant to the authority of this chapter from the approved site plan or the approved subdivision map (to the extent of the grading plan incorporated therein) shall constitute grounds for summary revocation by the Planning Board and Zoning Board of Appeals of any permit granted pursuant to the provisions of this chapter.

§ 53-8. Existing mining operations.

Any sand mining operations presently existing and operating pursuant to a preexisting, current sand mining permit issued by the Zoning Board of Appeals shall constitute a nonconforming use and may continue to operate as a sand mine subject to the following conditions:

- A. The dumping of garbage, debris, rubble or any other kind of material or solid waste, including but not limited to construction and demolition debris, and any materials that contain hazardous substances as delineated in 6 NYCRR 597, entitled "List of Hazardous Substances," shall be strictly prohibited at any such site.

§ 53-9. Costs incurred.

All costs and special fees incurred by the Town in connection with the processing of an application pursuant to this chapter or for the supervision of operations conducted pursuant to a grant of permission pursuant to this chapter, including but not limited to engineering reports, on-site inspections and aerial inspections, shall be borne by the applicant and/or permittee of the subject premises.

§ 53-10. Authorization to adopt rules and regulations.

In connection with the approval of any building permit, site plan or change in use involving mining operations, the Planning Board and Board of Zoning Appeals shall have the power to adopt rules and regulations consistent with this chapter.

§ 53-11. Penalties for offenses.

- A. For any and every violation of the provisions of this chapter, the owner, lessee and/or agent thereof, including but not limited to said owner's or lessee's engineer, surveyor, contractor or any other agent thereof who knowingly permits, takes part in or assists in any conduct constituting a violation of this chapter or who maintains any premises upon which any such violation shall exist, shall be guilty of a misdemeanor punishable by a fine of not less than \$10,000 or imprisonment not exceeding 20

days, or both. Each day's continued violation of this chapter after written notice thereof shall constitute a separate additional offense.

- B. For any and every violation of the provisions of this chapter, the corporate owner, corporate lessee, and/or agent thereof, including but not limited to said owner's or lessee's engineer, surveyor, contractor or any other person or corporation who or which knowingly permits, takes part in or assists in any conduct constituting a violation of this chapter or who or which maintains any premises upon which any such violation shall exist, shall be guilty of a misdemeanor punishable by a fine of not less than \$10,000 or imprisonment not exceeding 20 days, or both. Each day's continued violation of this chapter after written notice thereof shall constitute a separate additional offense.

§ 53-12. Civil penalties.

The owner, general agent, lessee or tenant of any part of the premises for which a violation under this chapter has been committed or shall exist shall be responsible for damages caused to adjacent properties, whether public or private, and shall be responsible for the cost of restoring the subject premises in such manner as to ensure that damage to adjacent properties will cease. In the event of any such violation, the Town Attorney is hereby authorized to commence an action in a court of appropriate jurisdiction to restrain and correct said violation and for damages.

§ 53-13. Severability.

If any clause, sentence, paragraph or section of this chapter shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not impair or invalidate the remainder hereof, but such adjudication shall be confined in its operation to the clause, sentence, paragraph or section directly involved in the controversy in which judgment shall have been rendered.

*Town of Brookhaven, NY
Thursday, October 3, 2019*

Chapter 57. Shellfish

Article I. Definitions; Permits

§ 57-1. Title.

This chapter shall be known and may be cited as the "Town of Brookhaven Shellfish Law."

§ 57-2. Definitions.

For the purpose of this chapter, the following words and phrases shall be given the definitions contained herein:

BAY CULL

Shellfish and assorted bottom material unavoidably taken during harvesting.

COMMERCIAL HARD CLAM ENDORSEMENT

A special approval that is issued on a Town of Brookhaven commercial shellfish permit that enables the holder of the commercial shellfish permit/hard clam endorsement to harvest hard clams commercially from Town-owned underwater land in the Great South Bay lying west of a line running along the west side of the Suffolk County Bridge (William Floyd Parkway) between Shirley on the north and Smith Point County Park on the south and east of the line that runs from a point located 290 feet east of the entrance to Homan's Creek in Bayport to a point on Fire Island located approximately 2,950 feet west of the Barrett Beach Pier and which is coincident with the eastern property line of the underwater lands of The Nature Conservancy.
[Amended 7-17-2012 by L.L. No. 16-2012, effective 7-31-2012]

IMMEDIATE FAMILY MEMBER

Spouse, siblings, parents, children, grandparents, grandchildren, and, if domiciled in the house of the commercial hard clam endorsement holder, all persons who are related by blood, marriage or adoption.
[Added 5-18-2010 by L.L. No. 5-2010, effective 5-28-2010]

MANAGEMENT AREAS

Any area designed by the Town Board of the Town of Brookhaven, for the conservation, preservation, protection, rehabilitation, seeding and/or growth of shellfish or to promote the health, safety and welfare of the residents of the Town of Brookhaven.
[Amended 4-16-2002 by L.L. No. 2-2002, effective 4-25-2002]

NONRESIDENT

Any person who does not have his principal place of abode and domicile in the Town of Brookhaven and/or any person who does not own real property within the Town of Brookhaven at the time of the act permitted or prohibited by this chapter.

PERSON

Any firm, partnership, corporation, association or individual.

RESIDENT

Any person who has his principal place of abode and domicile in the Town of Brookhaven and/or any person who owns property within the Town of Brookhaven at the time of the act permitted or prohibited by this chapter.

[Amended 3-17-1998 by L.L. No. 4-1998, effective 3-20-1998]

SHELLFISH

All varieties and types of the following forms of marine life commonly known as "oysters" (*Crassostrea virginica*), "hard clams" (*Mercenaria mercenaria*), "soft or steamer clams" (*Mya arenaria*), "mussels" (*Mytilus edulis*) and "bay scallops" (*Pecten irradians*) and any combination thereof.

[Amended 5-18-2010 by L.L. No. 5-2010, effective 5-28-2010]

SUNRISE

The actual time of sunrise or up to 1/2 hour before the actual time of sunrise on any given date.

SUNSET

The actual time of sunset or up to 1/2 hour after the actual time of sunset on any given date.

TAKING

The removal of shellfish by any means from Town-owned land and all lesser acts of disruption of shellfish with or without the use of any implement, aid or device, regardless of whether such acts result in the removal of shellfish.

TOWN-OWNED LAND

All land, land underwater and the waters above land underwater in and owned by the Trustees of the Freeholders and Commonalty of the Town of Brookhaven. Such land shall not, however, include land, land underwater or waters above land underwater leased by the Town and/or the Trustees of the Freeholders and Commonalty of the Town of Brookhaven to any person for shellfish cultivation.

TRUSTEES

The Trustees of the Freeholders and Commonalty of the Town of Brookhaven.

UNCERTIFIED AREA:

- A. An area designated by the New York State Department of Environmental Conservation as an area in such unsanitary condition that shellfish therein may not be taken for use as food.
- B. A conditional clamming area restricted during specific seasons or periods of weather conditions as designated by the Director of the Division of Environmental Protection of the Town of Brookhaven and adopted in local law form by the Town Board.

WINTER GROUNDS

Any area lying close to the Long Island shoreline as may be designated by the Town Board of the Town of Brookhaven in order to provide safe, warm shellfishing areas during winter months and promote environmental and economic benefits to the Town of Brookhaven and its residents by closing such areas during summer months.

[Amended 3-5-1996 by L.L. No. 6-1996, effective 3-8-1996; 4-16-2002 by L.L. No. 2-2002, effective 4-25-2002]

§ 57-3. Restrictions for nonresidents.

A nonresident shall not gather, take or attempt to take, either on his own account or for his own benefit, the benefit of any other person or for sale, any shellfish from Town-owned land, except as set forth in § 57-5 of this chapter.

§ 57-4. Permit required.

[Amended 5-18-2010 by L.L. No. 5-2010, effective 5-28-2010]

No person or, in the case of any firm, partnership, corporation or association, each individual who engages in the taking of shellfish shall take shellfish from Town-owned land for commercial purposes unless such person has obtained a permit for such purposes as prescribed by § 57-6 of this chapter.

§ 57-5. Exceptions to permit commercial required.

[Amended 5-18-2010 by L.L. No. 5-2010, effective 5-28-2010]

A. A resident of the Town of Brookhaven may take no more than 100 bay scallops, soft clams, hard clams, or oysters or any combination thereof or 300 mussels from Town-owned land during each day of the open season, excluding Sunday, and in the manner hereinafter provided, for the sole purpose of consumption as food in his or her own household (noncommercial purposes) without obtaining a commercial shellfish permit, provided such shellfish are taken in conformance with Articles II and III of this chapter.

(1) A resident of the Town of Brookhaven desiring to avail himself of the privileges hereinbefore stated shall display proof of residency in the Town of Brookhaven to any harbormaster, constable or peace officer upon request. Failure to do so shall be prima facie evidence that such person is not a resident of the Town of Brookhaven.

(2) It shall be unlawful for any resident to take shellfish for noncommercial purposes with any device other than a hand-held rake having a head no wider than 14 inches measured perpendicular to the tynes and a straight handle not in excess of seven feet in length or by any means other than use of a resident's hands and feet. Possession or use of any device or aid other than as described above shall be presumptive evidence of an intent to harbor shellfish for commercial purposes.

B. A resident of the Town of Islip who has duly obtained a commercial permit from the Islip Town Clerk for the taking of shellfish from lands underwater in and owned by the Town of Islip, in accordance with the Islip Town Shellfish Ordinance, may take shellfish other than hard clams for commercial purposes from Town-owned land in the Great South Bay, from the Islip Town line to a line drawn running due south of Howell's Point in the Town of Brookhaven to the north shoreline of Fire Island.

C. A resident of the Town of Islip who has duly obtained a Town of Islip commercial shellfish permit and who has a Town of Islip commercial hard clam endorsement may take hard clams for commercial purposes from Brookhaven-owned land in the Great South Bay, from the Town of Brookhaven-Town of Islip town line to a line drawn running due south of Howell's Point in the Town of Brookhaven to the north shoreline of Fire Island.

[Amended 7-17-2012 by L.L. No. 16-2012, effective 7-31-2012]

D. A resident of the Town of Islip desiring to avail himself of the privileges stated herein shall display evidence of the commercial permit and the commercial hard clam endorsement for the harvest of hard clams if hard clams are harvested issued to him by the Town of Islip in a conspicuous place, either upon his person or upon the vessel used in the taking of shellfish.

[Amended 7-17-2012 by L.L. No. 16-2012, effective 7-31-2012]

§ 57-6. Commercial shellfish permit and commercial hard clam endorsement.

[Amended 5-18-2010 by L.L. No. 5-2010, effective 5-28-2010; 7-17-2012 by L.L. No. 16-2012, effective 7-31-2012]

- A. Commercial shellfish permit: A commercial shellfish permit shall allow the resident to whom it is issued to take shellfish from Town-owned underwater lands for commercial purposes, except that hard clams (*Mercenaria mercenaria*) may not be taken from Town-owned underwater land in the Great South Bay lying west of a line running along the west side of the Suffolk County Bridge (William Floyd Parkway) between Shirley on the north and Smith Point County Park on the south and east of the line that runs from a point located 290 feet east of the entrance to Homan's Creek in Bayport to a point on Fire Island located approximately 2,950 feet west of the Barrett Beach Pier and which is coincident with the eastern property line of the underwater lands of The Nature Conservancy property unless a commercial hard clam endorsement has been issued on the commercial shellfish permit.
- B. Commercial hard clam endorsement. To harvest hard clams (*Mercenaria mercenaria*) commercially from Town-owned underwater land in the Great South Bay lying west of a line running along the west side of the Suffolk County Bridge (William Floyd Parkway) between Shirley on the north and Smith Point County Park on the south and east of the line that runs from a point located 290 feet east of the entrance to Homan's Creek in Bayport to a point on Fire Island located approximately 2,950 feet west of the Barrett Beach Pier and which is coincident with the eastern property line of the underwater lands of The Nature Conservancy property and the Town of Brookhaven, the commercial shellfish permit shall also have a commercial hard clam endorsement.
 - (1) A commercial hard clam endorsement shall only be issued to a resident of the Town of Brookhaven who has a Town of Brookhaven commercial shellfish permit and who can demonstrate that he/she:
 - (a) Has held a commercial hard claim permit endorsement in 2011; or
 - (b) Was issued a commercial hard clam endorsement in 2013; or
 - (c) Subsequent to 2013 was issued a commercial hard clam endorsement in the previous year;
 - (d) Is a Town resident who did not obtain a commercial hard clam endorsement in 2010 or in subsequent years and meets any one of the criteria specified below and provides such clear and unambiguous proof as may be required by the Town Clerk:
 - [1] Was unable to obtain a commercial hard clam endorsement due to active military service; or
 - [2] Held a commercial shellfish harvest permit issued by the Town of Islip, Brookhaven, or Babylon during any five consecutive years while a resident of the Town of Islip, Brookhaven, or Babylon; or
 - [3] The resident's immediate family has historically been and is currently engaged in commercial hard clamming in the Great South Bay, provided that the applicant is at least 16 years old at the time of application; or
 - [4] Demonstrates an investment in the equipment necessary for participation in the Great South Bay commercial hard clam fishery and possesses a valid NYS shellfish digger's license and held such license for at least three out of the five

years prior to the date of application; or

- [5] Held a commercial hard clam endorsement or its equivalent while a resident of the Town of Islip or Babylon.
- (e) If a commercial hard clam endorsement is not renewed by February 14 of the year following its issuance, the commercial hard clam endorsement shall be deemed to have expired and will not be reissued to that holder unless the number of commercial hard clam endorsements for that year has not been reached and the applicant has met the criteria set forth in Subsection **B(1)(f)**.
- (f) If an individual does not qualify for a commercial hard clam endorsement but wishes to obtain such endorsement, that individual shall be placed on a waiting list. If after February 14 the number of commercial hard clam endorsements issued for that year is less than the number that could be issued, individuals on the waiting list will be issued a commercial hard clam endorsement based on their position on the waiting list.
- (2) Number of commercial hard clam endorsements. The number of commercial hard clam endorsements issued in 2013 shall be 130 plus the number of commercial hard clam endorsements issued to individuals meeting criteria Subsection **B(1)(d)** above. For each subsequent year, the number of endorsements issued shall not exceed the total number of endorsements issued in the previous calendar year.
- (a) The Town Board, by resolution, may annually adjust the number of commercial hard clam endorsements issued by the Town in a calendar year if the Town Board, based on the recommendation of the Division of Environmental Protection as set forth in Subsection **B(2)(a)[1]** and any other relevant information, finds that the long-term sustainability of the hard clam resources will not be adversely impacted by the number of commercial hard clam endorsements issued.
- [1] The Division of Environmental Protection shall annually submit to the Town Board by October 31 a report that recommends the number of commercial hard clam endorsements that could be issued in the following year without adversely impacting the long-term sustainability of the hard clam resource that is based on the best available scientific analyses and takes into account, at a minimum, the abundance of hard clams as determined by a hard clam census, available annual harvest statistics, the magnitude of the commercial shellfish harvesting, the current and projected hard clam harvest, the number of commercial hard clam endorsements issued by the Towns of Brookhaven, Babylon and Islip, the baywide hard clam population and any other relevant information.
- (3) The person to whom a commercial hard clam endorsement has been issued shall not harvest or be in possession of more than 2,000 hard clams harvested from Town-owned underwater land in the Great South Bay lying west of a line running along the west side of the Suffolk County Bridge (William Floyd Parkway) between Shirley on the north and Smith Point County Park on the south and east of the line that runs from a point located 290 feet east of the entrance to Homan's Creek in Bayport to a point on Fire Island located approximately 2,950 feet west of the Barrett Beach Pier which is coincident with the property line between The Nature Conservancy property and the Town of Brookhaven.

§ 57-7. Restrictions.

- A. The holder of a New York State or Town commercial shellfish permit shall not be entitled to the privileges of a resident of the Town of Brookhaven and shall not be permitted to engage in the taking of shellfish for noncommercial purposes.

- B. No person having had a shellfish permit suspended or revoked by the Town of Brookhaven, Town of Islip or the New York State Department of Environmental Conservation shall engage in the taking of shellfish from Town-owned lands at any time during the period of such suspension or revocation.
- C. Any person convicted of taking shellfish at the time when his shellfish permit is suspended or revoked as described in Subsection **B** of this section shall not be issued any Town shellfish permit at any time thereafter.

§ 57-8. Application.

- A. Permits shall be issued to residents only. The applicant shall provide two forms of proof of residency. Acceptable proof of residency shall include: property tax bill, utility bill, bank statement, W-2 income tax form, voter registration card, major credit card bill, a valid New York State driver's license or identification card. One form of proof of residency must be dated no earlier than three months preceding the date of the application for a permit. In the case of a minor, the parent or guardian must provide proof of residency.
[Amended 5-18-1995 by L.L. No. 14-1995, effective 5-24-1995; 3-17-1998 by L.L. No. 7-1998, effective 3-20-1998]
- B. Each permit application shall be made, in writing, on duplicate forms to be provided by the Town Clerk and shall include the following:
 - (1) The applicant's name.
 - (2) The applicant's residence with street and number.
 - (3) The applicant's mailing address.
 - (4) The applicant's length of residence in the Town of Brookhaven.
 - (5) The citizenship of the applicant.
 - (6) The applicant's date of birth.
 - (7) The applicant's weight.
 - (8) The applicant's height.
 - (9) The applicant's color of hair and eyes.
 - (10) The applicant's signature.
 - (11) All other information requested and deemed necessary by the Town Clerk.
- C. An application for a permit by a minor (17 years of age or under) shall be cosigned by that minor's parent or guardian.
- D. Prior to the issuance of a permit, the Town Clerk shall be satisfied as to the identification and residence of the applicant.
- E. Each commercial permit application shall be accompanied by two full-face photographs of the applicant taken within three months prior to the application.
- F. Any commercial permit application shall contain the description of any vessel which may be used by the applicant, including the New York State registration numbers for such vessel.

- G. Each commercial permit application shall be accompanied by the applicant's New York State Department of Environmental Conservation shellfish permit.
- H. (Reserved)^[1]
 - [1] *Editor's Note: Former Subsection H, establishing a fee for commercial shellfish permit applications, was repealed 1-24-2017 by L.L. No. 4-2017, effective 2-6-2017.*
- I. The Town Clerk shall furnish a description and map of currently designated bay management or winter-ground areas to each person issued a shellfish permit.

§ 57-9. Duration of commercial shellfish permits.

[Amended 5-18-2010 by L.L. No. 5-2010, effective 5-28-2010]

Permits issued pursuant to § **57-4** of this article shall be valid from the date of issuance until and shall expire on the last day of December of the year in which they were issued next ensuing unless such permits shall be suspended or revoked as hereinafter provided.

§ 57-10. Form; nontransferability; lost or stolen permit.

- A. Each permit shall be in the form prescribed by the Town Clerk with a photograph of the permit holder affixed thereto and shall contain the matter set forth upon the application. Each permit issued shall contain the exact date and time of issuance.
- B. The original application for a permit with the permit holder's photograph affixed thereto shall be filed in the Town Clerk's office, and the duplicate application shall be filed in the Harbormaster's office.
- C. A person to whom a permit has been issued shall not transfer, assign or allow any other person to use the permit, except that the holder of a commercial hard clam endorsement may transfer such endorsement to a member of the holder's immediate family as defined in § **57-2**, provided that the family member is a resident of the Town.

[Amended 7-17-2012 by L.L. No. 16-2012, effective 7-31-2012]
- D. No person shall use, display or possess a permit issued to another person.
- E. Any attempt to transfer or assign any permit shall terminate the same and render it null and void.
- F. Any person whose permit or display card is lost or stolen shall report the same to the Town Clerk's office immediately and shall obtain a duplicate permit or display card from the Town Clerk.

[Amended 1-24-2017 by L.L. No. 4-2017, effective 2-6-2017]
- G. The holder of a commercial hard clam endorsement who has a valid New York State vessel endorsement issued pursuant to New York State Environmental Conservation Law § 13-0311 may have individuals on the holder's vessel who can carry out harvesting activities as allowed by New York State Environmental Conservation Law § 13-0311 even if they do not have a Town of Brookhaven commercial shellfish permit and/or commercial hard clam endorsement.

[Added 7-17-2012 by L.L. No. 16-2012, effective 7-31-2012]

§ 57-11. Display of permit.

- A. All persons engaged in taking shellfish from Town-owned land for commercial purposes,

whether working aboard a vessel or otherwise, shall exhibit their permit to any harbormaster, constable or peace officer on request. Failure to do so shall be prima facie evidence that such person has not obtained a permit.

- B. The Town Clerk, upon issuing a commercial shellfish permit, will also issue to the permittee a commercial shellfish permit display card. The permittee shall not be engaged in the taking of shellfish for commercial purposes from Town-owned land without having a shellfish card displayed in a prominent place on his person or on the vessel from which he is operating.

§ 57-12. Voiding, suspension and revocation.

- A. Permits shall be void if the holder thereof ceases to be a resident of the Town of Brookhaven.
- B. Permits may be suspended by the Town Clerk upon recommendation of the Director of the Division of Environmental Protection for a period of not less than six months from the date of conviction if the holder thereof is convicted of any violation of this chapter and/or state law enacted for the conservation or protection of shellfish.
- C. A permit shall not survive the permittee.
- D. Permits may be suspended by the Town Clerk upon recommendation of the Director of the Division of Environmental Protection for a period of not less than six months from the date of compromise of civil penalties if the holder thereof is permitted to settle by agreement or civilly compromise any violation of this chapter or the Environmental Conservation Law of the State of New York and/or any state law enacted for the conservation and protection of shellfish.
- E. A permit shall be automatically suspended or revoked upon the suspension or revocation by the New York State Department of Environmental Conservation of a like permit. The period of suspension or revocation shall be for the same duration as that of the New York State permit.

Article II. General Regulations for Protection and Taking of Shellfish

§ 57-13. Altering or damaging buoys or markers.

- A. No person shall in any way alter, damage, mutilate, move or carry away any buoy or marker or other device used to mark land underwater placed by the New York State Department of Environmental Conservation or by the Town of Brookhaven that is used to designate, mark or define uncertified waters, bay management areas or winter grounds.
- B. No person shall remove stakes, buoys, markers or other devices used to mark land underwater leased by the Town to another for shellfish cultivation, a management area or Town-owned lands.

§ 57-14. Uncertified waters.

- A. No unauthorized person shall take shellfish by any means whatsoever from Town-owned land which is designated as an uncertified area or conditional clamming area closed by the New York State Department of Environmental Conservation or from any closed area designated by the Town Board as a bay management or winter-grounds area pursuant to § 57-2 of this chapter.

- B. No unauthorized person shall operate, use or place or attempt to operate, use or place, for whatever purpose, any dredges, rakes, tongs or other devices or use any means whatsoever for the taking of shellfish from uncertified areas or conditional clamming areas as designated by the New York State Department of Environmental Conservation or from areas otherwise closed by the Town Board as bay management areas or winter grounds pursuant to § 57-2 of this chapter.

§ 57-15. Night restrictions.

No person shall take shellfish from Town-owned land or from lands and/or land underwater leased by the Town to others for shellfish cultivation between sunset and sunrise.

§ 57-16. Sunday restrictions.

[Amended 5-18-1995 by L.L. No. 14-1995, effective 5-24-1995]

No shellfish shall be taken from Town-owned land on Sundays, whether for commercial or noncommercial purposes, except that for holders of a valid commercial shellfish permit, shellfish may be taken on Sundays during the period beginning on the first Sunday in December and ending on the last Sunday in March.

§ 57-17. Use of dredges.

- A. It shall be unlawful to use or have in one's possession any device commonly known as a "dredge," including but not limited to scraper tongs or blades, stick dredges or any other device operated by power or by boats propelled by motor or other mechanical means, or a device attached to or aided by the motion of any boat mechanically propelled or otherwise for the taking of shellfish from Town-owned land or placed overboard any boat except:
- (1) By special permit issued by the Director of Environmental Protection of the Town of Brookhaven.
 - (2) A dredge used for the taking of bay scallops, provided that such dredge has an opening at the mouth not to exceed 36 inches in width when taken by a boat operated by mechanical power or other means, and further provided that such dredge is brought aboard by hand power without the use of a mechanical device.
 - (3) When engaged in the taking of soft-shelled clams wherein the propeller of a boat may be used for churning such clams on any bar or shoreline that does not fall dry at the ordinary low tide.
- B. Any dredge prohibited by this section shall be immediately confiscated from the user, and any shellfish taken by the use of such dredge shall be returned to the water immediately.

§ 57-18. Interference with shellfish.

- A. No unauthorized person shall take, interfere with or otherwise disturb shellfish possessed, planted or cultivated by another.
- B. No unauthorized person shall place any device used to take shellfish on or in water above land underwater owned by another or leased by the Town to another for shellfish cultivation.
- C. No person shall take, interfere with, disturb, place into the water or onto underwater lands any

device that is commonly used to take or harvest shellfish, or use any device that is commonly used to take or harvest shellfish within an area designated as a "management area,"^[1] except upon prior written permission from the Town of Brookhaven.

[Added 4-16-2002 by L.L. No. 4-2002, effective 4-25-2002]

[1] *Editor's Note: Management areas and their boundaries are listed in Exhibit A at the end of this chapter.*

- D. No person shall take, interfere with, disturb, place into the water or onto underwater lands any device that is commonly used to take or harvest shellfish, or use any device that is commonly used to take or harvest shellfish within an area designated as a "winter grounds"^[2] commencing at sunset on March 31 to sunrise on the first Monday in December of each year, except upon prior written permission from the Town of Brookhaven.

[Added 4-16-2002 by L.L. No. 4-2002, effective 4-25-2002]

[2] *Editor's Note: Winter grounds and their boundaries are listed in Exhibit B at the end of this chapter.*

§ 57-19. Use of boat or vessel.

No person shall take shellfish for commercial or noncommercial purposes from a boat or vessel, while such boat or vessel is in motion or being propelled by any means other than the motion of the water and/or wind, other than as provided in § **57-17** herein.

Town of Brookhaven, NY
Thursday, October 3, 2019

Chapter 57A. Signs

[HISTORY: Adopted by the Town Board of the Town of Brookhaven 6-3-1997 by L.L. No. 9-1997,^[1] effective 6-4-1997.
Amendments noted where applicable.]

GENERAL REFERENCES

Fees — See Ch. **29**.

Zoning — See Ch. **85**.

[1] *Editor's Note: This local law also repealed former Ch. 57A, Signs, adopted 6-16-1987 by L.L. No. 7-1987, as amended.*

§ 57A-1. Purpose.

It is the purpose and intent of this chapter to regulate signs within the Town of Brookhaven to accomplish the goals of:

- A. Avoiding an unsightly proliferation of unnecessary signs.
- B. Providing for adequate signs for the business community to communicate its availability to the public.
- C. Protecting the public from improperly located or distracting signs which create a hazard to said public by virtue of their construction, location and/or illumination.

§ 57A-2. Definitions.

[Amended 8-14-2001 by L.L. No. 21-2001, effective 8-17-2001; 10-28-2014 by L.L. No. 27-2014, effective 11-4-2014; 4-21-2016 by L.L. No. 6-2016, effective 5-3-2016]

As used in this chapter, unless otherwise expressly stated, the following terms shall have the meanings indicated:

ANIMATED SIGN

Any sign that uses movement or change of lighting to depict action or create a special effect or scene.

AREA OF SIGN

The total area of the faces of the sign within a perimeter which forms the outside shape of said sign.

AWNING

A protective roof-like covering, often of canvas, mounted on a frame over a walkway or door.

BANNER

Any sign of lightweight fabric or similar material that is permanently mounted to a pole or a building by a permanent frame at one or more edges. National flags, state or municipal flags, or the official flag of any institution or business shall not be considered banners.

BILLBOARD

An outdoor advertising sign commonly characterized as a large, immobile, fixed structure attached to the ground or other structure.

[Amended 3-23-2017 by L.L. No. 6-2017, effective 4-3-2017]

BUILDING INSPECTOR

The Chief Building Inspector of the Building Division of the Town of Brookhaven or any of his deputies or any inspector regularly assigned to the Department of Law.

CANOPY

A structural protective cover over an outdoor service area.

CANOPY SIGN

Any sign that is a part of or attached to an awning, canopy, or other fabric, plastic, or structural protective cover over a door, entrance, window, or outdoor service area. A marquee is not a canopy.

CHANGEABLE COPY SIGN

A sign or portion thereof with characters, letters, or illustrations that can be changed or rearranged without altering the face or the surface of the sign. A sign on which the message changes more than eight times per day shall be considered an

animated sign and not a changeable copy sign for purposes of this chapter. A sign on which the only copy that changes is an electronic or mechanical indication of time or temperature shall be considered a "time and temperature" portion of a sign and not a changeable copy sign for purposes of this chapter.

COMMERCIAL CENTER

Any building or buildings, structure or structures or premises used by one or more enterprises for a commercial purpose specifically permitted within the particular use district in which this term is applied where the proposed use occupies a site of five or more acres, whether built at one time as a unit or in two or more construction stages.

COMMERCIAL MESSAGE

Any sign wording, logo, or other representation that, directly or indirectly, names, advertises, or calls attention to a business, product, service or other commercial activity.

COMMISSIONER

The Commissioner of the Department of Planning, Environment and Development or his/her designee.

DEPARTMENT

The Department of Planning, Environment and Development.

DIRECTORY SIGN

Any sign containing a list of the names of business establishments located within a shopping center and/or the name of the shopping center.

ELECTRONIC MESSAGE SIGN

An on-premises sign with changing text or graphics generated by electronic components, with a black background or face, advertising an on-site product, service, or activity, public service message, time, and/or temperature. Said signs shall not create visual distractions to adjacent roadways.

ELECTRONIC SIGN

Any sign, video display, projected image, or similar device or portions thereof with text, images, or graphics generated by solid-state electronic components. Electronic signs include, but are not limited to, signs that use light-emitting diodes (LED), plasma displays, fiber optics, or other technology that results in bright, high-resolution text, images, and graphics. Said signs shall not create visual distractions to adjacent roadways.

ERECT

To build, construct, alter, repair, display, relocate, attach, hang, place, suspend, affix or maintain any sign, and shall also include the painting of exterior wall signs.

FREESTANDING SIGN

Any sign not attached to a building, including, but not limited to, monument signs, pole signs, and pylon signs.

FRONT YARD

An open, unoccupied space on the same lot with the building or structure, extending the full width of the lot and situated between the street line and the front lines of the building. The depth of the front yard shall be measured between the front line of the building or structure and the street line.

GROUND SIGN

Any freestanding commercial sign which is accessory to the business conducted at the same location or parcel.

HOUSE OF WORSHIP

Any structure in which any recognized religion which has a tax-exempt status meets to practice its religion.

ILLUMINATED SIGN

Any sign illuminated by electricity, gas, light-emitting diodes (LED), or other artificial light, including reflective or phosphorescent light.

LIGHTING DEVICE

Any light, string of lights or group of lights located or arranged so as to cause illumination on a sign.

MARQUEE SIGN

A canopy extending more than two feet from a building, with lettering thereon.

MOBILE SIGN

Any sign not designed or intended to be anchored to the ground and designed and intended to be capable of being transported over public roads and streets, whether or not it is so transported.

MONUMENT SIGN

A freestanding sign, generally having a low profile, where the base of the sign structure is on the ground or just above the ground such that the sign has the appearance of a solid base and having a structure constructed of masonry, wood, or materials similar in appearance.

MUNICIPAL DIRECTORY SIGN

A sign erected and maintained by the Town of Brookhaven, with space available on a rental basis to businesses and enterprises wishing to have placed thereon a sign advertising their enterprise. Such sign must meet specifications as to size, color and appearance specified by the Town.

OVERSIZED GROUND SIGN

Any freestanding commercial sign which is accessory to the business conducted at the same location or parcel which exceeds an area of 32 square feet.

PENNANT

Any lightweight plastic, fabric, or other material, whether or not containing a message of any kind, suspended from a rope, wire, or string, usually in series, designed to move in the wind.

PERMANENT SIGN

Any sign intended and installed to be permanently in place at a given location by means of suitable fastening to a building or to a structure specifically erected to hold such sign(s) or to the ground.

PERSON

Any person, firm, partnership, association, corporation, company, institution or organization of any kind.

POLE SIGN

A sign that is supported by a single pole or similar support structure so that the bottom edge of the sign is one foot or more above grade.

POLITICAL SIGNS

Political posters, banners, promotional devices and signs of a temporary nature.

PYLON SIGN

Any freestanding sign that is supported by two or more uprights, poles, or braces, with a visible support structure or that is surrounded by a decorative cover to form one solid sign support, often with a sign face having a vertical dimension in excess of its horizontal dimension.

ROOF SIGN

Any sign in which all or any part extends above the wall of any building or structure, where said wall does not extend above the roofline. In no event shall a sign permitted as defined by "wall sign" extend beyond the actual wall surface.

ROOFLINE

The top edge of the roof or top of the parapet, whichever forms the top line of the building silhouette.

SETBACK

The distance from the property line to the nearest part of the applicable building, structure, or sign, measured perpendicularly to the property line.

SHOPPING CENTER

Premises having two or more stores or business establishments in connection with which there is provided, on privately owned property near or contiguous thereto, an area or areas of land totaling at least one acre usable by the public as the means of access to and egress from the stores and business establishments on such premises and for the free parking of motor vehicles of customers and patrons of such stores and business establishments on such premises.

SIDE YARD

An open, unoccupied space on the same lot with the building or structure extending from the rear line of the front yard to the rear lot line on a line which would extend the side of the building facing said side yard to the rear lot line.

SIGN

Any material, structure or device or part thereof composed of lettered or pictorial matter or upon which lettered or pictorial matter is placed when used or located out of doors or outside or on the exterior of any building, including window display area, for display of an advertisement, announcement, notice, directional matter or name, and includes sign frames, billboards, signboards, painted wall signs, hanging signs, illuminated signs, pennants, fluttering devices, projecting signs or ground signs, and shall also include any announcement, declaration, demonstration, display, illustration or insignia used to advertise or promote the interests of any person or business when the same is placed in view of the general public.

SOFFIT SIGN

A sign affixed to the underside of a roof overhang adjacent to a store or other commercial premises.

STREET

A strip of land or way subject to vehicular traffic (as well as pedestrian traffic) that provides direct or indirect access to property, including, but not limited to, alleys, avenues, boulevards, courts, drives, highways, lanes, places, roads, terraces, trails, or other thoroughfares.

STREET FRONTAGE

The distance for which a lot line of a zone lot adjoins a public street, from one lot line intersecting said street to the furthest

distant lot line intersecting the same street.

TEMPORARY SIGN

Any sign other than a permanent sign, except for posters, banners, window signs or building contractor's, subcontractor's, architect's or engineer's signs maintained on the premises only while the same is under construction.

WALL SIGN

Any single-faced sign which is attached to, incorporated into or painted on the exterior wall of the premises abutting a public street or a public or private parking field advertising only the business conducted on the premises. Such sign shall be parallel to the face of the wall.

WINDOW SIGN

A sign, excluding illuminated signs, installed inside a window for purposes of viewing from the outside of the premises, including any decorative elements. This term does not include merchandise located in a window.

§ 57A-3. Signs permitted in all areas.

[Amended 4-21-2016 by L.L. No. 6-2016, effective 5-3-2016]

Only the following signs are permitted in all districts, as defined by Chapter **85**, Zoning, of the Town of Brookhaven, unless otherwise specified, and no permit shall be required unless otherwise provided:

- A. Professional signs: one sign, not exceeding two square feet in area per face, bearing only the name and profession of the resident practitioner. Such sign may be illuminated by an electric lamp, not exceeding 15 watts of power, contained within the sign. Such sign shall have a maximum height of nine feet from grade to the top of the sign, including supports.
- B. Sale or rent signs: one "for sale" or "for rent" sign advertising only the sale, lease or rental of the premises upon which the sign is erected, not exceeding four square feet in area per face, with a maximum height of nine feet from grade to the top of the sign, including supports. In industrial and commercial zones, the maximum size of the sign shall be three feet by six feet.
- C. Subdivision signs: one sign for each approved subdivision, not larger than 32 square feet in area per face, advertising only the premises on which the sign is placed, and such sign shall not exceed nine feet above grade, including supports.
- D. Municipal signs: signs erected and maintained for a municipal or governmental purpose, subject to such conditions and safeguards as the Town Board may deem appropriate.
- E. Utility signs: standard signs of public utilities, not exceeding 12 inches by 20 inches per face, placed to inform the public of the location of utility facilities available to the general public.
- F. Houses of worship: one ground sign, not to exceed 32 square feet in area per face nor higher than nine feet in total height above grade, including supports, erected on the premises of the place of worship; and one wall sign on a building wall of the place of worship facing a public street or parking lot, not to exceed 20 square feet. Nothing herein shall be construed to prohibit any house of worship from displaying its recognized symbol.
- G. Identification signs: signs as required, reasonable in size for the premises, bearing only the name and/or address of the occupant of the premises. These signs shall be permitted in a residential area only.
- H. Public safety signs: any sign erected by a governmental agency or at its direction warning the public of a specific danger, with no other advertising on such sign. Such signs shall include directional flow of traffic signs and entering and exiting parking lot signs and shall be designed and placed in accordance with the New York State Manual on Uniform Traffic Control Devices.
- I. Window signs: signs painted or placed inside display windows in accordance with all other provisions of this chapter, and excluding petroleum price signs. Window signs shall be limited to one sign per 12 linear feet of window, not to exceed 25% of the total window area. Illuminated signs in windows are prohibited.
- J. Building contractor's, subcontractor's, architect's or engineer's signs: one sign, not larger than six square feet in area, maintained on the premises only while the same is under construction.
- K. Municipal directory signs: Municipal directory signs are to be installed by or at the direction of the Town. The individual identifying signs to be located thereon shall be supplied by the individual wishing to place them upon the municipal directory sign. Said sign shall comply with the requirements as to size, color and appearance directed by the Town of Brookhaven. The fee for location of such a sign upon the municipal directory sign shall be determined as set forth in this chapter. Any individual or corporation wishing to rent space upon a municipal directory sign shall be permitted to do so for no more than six months.
- L. Signs for service organizations: Service organizations shall be permitted to erect two off-premises signs up to a maximum of four square feet per sign face. Said signs shall require a permit issued by the Building Division, but no fee shall be required.

§ 57A-4. Signs permitted in J and J-4 Zoning Districts.

[Amended 8-14-2001 by L.L. No. 21-2001, effective 8-17-2001; 12-20-2005 by L.L. No. 36-2005, effective 12-27-2005; 12-13-2011 by L.L. No. 28-2011, effective 12-28-2011]

Only the following signs are allowed in J and J-4 Zoning Districts with a permit from the Building Division and in conformance with Subsection D below.

- A. Wall signs: one sign attached to or incorporated into each exterior side wall of a building facing a public street or parking area, advertising only the business conducted in such building, provided that:
 - (1) There is only one such sign for each wall on any wall where such sign is permitted.
 - (2) The area of the largest sign may not exceed 2 1/2 square feet per linear foot of wall width to a maximum of 36 square feet. However, if said wall exceeds 24 feet in width, the sign may be increased as follows: the larger of 36 square feet or two square feet per linear foot of wall, calculated by using only 2/3 of said length. Other permitted wall signs may not exceed 24 square feet.
 - (3) The sign is not wider than the building upon which it is placed.
 - (4) The sign or any part thereof does not project more than one foot from said wall and canopy signs and necessary lighting devices do not project more than two feet from said wall. In no case shall either the signs themselves or the lights extend into any right-of-way.
 - (5) The sign does not extend higher than the roof of any building.
 - (6) The sign is not higher than the distance between the head of the windows of one story and the lower sill course of the windows of the next higher story or the top of the parapet wall if a one-story building, and in no event shall the top of the sign be higher than 18 feet above the mean level of the ground.
 - (7) Any such sign shall be maintained in a good state of repair, in working order.
 - (8) The provisions of Subsection **A(1)** through **(7)** above shall not prohibit a sign projecting not more than one foot from any wall and not more than one foot by one foot in area used to indicate the location on the premises of a public telephone or other public utility facility for the use of the general public.
- B. Detached or ground signs advertising only the business conducted on the premises upon which the sign is located, provided that:
 - (1) There is only one such sign detached from a building. However, for buildings which have more than one street frontage, one such sign shall be allowed on each street frontage.
 - (2) Such sign shall not exceed 18 square feet per sign face in area or nine feet in height from the mean level of the ground.
 - (3) The area between the sign and front property line shall be maintained free of obstructions and debris.
 - (4) Said sign must not be designed or constructed to move, oscillate or rotate, except for time and temperature signs in which said time and temperature are indicated, alternately, in lights.
- C. Roof signs and window signs shall be prohibited.
- D. Any project requesting signs within this zoning district that requires site plan approval after the adoption of this chapter shall be approved by the Planning Board at the time of the site plan approval.

§ 57A-4.1. Signs permitted in J-6 Zoning Districts, Main Street Business Districts.

[Added 12-20-2005 by L.L. No. 36-2005, effective 12-27-2005; 12-13-2011 by L.L. No. 28-2011, effective 12-28-2011]

- A. Only the following signs are allowed in the J-6 Zoning Districts, Main Street Business Districts with a permit from the Building Division and in conformance with Subsection **E** below.
- B. Except as otherwise provided herein the following sign types shall be permitted:
 - (1) One wall sign attached to or incorporated into each exterior side wall of each store facing a public street or parking area, advertising only the business conducted in such store, provided that:
 - (a) For walls under 24 feet in width, the maximum permitted size shall not exceed one square foot per linear foot of wall width, not to exceed 15 square feet.
 - (b) For walls over 24 feet in width, the maximum permitted size shall not exceed two square feet per linear foot of wall width, calculated by using only 2/3 of said length, not to exceed 48 square feet.
 - (c) Signs shall be lighted with external building-mounted lighting fixtures and shall not be backlit.
 - (2) One blade sign for each business may be permanently installed perpendicular to the facade, provided that:

- (a) Such sign shall not exceed a total of four square feet, unless otherwise authorized by the Town Board.
- (3) A detached or ground sign may be permitted by the Planning Board, advertising only the assembled businesses conducted on the premises upon which the sign is located, provided that:
 - (a) Such sign advertises an assemblage of businesses. Detached ground signs shall not be used for individual sites with a single individual business.
 - (b) There is only one such sign detached from a building. However, for buildings which have more than one street frontage the Planning Board may permit one such sign on each street frontage.
 - (c) The maximum height of the sign shall not exceed 12 feet in height from the mean level of the ground,
 - (d) Necessary lighting devices shall not project more than two feet from said sign. Lighting fixtures shall be directed downward. No sign shall be backlit. In no event shall either the signs or the lights extend into any right-of-way.
- (4) One address number sign no more than six inches high shall be attached to the building in proximity to the principal entrance.
- (5) One portable sandwich board sign, A-frame or sidewalk sign, provided said sign:
 - [Added 10-23-2012 by L.L. No. 29-2012, effective 11-7-2012]
 - (a) Does not exceed 24 inches by 36 inches; and
 - (b) Is located on the property for which the sign is erected; and
 - (c) Does not impede or obstruct pedestrian traffic.
 - (d) Shall be removed each day as of the close of business.
- C. All signs shall be of wood or similar materials as may be approved by the Planning Board.
- D. Roof signs shall be prohibited.
- E. Any project requesting signs within this zoning district that requires site plan approval shall be approved by the Planning Board at the time of site plan review.

§ 57A-5. Signs permitted in J-2 Zoning Districts.

[Amended 8-14-2001 by L.L. No. 21-2001, effective 8-17-2001; 12-13-2011 by L.L. No. 28-2011, effective 12-28-2011]

Only the following signs are allowed in J-2 Zoning Districts with a permit from the Building Division and in conformance with Subsection E below.

- A. Wall signs: one sign attached to or incorporated into each exterior side wall of each store facing a public street or parking area, advertising only the business conducted in such store, provided that:
 - (1) There is only one such sign for each store on any wall where such sign is permitted.
 - (2) The area of the largest sign may not exceed two square feet per linear foot of wall width to a maximum of 48 square feet. However, if said wall exceeds 24 feet in width, the sign may be increased as follows: two square feet per linear foot of wall calculated by using only 2/3 of said length. In no case shall such sign exceed 80 square feet. Other permitted wall signs may not exceed 36 square feet.
 - (3) The sign is not wider than the building upon which it is placed.
 - (4) The sign or any part thereof does not project more than one foot from such wall and canopy signs and necessary lighting devices do not project more than two feet from said wall. In no case shall either the sign itself or the light extend into any right-of-way.
 - (5) The sign does not extend higher than the roof of any building.
 - (6) The sign is not higher than the distance between the head of the windows of one story and the lower sill course of the windows of the next higher story or the top of the parapet wall if a one-story building, and in no event shall the top of the sign be higher than 18 feet above the mean level of the ground.
 - (7) Any such sign shall be maintained in a good state of repair, in working order.
 - (8) The provisions of Subsection **A(1)** through **(7)** above shall not prohibit a sign projecting not more than one foot from any wall and not more than one foot by one foot in area used to indicate the location on the premises of a public telephone or other public utility facility for the use of the general public.

- B. Detached or ground signs advertising only the business conducted on the premises upon which the sign is located, provided that:
 - (1) There is only one such sign detached from a building. However, for buildings which have more than one street frontage, one such sign shall be allowed on each street frontage.
 - (2) Each face of such sign shall not exceed 32 square feet in area or 12 feet in height from the mean level of the ground.
 - (3) The area between the sign and front property line shall be maintained free of obstructions and debris.
 - (4) Said sign must not be designed or constructed to move, oscillate or rotate, except for time and temperature signs in which said time and temperature are indicated, alternately, in lights.
- C. Roof signs shall be prohibited.
- D. Theater marquee signs shall not exceed one square foot per linear foot of marquee to a maximum of 12 square feet.
- E. Any project requesting signs within this zoning district that requires site plan approval after the adoption of this chapter shall be approved by the Planning Board at the time of the site plan approval.

§ 57A-6. Signs permitted in J-5 Zoning Districts.

[Amended 12-13-2011 by L.L. No. 28-2011, effective 12-28-2011]

Notwithstanding any other provisions of this chapter, the following signs shall be permitted in the J-5 Zoning District with a permit from the Building Division and in conformance with Subsection H below.

- A. Signs which are an integral part of gasoline pumps.
- B. Signs showing the selling price of gasoline, either mechanical, manual or electronic, not to exceed one such sign for each gasoline pump and attached thereto and measuring 12 inches in height and 12 inches in width.
- C. One ground sign, not to exceed 24 square feet in area per sign face and 12 feet in height above the mean level of the ground, not to extend or project beyond any lot line.
- D. Temporary signs, not to exceed two in number, or 10 square feet per sign face; in conformity with the provisions of § **57A-9** of this chapter.
- E. Wall signs: one sign attached to or incorporated into each exterior side wall of a building facing a public street or parking area, advertising only the business conducted in such building, provided that:
 - (1) There is only one such sign for each wall on any wall where such sign is permitted.
 - (2) The area of the largest sign may not exceed two square feet per linear foot to a maximum of 40 square feet. Other permitted wall signs may not exceed 32 square feet.
 - (3) The sign is not wider than the building upon which it is placed.
 - (4) The sign or any part thereof does not project more than one foot from such wall and awning signs and necessary lighting devices do not project more than two feet from said wall. In no case shall either the sign itself or the light extend into any right-of-way.
 - (5) The sign does not extend higher than the roof of any building.
 - (6) The sign is not higher than the distance between the head of the windows of one story and the lower sill course of the windows of the next higher story or the top of the parapet wall if a one-story building, and in no event shall the top of the sign be higher than 18 feet above the mean level of the ground.
 - (7) Any such sign shall be maintained in a good state of repair, in working order.
 - (8) The provisions of Subsection **E(1)** through **(7)** above shall not prohibit a sign projecting not more than one foot from any wall and not more than one foot in area used to indicate the location on the premises of a public telephone or other public utility facility for the use of the general public.
- F. Canopy signs not to exceed one square foot per linear foot of canopy width to a maximum of 12 square feet.
- G. Roof signs shall be prohibited.
- H. Any project requesting signs within this zoning district that requires site plan approval after the adoption of this chapter shall be approved by the Planning Board at the time of site plan approval.

[1] *Editor's Note: Former § 57A-6, Signs permitted in J-3 Zoning Districts, was repealed 12-13-2011 by L.L. No. 28-2011, effective*

12-28-2011. This local law also renumbered former § 57A-7 as § 57A-6.

§ 57A-7. Signs permitted in J-8 Zoning District.

[Added 12-13-2011 by L.L. No. 28-2011, effective 12-28-2011]

Only the following signs are allowed in the J-8 Zoning District with a permit from the Building Division and in conformance with Subsection F below.

- A. Wall signs: one sign attached to or incorporated into each exterior side wall facing a public street or parking area.
 - (1) The area of the largest sign may not exceed two square feet per linear foot of wall width to a maximum of 48 square feet. However, if said wall exceeds 24 feet in width, the sign may be increased as follows: two square feet per linear foot of wall calculated by using only 2/3 of said length. In no case shall such sign exceed 80 square feet.
 - (2) The sign is not wider than the building upon which it is placed.
 - (3) The sign or any part thereof does not project more than one foot from such wall and canopy signs and necessary lighting devices do not project more than two feet from said wall. In no case shall either the sign itself or the light extend into any right-of-way.
 - (4) The sign does not extend higher than the roof of any building.
 - (5) Any such sign shall be maintained in a good state of repair, in working order.
 - (6) The provisions of Subsection **A(1)** through **(5)** above shall not prohibit a sign projecting not more than one foot from any wall and not more than one foot by one foot in area used to indicate the location on the premises of a public telephone or other public utility facility for the use of the general public.
- B. Detached or ground signs advertising only the business conducted on the premises upon which the sign is located, provided that:
 - (1) There is only one such sign detached from a building. However, for buildings which have more than one street frontage, one such sign shall be allowed on each street frontage.
 - (2) Each face of such sign shall not exceed 32 square feet in area or 12 feet in height from the mean level of the ground.
 - (3) The area between the sign and front property line shall be maintained free of obstructions and debris.
 - (4) Said sign must not be designed or constructed to move, oscillate or rotate, except for time and temperature signs in which said time and temperature are indicated, alternately, in lights.
- C. Canopy and marquee signs not to exceed one square foot per linear foot of canopy or marquee to a maximum of 12 square feet.
- D. Roof signs shall be prohibited.
- E. Wall signs for accessory uses shall be permitted at one wall sign per use not to exceed 36 square feet.
- F. Any project requesting signs within this zoning district that requires site plan approval after the adoption of this chapter shall be approved by the Planning Board at the time of the site plan approval.

§ 57A-8. Signs permitted in L-1 and L-2 Zoning Districts.

[Amended 8-14-2001 by L.L. No. 21-2001, effective 8-17-2001; 12-13-2011 by L.L. No. 28-2011, effective 12-28-2011]

The following signs are allowed in L-1 and L-2 Zoning Districts with a permit from the Building Division and in conformance with Subsection D below.

- A. Wall signs: one sign attached to or incorporated into each exterior side wall of a building facing a public street or parking area, advertising only the business conducted in such building, provided that:
 - (1) There is only one such sign for each wall on any wall where such sign is permitted.
 - (2) The area of the largest sign may not exceed two square feet per linear foot of wall area to a maximum of 80 square feet. Other permitted wall signs may not exceed 48 square feet.
 - (3) The sign is not wider than the building upon which it is placed.
 - (4) The sign or any part thereof does not project more than one foot from such wall and a necessary lighting device does not project more than two feet from said wall. In no case shall either the sign itself or the light extend into any right-of-way.

- (5) The sign does not extend higher than the roof of any building.
 - (6) The sign is not higher than the distance between the head of the windows of one story and the lower sill course of the windows of the next higher story or the top of the parapet wall if a one-story building, and in no event shall the top of the sign be higher than 18 feet above the mean level of the ground.
 - (7) Any such sign shall be maintained in a good state of repair, in working order.
 - (8) The provisions of Subsection **A(1)** through **(7)** above shall not prohibit a sign projecting not more than one foot from any wall and not more than one foot by one foot in area used to indicate the location on the premises of a public telephone or other public utility facility for the use of the general public.
- B. Detached or ground signs advertising only the business conducted on the premises upon which the sign is located, provided that:
- (1) There is only one such sign detached from a building. However, for buildings which have more than one street frontage, one such sign shall be allowed on each street frontage.
 - (2) Such sign shall not exceed 18 square feet per sign face in area or nine feet in height from the mean level of the ground.
 - (3) The area between the sign and front property line shall be maintained free of obstructions and debris.
 - (4) Said sign must not be designed or constructed to move, oscillate or rotate, except for time and temperature signs in which said time and temperature are indicated, alternately, in lights.
- C. Roof signs shall be prohibited.
- D. Any project requesting signs within this zoning district that requires site plan approval after the adoption of this chapter shall be approved by the Planning Board at the time of the site plan approval.

§ 57A-8.1. Signs permitted in Route 25A Hamlet Center Overlay District.

[Added 10-23-2012 by L.L. No. 31-2012, effective 11-7-2012; amended 4-2-2013 by L.L. No. 16-2013, effective 4-18-2013] Standards.

- A. All signs shall conform to the sign requirements of the underlying zoning district contained within this chapter in addition to the regulations set forth herein.
- B. Applicants for new or replacement signs in the district shall apply to the Planning Division for conformance review prior to submittal for a building permit.
- C. Individual rate signs or price signs shall be prohibited. Motor vehicle fuel and service stations shall be permitted to integrate fuel and price information into one freestanding, detached business identification sign.
- D. Portable signs and off-premises business signs shall be prohibited, including but not limited to portable/temporary signs attached to trailers (with or without the wheels), sandwich board signs, signs tied to street poles and other appendages, and temporary ground signs.
- E. Materials, colors and shapes of proposed or replacement signs shall be compatible throughout the district. Wood or wood-like signs with direct lighting shall be required throughout the district.
- F. No new freestanding signs shall be permitted within the district, except monument signs that shall not exceed 9.5 feet in height above mean ground level for single tenants or 12 feet in height above mean ground level for multi-tenant parcels. All existing legally permitted, conforming freestanding signs shall be landscaped with a clustering of plant species.
- G. No blinking, flashing, rotating or electronic signs, or banners shall be permitted, except street banners or decorations which may be attached to roadway utility or lighting poles by local Chambers of Commerce or similar to identify individual hamlets or commemorate holidays or special occasions.
- H. Any sign located on property that is unoccupied for a period of 60 days or more shall be deemed abandoned. The owner of the sign or the owner of the property shall remove such abandoned sign. If the owner or lessee fails to remove the sign, the Town shall give the owner 30 days written notice to remove the abandoned sign. Upon failure to comply with this notice, the Town may initiate such action as may be necessary to gain compliance in accordance with § **57A-21**.
- I. Any project requesting signs within this zoning district that requires site plan approval after the adoption of this chapter shall be approved by the Planning Board at the time of the site plan approval.

§ 57A-8.2. Signs permitted in Route 25A Transition Center Overlay District.

[Added 10-23-2012 by L.L. No. 31-2012, effective 11-7-2012; 11-7-2012; amended 4-2-2013 by L.L. No. 16-2013, effective 4-18-2013]
Standards.

- A. All signs shall conform to the sign requirements of the underlying zoning district contained within this chapter in addition to the regulations set forth herein.
- B. Applicants for new or replacement signs in the district shall apply to the Planning Commissioner or his/her designee for conformance review prior to submittal for a building permit.
- C. Individual rate signs or price signs shall be prohibited. Motor vehicle fuel and service stations shall be allowed to integrate fuel and price information into one freestanding, detached business identification sign.
- D. Portable signs and off-premises business signs shall be prohibited, including but not limited to portable/temporary signs attached to trailers (with or without the wheels), sandwich board signs, signs tied to street poles and other appendages, and temporary ground signs.
- E. Materials, colors and shapes of proposed or replacement signs shall be compatible throughout the district. Wood or wood-simulated signs with direct lighting shall be required throughout the district.
- F. No new freestanding signs shall be permitted within the district, except monument signs that shall not exceed 9.5 feet in height above mean ground level for single tenants or 12 feet in height above mean ground level for multi-tenants. All existing legally permitted and conforming freestanding signs shall be landscaped with a clustering of plant species.
- G. No blinking, flashing, rotating or electronic signs or banners shall be permitted, excepting street banners or decorations which may be attached to roadway utility or lighting poles by local Chambers of Commerce or similar to identify individual hamlets or commemorate holidays or special occasions.
- H. Any sign located on property that is unoccupied for a period of 60 days or more shall be deemed abandoned. The owner of the sign or the owner of the property shall remove such abandoned sign. If the owner or lessee fails to remove the sign, the Town shall give the owner 30 days' written notice to remove the abandoned sign. Upon failure to comply with this notice, the Town may initiate such action as may be necessary to gain compliance in accordance with § 57A-21.
- I. Any project requesting signs within this zoning district that requires site plan approval after the adoption of this chapter shall be approved by the Planning Board at the time of the site plan approval.

§ 57A-8.3. Signs permitted in Commercial Recreation (CR) District.

[Added 10-28-2014 by L.L. No. 27-2014, effective 11-4-2014]

- A. Wall signs: one sign attached to or incorporated into each exterior side wall facing a public street or parking area.
 - (1) The area of the largest sign may not exceed two square feet per linear foot of wall width to a maximum of 48 square feet. However, if said wall exceeds 24 feet in width, the sign may be increased as follows: two square feet per linear foot of wall calculated by using only 2/3 of said length.
 - (2) The sign may not be wider than the building upon which it is placed.
 - (3) The sign or any part thereof may not project more than one foot from such wall, and canopy signs and necessary lighting devices shall not project more than two feet from said wall. In no case shall either the sign itself or the light extend into any right-of-way.
 - (4) The sign may not extend higher than the roof of any building.
 - (5) Maximum height shall not exceed 35 feet.
 - (6) Any such sign shall be maintained in a good state of repair and in working order.
- B. Detached or ground signs:
 - (1) Only one such sign detached from a building. For buildings which have more than one street frontage, one such sign shall be allowed on each street frontage.
 - (2) Sign height shall not be greater than 25% of the average width of the highway right-of-way directly adjacent to the site, not including additional right-of-way widths of interchanges and intersections. No such sign may exceed 100 feet height, regardless of right-of-way width.
 - (3) The area in square feet of each face of such sign shall not exceed 300% of the height.
 - (4) Pylon and pole signs may be permitted only along the Long Island Expressway (SR 495) and Sunrise Highway (SR 27).

- (5) The area between the sign and front property line shall be landscaped and maintained free of obstructions and debris.
- (6) Pylon and pole signs shall be set back a distance equal to at least 50% of the height of the sign from any adjoining lot line.
- C. Canopy signs, not to exceed one square foot per linear foot of canopy.
- D. Marquee sign:
 - (1) The width of the marquee sign shall be a maximum of two feet from each side of the entrance.
 - (2) The maximum height shall not exceed 50% of the story height.
 - (3) The depth and projection shall be a minimum of four feet and a maximum of 10 feet.
 - (4) The minimum clearance shall be 10 feet.
 - (5) A minimum of three feet shall be required from the curbline.
- E. Roof signs shall be prohibited.
- F. Wall signs for accessory uses shall be permitted at one wall sign per use, not to exceed 80 square feet.
- G. Wall or detached or ground signs design criteria.
 - (1) One large electronic or electronic message sign shall be permitted per site in conformance with Subsection **A** above.
 - (a) The width of the sign shall not exceed a maximum of 50 feet.
 - (b) The height shall not exceed a maximum of 20 feet.
 - (c) The maximum mounting height shall be 42 feet to the top of the sign.
 - (2) A maximum of three small electronic or electronic message signs shall be permitted per site.
 - (a) The width of the sign shall not exceed a maximum of 25 feet.
 - (b) The height shall not exceed a maximum of 10 feet.
 - (c) The maximum mounting height shall be 42 feet to the top of the sign.
 - (3) Electronic and electronic message signs shall be permitted only along the Long Island Expressway (SR 495) and Sunrise Highway (SR 27).
- H. Signs with neon or LED lighted effects shall be in conformance with Subsection **A** above.
 - (1) The area shall not exceed a maximum of 144 square feet or 144 linear feet per wall.
 - (2) The maximum mounting height shall not exceed 35 feet.
 - (3) Animated and motion effects shall be prohibited.
 - (4) Electronic and electronic message signs shall be permitted only along the Long Island Expressway (SR 495) and Sunrise Highway (SR 27).
- I. Any project requesting signs within this zoning district that requires site plan approval after the adoption of this chapter shall be approved by the Planning Board at the time of the site plan approval.

§ 57A-9. Mobile signs and temporary signs.

- A. Mobile signs and temporary signs shall be permitted only in J-2 and J-5 Zoning Districts with a special permit from the Building Division.
[Amended 12-13-2011 by L.L. No. 28-2011, effective 12-28-2011]
- B. Mobile signs and temporary signs shall not exceed 32 square feet. The top of such sign shall not be more than nine feet above grade, and there shall be a clearance of not less than four feet above grade beneath said sign.
- C. The Division of Building shall receive an application for a permit not less than two business days before a mobile or temporary sign is erected or located. Upon receipt of same, an inspection shall be conducted and a permit issued if said sign is in compliance with all applicable portions of this chapter.
- D. For the purposes of this subsections, the term "premises" shall mean an entire shopping center or commercial center.

- E. The applicant may apply for a permit for any length of time, up to and including 30 days. Such permit may be renewed twice within a 12 month period, not to exceed 90 days.
- F. Permits shall not be assignable or transferable. No portion of an application fee shall be refundable once the permit is written.
- G. Mobile signs and temporary signs shall not be illuminated or electrified.
- H. No mobile or temporary sign shall be placed in a defined parking stall in an established shopping center.
- I. All other setback requirements set forth in this chapter shall be applied to mobile and temporary signs located in other than established shopping centers.
- J. Only one mobile or temporary sign shall be permitted per 150 feet of road frontage of the lot upon which the signs are to be located.
- K. The permit for a mobile or temporary sign shall be applied for by the entity whose business is advertised upon such sign. However, the owner of such sign, if different from the advertised entity, may apply for said permit on behalf of the advertised entity.
- L. Unless specifically excepted, mobile and temporary signs shall meet all other requirements in this chapter.
- M. Presumption. It shall be presumed that any person, business or entity identified on any sign, poster, sticker or advertising device regulated under this chapter, or the owner, agent, registrant, manager, business, entity or person in charge of any telephone number, Web site, entity, business or address identified on any sign, poster, sticker or advertising device regulated under this chapter, is responsible for the placement of that sign, poster or sticker. This presumption shall be rebuttable.
[Added 6-19-2007 by L.L. No. 12-2007, effective 6-25-2007]

§ 57A-10. Political signs.

- A. Purpose. The Town Board hereby finds that while the proliferation of political signs during political campaigns is unsightly and distracting to passing motorists, the use of political signs by candidates for public office offers an inexpensive, yet effective means, for political expression. Therefore, it is the intent and purpose of this provision to permit signs to be located within residential, industrial and commercial zoned districts expressing political messages in addition to those signs permitted herein but subject to certain limiting factors so that the visual and aesthetic impact is minimized.
- B. With the consent of the property owner, political signs not exceeding 16 square feet in area may be located on privately owned commercial or industrial zoned property for a period not to exceed 30 days for each political campaign. Only one sign shall be permitted per candidate for each political campaign and said sign shall not be placed in a position that will obstruct or impair vision or traffic in any manner or create a hazard or disturbance to the health and welfare of the public.
- C. With the consent of the property owner, political signs not exceeding four square feet in area may be located on privately owned residential zoned property for a period not to exceed 30 days for each political campaign. Only one sign shall be permitted per candidate for each political campaign and said sign shall not be placed in a position that will obstruct or impair vision or traffic in any manner or create a hazard or disturbance to the health and welfare of the public.
- D. Said signs must be removed no later than 15 days after the election for political office for which said signs were placed.
- E. A temporary permit shall be required for each political sign. However, a political party or candidate may obtain one temporary permit for all signs to be located pursuant to this section, provided that the location of each sign is stated in the application, the consent of the property owners are attached to the application and the fee provided herein is paid.
- F. The fee for an individual temporary political sign permit shall be \$5. The fee for a group temporary political sign permit shall be \$50.
- G. No consent is granted herein for political signs located or placed upon any land owned by the Town of Brookhaven.
[Added 3-25-2014 by L.L. No. 6-2014, effective 4-1-2014]
- H. No consent is granted herein for political signs located or placed within the rights-of-way of the Town of Brookhaven or upon utility poles located therein.
[Added 3-25-2014 by L.L. No. 6-2014, effective 4-1-2014]

§ 57A-11. Signs, posters and stickers prohibited on public property.

[Amended 6-19-2007 by L.L. No. 12-2007, effective 6-25-2007; 3-25-2014 by L.L. No. 6-2014, effective 4-1-2014]

- A. Declaration of policy. The Town Board hereby finds that the use of signs, posters, stickers and advertising devices along public roadways and on public property creates unreasonable distractions to operators of motor vehicles, creates confusion

with regard to traffic lights, signs and signals, impairs visibility of pedestrians and motor vehicles, creates safety hazards to the public and, in particular, pedestrians, distracts from identification of surrounding businesses and home-house numbering and detracts from the aesthetic character of buildings, sites, districts and the Town as a whole. In addition, the Town Board finds that the undue proliferation of signs, posters, stickers or advertising devices located along public rights-of-way and on public property detracts from the established character of adjoining properties and of the neighborhood in which they are located and depreciates the values of said properties and neighborhoods. It is hereby found that removal of said signs, posters, stickers or advertising devices will promote the health, safety, morals and general welfare of the community in which they are located.

- B. Prohibitions. With the exception of any sign erected by the Town, county, state or other governmental authority and all signs pertaining to traffic regulations, parking regulations and fire zones which are subject to the rules and regulations of the New York State Vehicle and Traffic Law, no sign, poster, sticker, flag or advertising device shall be located within or upon the right-of-way of any Town, state or county road or highway or upon any Town, county or state or other publicly owned land, or upon any utility pole, tree, fence, or any other structure or object thereupon.
- C. Removal of signs, posters, stickers or advertising devices authorized. The Superintendent of Highways or his designee, Sanitation Inspectors, Town Investigators, Code Enforcement Officers, and the Department of Public Safety Commissioner, Deputy Commissioner, Director and Assistant Director are hereby authorized to remove any sign, poster, sticker or advertising device placed upon any property owned by the Town of Brookhaven, including but not limited to Town highways, parks, Town rights-of-way or utility poles within the right-of-way, or other public lands. Upon receipt of written authorization from the New York State Department of Transportation and/or the Suffolk County Department of Public Works, the Superintendent of Highways or his designee, Sanitation Inspectors, Town Investigators, Code Enforcement Officers, and the Department of Public Safety Commissioner, Deputy Commissioner, Director and Assistant Director shall be authorized to remove signs, posters, stickers or advertising devices in accordance with this section from state and county roads and highways.
- D. Presumption. It shall be presumed that any person, business or entity identified on any sign, poster, sticker or advertising device regulated under this chapter, or the owner, agent, registrant, manager, business, entity or person in charge of any telephone number, Web site, entity, business or address identified on any sign, poster, sticker or advertising device regulated under this chapter, is responsible for the placement of that sign, poster or sticker. This presumption shall be rebuttable.

§ 57A-12. Setback requirements.

[Amended 12-13-2011 by L.L. No. 28-2011, effective 12-28-2011]

Unless otherwise specified within this chapter, all freestanding signs permitted by this chapter shall be erected and maintained pursuant to the following:

- A. Located not less than 10 feet from any side property line.
- B. Located not less than 12 feet from the property line when the abutting roadway has a posted speed limit of up to 30 miles per hour, not less than 17 feet from the property line when the abutting roadway has a posted speed limit of 31 through 40 miles per hour; and not less than 22 feet from the property line when the abutting roadway has a posted speed limit of 41 through 55 miles per hour, however, if the average front setback of existing buildings on the same side of the street within the same block is less than the above specified number of feet, then not less than the established average setback.
- C. Irrespective of Subsection **B** above, at intersections, no sign shall be located within the triangle formed by the intersection of the two property lines and a baseline which intersects those two lines at a point 30 feet from the aforementioned intersection point.

§ 57A-13. Illumination.

All signs permitted within this chapter shall comply with the following requirements:

- A. Illumination of signs shall be accomplished by means of shielded light sources or in such other manner that no glare shall extend beyond the property lines of the property upon which such signs are located, and no glare shall disturb the vision of passing motorists or constitute a hazard to traffic.
- B. No flashing, rotating or moving light sources shall be permitted to constitute a part of any sign, with the exception of signs displaying time and temperature, in which case only said time and temperature shall be permitted to have said moving light sources. Each message shall be allowed to remain for two seconds.
- C. Any electrical apparatus must be approved by Underwriters' Laboratories, Inc.

§ 57A-14. General restrictions and prohibitions.

- A. No sign shall be constructed of cloth, oilcloth, paper or other destructible material for display outside of any building, except for temporary signs, in which case said signs shall be permissible if properly mounted on a frame in a stationary manner.

Said signs shall be removed within 90 days of their erection.

- B. No sign or any part thereof, including lighting devices and reflectors, shall be placed so as to frame or outline any side of any wall of a building.
- C. No sign which directs attention to a business, service, entertainment or commodity conducted, sold or offered elsewhere than upon the premises shall be erected or maintained.
- D. No sign shall be attached to any tree, fence or utility pole, unless required for safety purposes and placed by the utility.
- E. No banners, streamers, flags, pennants or noise-creating devices may be attached to or used in connection with any sign or be used as a sign.
[Amended 12-13-2011 by L.L. No. 28-2011, effective 12-28-2011]
- F. No sign shall be erected or maintained which might be confused with any traffic control device or which might interfere with the vision or discernment of any traffic sign or which might cause danger to public travel.
- G. Except as otherwise permitted in this chapter, no sign shall be erected or maintained which extends or projects into any right-of-way.

§ 57A-15. Illegal signs.

[Amended 8-14-2001 by L.L. No. 21-2001, effective 8-17-2001; 3-25-2014 by L.L. No. 6-2014, effective 4-1-2014]

- A. Any sign requiring a permit erected on or after the effective date of this chapter, which does not have such permit or which does not have a sign permit number displayed on its face or which has had its permit revoked or which is prohibited, or any political sign located upon land owned by the Town of Brookhaven or any political sign located or placed within the right-of-way or on utility poles located therein, shall be deemed an illegal sign and in violation of this chapter.
- B. Any sign for which a sign permit has been issued may be inspected for adequate maintenance, freedom from any hazardous condition and structural soundness. If such sign is found to be unsafe, the Chief Building Inspector shall suspend the sign permit until such time as a satisfactory adjustment has been made.
- C. No existing sign may be structurally altered, rebuilt, enlarged, extended, relocated or modified in any way except in conformity with the provisions of this section.

§ 57A-16. Nonconforming signs.

- A. Anything to the contrary in this chapter notwithstanding, after the effective date of this chapter all signs must either conform to the requirements of this chapter or have a permit, certificate of existing use or certificate of zoning compliance from the Building Division.
- B. Any sign existing at the time of the adoption of this chapter which is altered in any way after the adoption of said chapter shall be considered to be a new sign and shall be required to comply with all requirements of this chapter.

§ 57A-17. Variances.

[Amended 8-14-2001 by L.L. No. 21-2001, effective 8-17-2001; 12-13-2011 by L.L. No. 28-2011, effective 12-28-2011]

In the event a variance is required, the Board of Zoning Appeals is authorized to grant relief pursuant to § 85-29.1B and in conformance with Town Code § 85-28 from the provisions of this chapter, with or without modification thereto, and may impose such reasonable conditions upon its grant of approval of any such relief as it deems appropriate, or may deny the application.

§ 57A-18. Fee.

[Amended 11-20-2018 by L.L. No. 26-2018, effective 12-3-2018]

No sign for which a permit is required shall be erected unless and until the payment of a fee, as established by Town Board Resolution, is paid.

§ 57A-19. Permit applications.

- A. Application for any and all permits required by this chapter, except any signs approved in conjunction with a site plan, or change of use/expansion, shall be made, in writing, in duplicate, to the Chief Building Inspector, upon forms prescribed and provided by the Chief Building Inspector, and shall contain but not be limited to the following:
 - (1) The name and address of the applicant, the owner of the sign and the landowner.

- (2) The location of the building, structure or land to which or upon which the sign is to be erected.
- (3) A detailed drawing of the proposed sign, indicating its dimensions and showing any pictorial content or lettering to be displayed on said sign. Mobile and political signs shall be excepted from this requirement.
- (4) A survey showing the proposed location of said sign, its setbacks from front and side yard lines and distance from buildings. Mobile and political signs shall be excepted from this requirement.

§ 57A-20. Display of permit.

The owner or occupant of any premises which displays a sign which requires a permit pursuant to this chapter, shall retain the permit on the premises and exhibit the permit to any authorized person or persons upon request. Authorized persons shall include but not be limited to Building Inspectors, Zoning Inspectors and Town Investigators.

§ 57A-21. Conformance required; revocation of permit.

- A. No sign, whether new or existing, shall hereafter be erected or altered except in conformity with the provisions contained herein. The sign must be kept clean, neatly painted and free from all hazards, such as but not limited to faulty wiring and loose fastenings, and must be maintained at all times in such safe condition as not to be detrimental to the public health or safety.
- B. In the event of a violation of any of the foregoing provisions, the chief Building Inspector or Chief Fire Marshal shall give written or personal notice, specifying the violation, to the named owner of the sign and the named owner of the land upon which the sign is erected, sent to the address as stated in the application for the sign permit, to conform or remove such sign. The sign shall thereupon be conformed by the owner of the sign and the owner of the land within 30 days from the date of said notice. In the event that such sign shall not be so conformed or removed, the Chief Building Inspector or Chief Fire Marshal shall thereupon revoke the permit, whereupon said sign shall be deemed an illegal sign pursuant to § 57A-15, and subject to the penalties provided by § 57A-23.
- C. Any permit may also be revoked if such sign no longer advertises an existing business conducted or product sold on the premises of if said sign no longer meets the requirements of this chapter.

§ 57A-22. Billboard signs prohibited.

[Added 8-14-2001 by L.L. No. 21-2001, effective 8-17-2001]

- A. Purpose and intent. In recognition of the negative visual impacts, including but not limited to the unaesthetic appearance of many billboards throughout the Town, and particularly in commercially developed areas and along public roads and highways, it is the intent and objective of this Town Board to create a more aesthetic visual environment throughout the Town in keeping with the rural, semi-rural, and suburban character of its various hamlets, neighborhoods and areas by limiting, and ultimately eliminating, certain kinds of commercial signage defined in this chapter as "billboards."
- B. The construction of new billboards as defined in this chapter is hereby prohibited in all zoning districts.
- C. All existing billboards as defined in this chapter, whether or not authorized by a certificate of occupancy, certificate of conforming use or certificate of zoning compliance, shall be dismantled and removed from their existing locations on or before December 31, 2004.
- D. Extension of amortization period. In the event that the dismantling and removal of any billboard on or before December 31, 2004, shall work an unreasonable hardship upon the owner thereof, said owner may make application to the Board of Zoning Appeals for a reasonable extension(s) of time, not beyond December 31, 2007, during which said billboard may be maintained at its present location.

§ 57A-23. Amortization period.

[Added 12-13-2011 by L.L. No. 28-2011, effective 12-28-2011^[1]; amended 8-28-2012 by L.L. No. 22-2012, effective 9-11-2012]

- A. Except as otherwise provided in § 57A-23, any sign in existence at the date of adoption of this chapter which does not conform to the provisions of this chapter shall be discontinued and removed on or before December 31, 2015, and the failure to discontinue or remove such nonconforming sign on or before the aforesaid date shall constitute a violation of the provisions of this chapter. All legal nonconforming signs in the Town of Brookhaven at the time of the adoption of this chapter may be maintained until December 31, 2015, but if any change, modification, structural repair or replacement thereof is hereafter made, such sign shall thereafter conform to the provisions of this chapter, provided that a legal nonconforming sign may not be replaced by another nonconforming sign. Nothing herein shall be construed to permit a sign to remain during the amortization period which does not have a valid sign permit, certificate of occupancy or its equivalent.

- B. Extension of amortization period. In the event that the dismantling and removal of any sign on or before December 31, 2015, shall work an unreasonable hardship upon the owner thereof, said owner may make application to the Board of Zoning Appeals for a reasonable extension(s) of time, not beyond December 31, 2016, during which said sign may be maintained at its present location.
- C. Exemption: existing signs erected which are located above line of sound walls along the Long Island Expressway, and wherein the removal and lowering of said sign would completely obstruct the sign.

[1] *Editor's Note: This local law also renumbered former § 57A-23 as § 57A-24.*

§ 57A-24. Penalties for offenses.

[Amended 8-14-2001 by L.L. No. 21-2001, effective 8-17-2001; 12-13-2011 by L.L. No. 28-2011, effective 12-28-2011; 3-25-2014 by L.L. No. 6-2014, effective 4-1-2014]

- A. Any violation of this chapter, except § 57A-11, shall subject the owner of said sign and/or the owner of the land upon which the sign is placed and/or the entity advertised on said sign to a fine of not less than \$100 nor more than \$500 or to imprisonment for a period not to exceed 15 days, or both.
- B. Any violation of § 57A-11 shall subject the owner of said sign and/or the entity advertised on said sign to a fine of \$250.

§ 57A-25. Severability.

[Added 12-13-2011 by L.L. No. 28-2011, effective 12-28-2011]

If any clause, sentence, paragraph or section of this chapter shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not impair or invalidate the remainder hereof, but such adjudication shall be confined in its operation to the clause, sentence, paragraph or section directly involved in the controversy in which judgment shall have been rendered.

*Town of Brookhaven, NY
Thursday, October 3, 2019*

Chapter 70. Tree Preservation

[HISTORY: Adopted by the Town Board of the Town of Brookhaven 6-16-1987 by L.L. No. 7-1987. Amendments noted where applicable.]

GENERAL REFERENCES

Disposition of trees and debris — See Ch. 72.

Subdivision regulations — See Appendix.

§ 70-1. Intent.

The vital environmental function which trees serve within the ecological structure of the Town of Brookhaven is well recognized. Trees are recognized to provide various benefits to the environment, including the stabilization and preservation of the soil, the absorption of air pollutants and the provision of oxygen and to further provide natural barriers to noise and habitats for wildlife, while maintaining and offering an intrinsic aesthetic quality. The destruction or removal of trees deprives all sectors of society of these benefits while disrupting the ecological systems of which they are an integral part. Thus, it is the intent of the Town Board of the Town of Brookhaven in enacting this chapter to regulate the destruction and removal of trees to secure these various benefits for the present and future inhabitants of the Town of Brookhaven.

§ 70-2. Definitions.

For the purpose of this chapter, the following terms and phrases shall be given the meanings stated herein:

APPLICANT

The owner of real property, or his duly authorized agent, seeking a permit to remove trees pursuant to the provisions of this chapter.

DEAD OR DYING TREE

A tree that is dead or has been damaged beyond repair, or is in an advanced state of decline, as determined by the Commissioner of Planning, Environment and Land Management, or his/her designee, or an arborist certified by the International Society of Arboriculture (ISA).

[Added 11-20-2018 by L.L. No. 27-2018, effective 12-3-2018]

LANDMARK TREE

Any tree which has a special character based on environmental, social, aesthetic, or historical value, which constitutes a distinct significance as to warrant its conservation, preservation and protection from adverse influences, as so designated by the Town Board of the Town of Brookhaven.

[Added 11-20-2018 by L.L. No. 27-2018, effective 12-3-2018]

PERSON

Any firm, partnership, association, corporation, company, public utility or individual.

PLANNING BOARD

The Planning Board of the Town of Brookhaven.

TREE

Any living, perennial, woody plant, its branches, its root system and its trunk, if greater than three inches in diameter measuring three feet from ground level, and six feet in height measured from ground level.

§ 70-3. Permit required.

[Amended 7-21-2016 by L.L. No. 19-2016, effective 8-15-2016]

No person shall destroy or remove from the soil any tree growing upon a parcel of real property of any size which is zoned for commercial or industrial use or which is in excess of two acres in size and is zoned for residential use or commit any act which causes the destruction or cessation of life functions of any tree growing upon such real property without first having obtained a permit issued therefor as prescribed by this chapter. In determining the area of a parcel of real property for the purpose of this chapter, whenever any two or more contiguous parcels of property are subject to common ownership, such two or more parcels are deemed merged, and the total area thereof shall be the determinant size for the application of this section. No such permit shall be issued unless a building permit has been issued.

§ 70-4. Exemptions.

[Amended 3-7-1989 by L.L. No. 8-1989, effective 3-13-1989; 3-6-1990 by L.L. No. 10-1990, effective 3-12-1990; 7-21-2016 by L.L. No. 19-2016, effective 8-5-2016]

A. Surveying and soil investigation activities.

- (1) Destruction or removal of trees incidental to surveying and soil investigation activities shall not be undertaken for any parcel of property of any size which is owned for commercial or industrial use or which is in excess of two acres in size and is zoned for residential use, unless such destruction or removal is in conformity with a plan approved by the Commissioner of the Department of Planning, Environment and Development pursuant to the provisions contained hereunder.
- (2) Prior to destruction or removal of trees incidental to surveying and soil investigation activities, the property owner, or designee, shall apply to the Commissioner of the Department of Planning, Environment and Development for permission to remove or destroy trees in order to undertake said activities. No trees may be destroyed or removed except in conformity with an approved plan.
- (3) Said application shall be accompanied by a one-inch-equals-two-hundred-feet scale topographical map of the site and a one-inch-equals-two-hundred-feet scale aerial photograph. In the event that the applicant is applying for approval to construct test holes for soil analyses and groundwater monitoring, the applicant shall provide a map from the Suffolk County Department of Health Services indicating its approved test hole and well sites. The applicant shall indicate on the topographical map and on the aerial photograph the boundaries of the site and the extent of clearing needed for the surveying and soil investigation activities.
- (4) The fee for said application shall be as established by Town Board resolution.
[Amended 11-20-2018 by L.L. No. 26-2018, effective 12-3-2018]
- (5) The application shall be on such form and contain such information as may be required by the Commissioner of the Department of Planning, Environment and Development, and in approving said application, the Commissioner may limit the amount of tree destruction or removal contemplated by the applicant.

- B. Any person doing business as a public utility subject to the jurisdiction of the New York State Public Service Commission and any duly constituted public agency authorized to provide utility services shall be permitted to trim, prune or alter any tree which may otherwise be lawfully altered by such person, to the minimum extent necessary to enable such person to repair existing utility services, without having first obtained a permit issued therefor pursuant to § 70-3 of this chapter.
- C. The provisions of this chapter shall not apply to real property included in any approved subdivision or approved site plan when such approval was granted by the Planning Board prior to the effective date of this chapter. Notwithstanding the foregoing, in the event that building permits have not been issued for said approved subdivision or approved site plan, this chapter shall apply, and no building permit shall issue until all applicable provisions of this chapter have been complied with.
- D. Any person required by the Code of the Town of Brookhaven to submit an application to the Planning Board for approval of a proposed subdivision or site plan after the effective date of this chapter shall submit with such application the information required for a permit pursuant to § 70-6 of this chapter. No subdivision or site plan shall be approved by the Planning Board without due consideration of such information. Approval of a subdivision or site plan pursuant to this section shall relieve the applicant for such approval of the necessity to obtain a permit required by § 70-3 of this chapter, and the approval of such subdivision or site plan shall constitute adequate compliance with this chapter. However, in the event of a subdivision, tree clearing and removal may commence prior to issuance of building permits restricted to those areas of the subdivision which are to be developed as roads and/or drainage facilities.
- E. Any person who has filed an application for approval of a subdivision or site plan prior to the effective date of this chapter and has not received approval of the same prior to the effective date of this chapter shall submit to the Planning Board such information relative to the preservation of trees as the Planning Board may request.
- F. The New York State Department of Environmental Conservation shall be permitted to trim, prune or remove trees pursuant to the New York Environmental Conservation Law without the necessity of obtaining a permit pursuant to this chapter.

§ 70-5. Administration of provisions.

This chapter shall be administered by the Planning Board which shall have the authority to promulgate rules and regulations for the effective administration of this chapter consistent with the legislative intent of this chapter. The Planning Board shall have the authority to delegate the administration of this chapter to its departmental personnel.

§ 70-6. Application; issuance of permit; fee.

- A. Every applicant for a permit required by this chapter shall submit an application to the Planning Board on such form as may be prescribed by the Planning Board. Such application shall include the following information:

- (1) The name and address of the applicant and owner, if not the same.
 - (2) The purpose of the proposed tree removal.
 - (3) The site of the proposed tree removal.
 - (4) An attached sketch or plan of the area clearly indicating the following:
 - (a) An outline of existing heavily wooded areas on the site.
 - (b) The location of any improvements on the property.
- B. In acting upon the application, the Planning Board shall take into account the following considerations:
- (1) The location and size of the tree or trees to be removed.
 - (2) The condition of the trees with respect to disease and potential for creating hazardous conditions.
 - (3) The proximity of the trees to existing or proposed structures and utility appurtenances.
 - (4) The necessity of the removal for the proposed project.
 - (5) The environmental effect of the removal.
 - (6) Any of the considerations enumerated in the legislative intent of this chapter.
- C. The Planning Board shall evaluate the considerations of Subsection **B** upon the advice and recommendations of the Town of Brookhaven Division of Environmental Protection.
- D. The Planning Board shall advise the applicant, in writing, of its decision on the application and, upon the favorable determination of such application, issue a permit therefor.
- E. The fee for a tree clearing permit shall be as established by Town Board resolution.
[Amended 3-6-1990 by L.L. No. 10-1990, effective 3-12-1990; 11-20-2018 by L.L. No. 26-2018, effective 12-3-2018]

§ 70-7. Effect on parking space requirements.

In the event that an applicant for site plan approval who submits with the application the information required pursuant to §§ **70-4D** and **70-6A** is required by the Planning Board to preserve trees and such preservation results in a decrease of the number of available parking spaces otherwise required by the applicable provisions of the Code of the Town of Brookhaven, the Planning Board shall have the authority to waive such parking space requirements commensurate with the number of spaces lost, in acting upon the application for site plan approval.

§ 70-8. Landmark trees.

[Added 11-20-2018 by L.L. No. 27-2018, effective 12-3-2018^[1]]

- A. A landmark tree, located upon Town of Brookhaven owned property, may be established by Town Board resolution.
- B. A landmark tree, located upon property not owned by the Town of Brookhaven, may be established by Town Board resolution after obtaining written permission from the property owner.
- C. The Commissioner of Planning, Environment and Land Management shall provide a written recommendation to the Town Board regarding the designation of a landmark tree. The Commissioner of Planning, Environment and Land Management shall obtain the recommendation of the Superintendent of Highways for all trees proposed as landmark trees within the Town rights-of-way, recharge areas or any other land that is under the jurisdiction of the Superintendent of Highways prior to making a recommendation to the Town Board. The Commissioner of Planning, Environment and Land Management shall consider the following:
 - (1) Whether the tree is rare or endangered pursuant to any local, state or federal agency having jurisdiction over same; or
 - (2) Whether the tree is included in New York State's Big Tree Register or is on the American Forests National Register of Big Trees; or
 - (3) Whether the tree has been designated as an historic landmark by the Town, state or federal government; or
 - (4) Whether the tree has been designated as a New York State Champion or an American Forests Champion Tree; or
 - (5) Whether the tree possesses exceptional value or quality in illustrating or interpreting the heritage of the Town of Brookhaven, State of New York or the United States; or

- (6) Whether the tree was alive and present for any key historical events in Town of Brookhaven, State of New York or the United States; or
 - (7) Whether the tree contains special environmental, social, aesthetic, or historical characteristics which warrant conservation, preservation or protection from adverse influences; or
 - (8) Any other factors which the Commissioner determines to be relevant to protecting and designating a tree as a landmark.
- D. The Commissioner of Planning, Environment and Land Management shall maintain a list of all landmark trees.
- E. No landmark tree shall be destroyed or removed from the soil or any act committed which causes the destruction or cessation of life functions of any landmark tree located in the Town of Brookhaven without permission of the Town Board of the Town of Brookhaven and without a permit issued therefor as prescribed by this chapter.
- (1) Exceptions:
- (a) This section shall not apply to the Superintendent of Highways when acting in accordance with the authority granted pursuant to Highway Law § 153.
 - (b) This section shall not apply to the removal or substantial alteration of a hazardous landmark tree or a dead or dying tree that has been established as a landmark tree in an emergency to protect persons, wildlife or property from imminent danger, as determined by the Town, an ISA certified arborist, emergency service worker, or as documented by photographic evidence.
 - (c) This section shall not apply to a public utility subject to the jurisdiction of the New York State Public Service Commission removing or trimming trees on lands within its jurisdiction.

[1] *Editor's Note: This ordinance also renumbered former § 70-8 as § 70-9.*

§ 70-9. Penalties for offenses.

[Amended 9-1-1992 by L.L. No. 10-1992, effective 9-8-1992; 4-16-2009 by L.L. No. 7-2009, effective 4-27-2009; 11-20-2018 by L.L. No. 27-2018, effective 12-3-2018]

- A. Criminal penalties.
- (1) Any person who commits, takes part or assists in the destruction or removal of any tree without having first obtained a permit issued therefor pursuant to this chapter or who destroys or removes any tree in a manner inconsistent with such permit or the requirements of an approved subdivision or site plan shall be guilty of a violation punishable by a fine of not less than \$500 nor more than \$2,000 or by imprisonment for a period not to exceed 15 days, or by both such fine and imprisonment, for conviction of a first offense; and by a fine of not less than \$1,000 nor more than \$3,000 or by imprisonment for a period not to exceed 15 days, or by both such fine and imprisonment, for conviction of a second offense. This subsection shall not apply to landmark trees.
 - (2) Any person who commits, takes part or assists in the destruction or removal of a landmark tree without having first obtained permission of the Town Board and a permit issued therefor pursuant to this chapter or who destroys or removes any landmark tree in a manner inconsistent with such permit shall be guilty of a violation punishable by a fine of not less than \$500 nor more than \$2,000. All fines collected pursuant to this subsection shall be deposited into a dedicated fund for the planting of trees within the Town of Brookhaven.
- B. Civil penalties. In addition to any criminal penalties which may be imposed pursuant to Subsection **A**, any person who violates any provision of this chapter may be ordered to restore the premises damaged by the unlawful destruction or removal of trees to such suitable conditions as the Planning Board may require. In the event that such person refuses or fails to restore the real property to a condition ordered by the Planning Board, the Planning Board or the Town Board may proceed in a court of competent jurisdiction for an order directing such person to restore such real property in conformity with the requirements of the Planning Board. In the event that the Town of Brookhaven is compelled to restore such real property all costs incurred incidental to such restoration shall be assessed against the real property in question.
- C. Revocation of approvals. In addition to any civil or criminal penalties which may be imposed pursuant to Subsection **A** or **B**, the Commissioner of the Department of Planning, Environment and Land Management is hereby authorized and empowered to revoke any building permit when it appears that unlawful destruction or removal of trees has taken place. The Planning Board is hereby authorized to revoke any site plan or subdivision approval where it appears that the unlawful destruction or removal of trees has taken place. In the event that a building permit, site plan or subdivision approval is to be revoked, a hearing must be held on not less than 48 hours' written notice to the person whose name appears on the building permit application, site plan application or subdivision application. Written notice shall also be given to the last known owner of the subject premises as appears on the current Brookhaven Town assessment roll. The hearing provided for therein shall, in the case of a building permit revocation, be held before the Commissioner of the Department of Planning, Environment and Land Management or his designee. The hearing called for in said notice, in the case of a site plan or subdivision approval revocation, shall be before the Planning Board. In the event that said building permit, site plan or subdivision approval is revoked, the Town Attorney is hereby authorized and empowered to institute a proceeding in a

court of competent jurisdiction to restrain any further development on the subject site and to seek sufficient funds for restoration of the site as provided in Subsection **B**.

[Amended 11-20-2018 by L.L. No. 27-2018, effective 12-3-2018]

§ 70-10. (Reserved)

*Town of Brookhaven, NY
Thursday, October 3, 2019*

Chapter 72. Trees and Debris, Disposition of

[HISTORY: Adopted by the Town Board of the Town of Brookhaven 6-16-1987 by L.L. No. 7-1987; amended in its entirety 7-20-2017 by L.L. No. 20-2017, effective 8-2-2017. Subsequent amendments noted where applicable.]

GENERAL REFERENCES

Dumps and disposal areas — See Ch. **24**.

Sanitation — See Ch. **45**.

Property maintenance — See Ch. **49**.

Tree preservation — See Ch. **70**.

§ 72-1. Findings; purpose.

It has been established that the indiscriminate burial of trees, tree branches and other debris upon property and the use of unacceptable fill contribute to improper grading, structural instability, flooding, contamination, and subsoil insect infestation. It is the purpose of this chapter to prevent the indiscriminate burial of trees, tree branches, and other debris and the use of unacceptable fill on property located within the Town of Brookhaven in order to protect the health, safety and welfare of the residents of the Town of Brookhaven.

§ 72-2. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

ACCEPTABLE FILL

Material that is artificially deposited on a site which:

- A. Is composed of clean, non-burnable inorganic components containing no solid waste; and
- B. Is generally derived from residential excavations or sand mining of undeveloped lands; and
- C. Exhibits good drainage characteristics and does not contain more than 5% clay or silt; and
- D. Does not contain contaminants in excess of soil cleanup objectives under 6 NYCRR Part 375-6.8(b) for the approved land use; and
- E. Does not contain refuse or offal or other unwholesome matter, recognizable concrete, steel, or brick or any discarded material or substances, including but not limited to garbage, rubber, glass, refuse, sludges from air or water pollution control facilities or water supply treatment facilities, rubbish, ashes, dredge spoils, contained gaseous materials, incinerator residue, construction and demolition debris and other discarded materials and substances resulting from industrial, commercial, mining or agricultural operations or from community activities, or the carbon component (or "content of") in energy waste, or any organic matter that may decompose over time

DEBRIS

The remains of any material that is present upon a lot and which was not naturally existing upon such lot prior to its development, including but not limited to scrap wood, lumber, shingles, building materials, tires, cans, paper, insulation and cement.

PERSON

Any individual, firm, partnership, association, corporation, company, public agency, public utility or organization of any kind, or agent thereof.

TREE

Any woody plant or part thereof, including the root system and branch system, which plant measures at least five feet from the point where such plant enters or would enter the ground to the farthest point of any branch, leaf or extremity.

§ 72-3. Burial of trees prohibited.

The burial of trees or debris in, upon or under property located within the Town of Brookhaven is expressly prohibited.

§ 72-4. Use of fill.

Only acceptable fill shall be permitted to be used on property within the Town of Brookhaven.

§ 72-5. Exemption.

This chapter does not apply to the burial or other disposition of trees, debris, or materials which do not meet the definition of acceptable fill, as defined herein, in, upon or under any official Town landfill, Town dump or Town disposal area, provided that such disposition is in accordance with Chapters **24** and **45** of the Code of the Town of Brookhaven.

§ 72-6. Penalties for offenses.

- A. The owner or owners of any building or premises or part thereof, or any person in possession thereof where any violation of this chapter has been committed or shall exist, and any architect, builder, contractor, agent, person or corporation who or which knowingly commits, takes part or assists in any such violation, or who maintains any building, structure or premises in which any such violation exists, shall be guilty of a violation of such chapter, which shall be punishable for a first offense by a fine not exceeding \$5,000 or imprisonment not to exceed 15 days, or both; for a second offense within a five-year period, by a fine not less than \$5000 and not exceeding \$10,000 or imprisonment for a period not to exceed 15 days, or both; and for a third or subsequent offense within a five-year period, by a fine of not less than \$10,000 and not exceeding \$25,000 and imprisonment for a period not exceeding six months. Each week's continued violation shall constitute a separate additional violation.
- B. In addition to the penalties authorized in this section, the Town Attorney is authorized to ask the court for restitution and reparation in accordance with Penal Law § 60.27.

*Town of Brookhaven, NY
Thursday, October 3, 2019*

Chapter 75. Vegetation on Beach Areas

[HISTORY: Adopted by the Town Board of the Town of Brookhaven 6-16-1987 by L.L. No. 7-1987. Amendments noted where applicable.]

GENERAL REFERENCES

Beaches — See Ch. 9.

§ 75-1. Restrictions on removal of vegetation.

No person shall move, remove or destroy any grass or actual growth of vegetation whatsoever from any lands in the Town of Brookhaven on the Great South Beach and on the beach and cliff adjacent to the Long Island Sound, except as herein provided.

§ 75-2. Applicability.

The provisions hereof shall apply to an owner of the whole or of any interest in said lands and to any lessee, tenant or other occupant thereof and to any person whatsoever, whether legally or illegally upon said lands.

§ 75-3. Town Board to regulate.

The Town Board of the Town of Brookhaven may enact rules and regulations to regulate and control the taking, destruction, moving, transplanting or replacing of beach grass or natural growth of vegetation on said lands as may from time to time appear necessary for the protection of the property and inhabitants of the Town and its welfare, and permits issued pursuant hereto shall be issued subject to such rules and regulations.

§ 75-4. Chief Building Inspector to issue permit.

The Chief Building Inspector of the Town of Brookhaven is hereby authorized and empowered to issue a written permit for the taking, destruction, moving, transplanting or replanting of said beach grass or natural vegetation, subject to any rules and regulations adopted by the Town Board of the Town of Brookhaven. If no such rules are adopted or if they do not apply to a particular situation, the Chief Building Inspector shall only issue such permit if it appears that the issuance of the permit will not endanger the welfare and property of the Town of Brookhaven and its inhabitants and will not cause or contribute to the erosion of said lands.

§ 75-5. Application.

A permit mentioned in § 75-4 hereof shall only be issued upon the presentation of a written application to the Chief Building Inspector and the payment of such fee as may be required by the Town of Brookhaven under the rules and regulations adopted by it and subject to compliance with

those rules and regulations. The application shall be verified and shall set forth:

- A. The name of the applicant.
- B. His interest in the area concerned.
- C. If the applicant is not the owner, his right or authority to do the work under the permit, and proof must be submitted of that right or authority.
- D. A description of the area concerned.
- E. The reason for the application.
- F. If the area concerned is to be improved with a structure, an agreement to replant the adjacent area or, if the area concerned is not to be improved, an agreement to replant the area from which the beach grass or other vegetation is removed.
- G. The time within which the work under the permit will be commenced and completed.
- H. An agreement to comply with the requirements of the Chief Building Inspector of the Town of Brookhaven and any rules and regulations adopted by the Town of Brookhaven pursuant hereto.

§ 75-6. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

PERSON

Includes any firm, partnership or corporation.

§ 75-7. Recovery of damages or penalties.

The enactment hereof or any prosecution hereunder shall not be deemed to prevent or prohibit an action for the recovery of damages or penalties by any public authority or private individual.

§ 75-8. Penalties for offenses.

A violation of the foregoing shall be a violation punishable by a fine not exceeding \$500 or by imprisonment not exceeding 15 days, or both.

Town of Brookhaven, NY
Thursday, October 3, 2019

Chapter 76. Coastal Erosion Hazard Areas

[HISTORY: Adopted by the Town Board of the Town of Brookhaven 4-3-2001 by L.L. No. 7-2001, effective 4-9-2001.^[1] Amendments noted where applicable.]

GENERAL REFERENCES

Bay and harbor bottoms — See Ch. 8.

Beaches — See Ch. 9.

Docks — See Ch. 22.

Shellfish — See Ch. 57.

Vegetation on beach areas — See Ch. 75.

Water resources — See Ch. 78.

Critical environmental areas — See Ch. 80.

Wooden public walks — See Ch. 83.

[1] *Editor's Note: This local law repealed former Ch. 76, Coastal Erosion Hazard Areas, adopted 3-7-1995 by L.L. No. 9-1995.*

§ 76-1. Legislative intent.

- A. Purpose. The Town Board of the Town of Brookhaven hereby declares its intent to establish a coastal erosion management program pursuant to its authority under Article 34 of the Environmental Conservation Law, applicable to the Town's north shore and Fire Island coastal areas, in furtherance of this Board's ongoing policy of preservation, protection and enhancement of the Town's unique natural environment by implementing this program and through the regulatory framework for the Town's coastal areas as set forth herein below, which includes but is not limited to the following goals and objectives:
- (1) To establish standards calculated to minimize and/or prevent damage to existing structures from coastal flooding and erosion and to preserve natural protective features and/or other natural resources.
 - (2) To regulate land use and development activities so as to minimize and/or prevent damage and/or destruction to existing physical improvements, natural protective features, other natural features and resources, and for the protection of human life.
 - (3) To regulate new construction in environmentally sensitive areas, including but not limited to the siting of structures a safe distance away from areas of active erosion and away from reasonably anticipated impacts of coastal storms in order to prevent premature damage and/or destruction thereof, and prevent damage to natural protective features and other natural resources.
 - (4) To regulate the construction of erosion protection structures in coastal areas which are subject to serious erosion, in order to assure that, if justified, the construction and operation of such structures will minimize or prevent damage of or destruction to improvements thereto on private and public real property, natural protective features, and other natural resources.

- (5) To restrict public investment in services, facilities, or activities which are likely to encourage new permanent development in erosion hazard areas.
- B. Findings. This Town Board hereby finds and determines that the coastal erosion hazard areas, located on its north shore and Fire Island shorelines:
- (1) Are prone to erosion from the action of the Long Island Sound and the Atlantic Ocean, respectively. Such erosion may be caused by the action of waves, currents running along the shore, and wind-driven water and ice. Such areas are also prone to erosion caused by the wind, runoff of rainwater along the surface of the land, or groundwater seepage, as well as by human activities such as construction, navigation and certain forms of recreation.
 - (2) Experience coastal erosion which causes extensive damage to publicly and privately owned property and to natural resources as well as endangering human lives. When this occurs, individuals and private businesses suffer significant economic losses, as do the Town and the state economies, either directly through property damage or indirectly through loss of economic return. Large public expenditures may also be necessitated for the removal of debris and damaged structures and the replacement of essential public facilities and services.
 - (3) Experience erosion-related problems that are often contributed to by man's building without considering the potential for damage to property, by undertaking activities which destroy natural protective features such as dunes or vegetation, by building structures intended for erosion prevention which may exacerbate erosion conditions on adjacent or nearby property, and by water action produced by wakes from boats.
 - (4) Are the subject of programs which foster erosion protection structures, either with private or public funds, which are costly, often only partially effective over time, and may even be harmful to adjacent or nearby properties. In some sections of the Town, major erosion protection structures of great length would be required to effectively reduce future damages due to erosion.

§ 76-2. Title.

This chapter shall be known as and may be cited as the "Coastal Erosion Hazard Area Law."

§ 76-3. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

ADMINISTRATOR

The Director of the Division of Environmental Protection.

APPARENT LOW WATER

The approximate average low water level for a given body of water at a given location, determined by reference to hydrological information concerning water levels or other appropriate tests.

BEACH

The zone of unconsolidated earth that extends landward from the apparent low water line to the waterward toe of a dune or bluff, whichever is most waterward; where no dune or bluff exists landward of a beach, the landward limit of a beach shall be 100 feet landward from the place where there is a marked change in natural material or physiographic form, or from the

line of permanent vegetation, whichever is most waterward; shorelands subject to seasonal or more frequent overwash or inundation shall constitute a beach.

BLUFF

Any bank or cliff with a precipitous or steeply sloped face adjoining a beach or a body of water. The waterward limit of a bluff is the landward limit of its waterward natural protective feature. Where no beach is present, the waterward limit of a bluff is mean low water. The landward limit is 25 feet landward of the receding edge or, in those cases where there is no discernible line of active erosion, 25 feet landward of the point of inflection on the top of the bluff. (The point of inflection is that point along the top of the bluff where the trend of the land slope changes to begin its descent to the shoreline.)

[Amended 12-17-2002 by L.L. No. 26-2002, effective 12-20-2002]

COASTAL EROSION HAZARD AREAS (CEH AREAS)

Those so identified and depicted on the final maps prepared by the State Department of Environmental Conservation, as amended by the Commissioner, pursuant to § 34-0104 of the Environmental Conservation Law, entitled "Coastal Erosion Hazard Area Map For The North Shore of the Town of Brookhaven" and "Coastal Erosion Hazard Area Map" for Fire Island in the Town of Brookhaven.

COASTAL EROSION HAZARD AREA MAP

The final map, and amendments thereto as shall be issued by the Commissioner of the Department of Environmental Conservation, delineating boundaries of coastal erosion hazard areas.

COASTAL EROSION MANAGEMENT PERMIT

A written approval for the undertaking of any regulated activity within coastal erosion hazard areas as mapped by the Commissioner.

COASTAL VEGETATION

Plant life capable of surviving and successfully reproducing and which is compatible with the natural environment of the designated coastal erosion hazard area(s).

COASTAL WATERS

Include Long Island Sound and the Atlantic Ocean.

COASTLINE

Lands adjacent to the Town's coastal waters.

COMMISSIONER

The Commissioner of the Department of Environmental Conservation.

DEBRIS LINE

A linear accumulation of water-borne debris deposited on a beach by high water or by wave action.

DUNE

A ridge or hill of loose, windblown or artificially placed earth, the principal component of which is sand, includes the primary dune and a secondary dune, if existent.

EMERGENCY

A natural or an accidental human-made event which presents an immediate threat to life, health, safety, property, or the environment.

EMERGENCY ACTIVITIES

Those proposed actions designed to provide structural support to buildings or structures that have incurred or are in imminent peril of incurring damage and without which such buildings or

structures may suffer such further failure as may cause them to exacerbate erosion, or increase damage to other buildings, or structures, or to natural or man-made protective features, by water- or wind-borne remnants and debris from such failed buildings or structures.

EROSION

The loss or displacement of land along the coastline due to the action of waves, currents, wind-driven water, water-borne ice or other impacts of storms and/or the loss or displacement of land due to the action of wind, surface runoff or groundwater seepage.

EROSION HAZARD AREA

An area of the coastline that is a natural protective feature area.

EROSION PROTECTION STRUCTURE

A structure specifically designed to reduce or prevent erosion such as a groin, jetty, revetment, breakwater or artificial beach nourishment project.

EXISTING STRUCTURE

A structure and appurtenances in existence or one where construction has commenced or one where construction has not begun but for which a building permit has been issued prior to the effective date of this chapter. "Existing structure" also includes any structure or appurtenance which was initially constructed outside an erosion hazard area, but as a result of amendments to coastal erosion hazard area maps is located in an erosion hazard area.

FIRE ISLAND

A barrier island located on the south shore of Brookhaven also known as the Great South Beach. For purposes of this chapter, "Fire Island" refers only to the side of Fire Island fronting the Atlantic Ocean.

FUNCTIONAL STRUCTURE

A functioning structure is one, which is fully performing as originally designed.

GRADING

A redistribution of sand or other unconsolidated earth to effect a change in profile.

MAJOR ADDITION

An addition to a structure resulting in a twenty-five-percent or greater increase in the ground area coverage of the structure other than an erosion protection structure or a pier, dock or wharf. The increase will be calculated as the ground area coverage to be added, including any additions previously constructed under a coastal erosion management permit, divided by the ground area coverage of the existing structure as defined in "existing structure."

MINOR ADDITION

Any addition other than a major addition.

MODIFICATION

A change in the size, design or function of a structure or erosion protection structure.

NATURAL PROTECTIVE FEATURE

A near-shore area, beach, bluff, primary dune, secondary dune or marsh and their vegetation.

NATURAL PROTECTIVE FEATURE AREA

A land and/or water area containing natural protective features, the alteration of which may reasonably be anticipated to reduce or destroy the protection afforded nearby lands against erosion from natural high water, or result in the lowering of existing sand reserve(s), or natural materials available for natural replenishment of storm losses through natural processes.

NEAR-SHORE AREA

Underwater lands beginning at the apparent low water line and extending waterward in a direction perpendicular to the shoreline to a point where apparent low water depth is 15 feet, or to a horizontal distance of 1,000 feet from the apparent low water line, whichever is greater.

NORMAL MAINTENANCE

Periodic replacement or repair of like-kind structural elements or protective coatings which do not result in the alteration of the size, design or function of an existing functional structure.

NORTH SHORE

The area of shoreline directly fronting Long Island Sound, excluding its bays and harbors.

PERSON

Any individual, public or private corporation, political subdivision, government agency, public improvement district, partnership, association, firm, trust, estate or any legal entity whatsoever.

PRIMARY DUNE

The most waterward major dune where there are two or more parallel dunes within a coastal area. Where there is only one dune present, it is the primary dune. Occasionally one or more relatively small dune forms exist seaward of the primary dune. These smaller formations will be considered to be part of the primary dune for the purposes of this chapter. The seaward limit of the primary dune is the landward limit of its fronting beach. The landward limit of the primary dune is 25 feet landward of its landward toe.

RECEDING EDGE

The most landward line of active erosion.

RECESSION RATE

The average rate, expressed in feet per year, at which an eroding shoreline moves landward.

REGULATED ACTIVITY

The construction, modification, restoration or placement of a structure, major addition to a structure, or any action or use of land which materially alters the condition of land or the vegetation protective thereof including grading, excavating, dumping, mining, dredging, filling, other disturbance to the soils, or the alteration of existing vegetation protecting a bluff or dune area which diminishes said vegetation's protective quality applicable to a natural protective feature relating to erosion, such as the cutting (mowing) of grasses, the cutting or pruning or topping of shrubs and trees.

RESTORATION

The reconstruction without modification of a structure, the cost of which equals or exceeds 50% of the estimated current full replacement cost thereof at the time of restoration. Modifications, however, maybe allowed if they do not exceed preexisting size limits and are intended to mitigate the impacts to natural protective features and other natural resources.

SECONDARY DUNE

The major dune immediately landward of a primary dune, the seaward limit of which is the landward limit of its fronting primary dune, and the landward limit of which is 25 feet landward of its landward toe.

SIGNIFICANT FISH AND WILDLIFE HABITAT

Habitats which:

- A. Are essential to the survival of a substantial portion of a particular fish or wildlife population;
- B. Support rare or endangered species;

- C. Are found at a very low frequency within a geographic area;
- D. Support fish or wildlife populations having important commercial or recreational value(s);
or
- E. That would be difficult or impossible to replace.

STRUCTURE

Any fabricated object constructed, installed or placed in, on, or under land or water, including, but not limited to: building(s), shed(s); decks; swimming pools; garages; mobile homes; roads; public service distribution and transmission facilities, or collection system(s); tanks; docks; piers; wharfs; groins; jetties; seawalls; bulkheads; breakwaters; revetments; and any addition to or alteration of the aforesaid.

TOE

The lowest point on a dune or bluff slope.

UNREGULATED ACTIVITY

Activities not subject to regulation under this chapter, including but not limited to: elevated walkways and stairways constructed solely for pedestrian use and installed by an individual property owner(s) solely for noncommercial access to the beach; ordinary beach grooming and clean-up; ordinary and customary maintenance of structures and/or in compliance with an approved maintenance program; planting coastal vegetation; establishing sand fencing so as to stabilize or entrap sand in primary dune and secondary dune areas which are intended to stabilize and/or enhance dune dimensions or increase dune height; the implementation of practices recommended in a soil and water conservation plan as defined in Section 3(12) of the Soil and Water Conservation Districts Law, provided that agricultural operations and the implementation of practices as aforesaid shall not be construed to include any activity that involves the construction or installation of a structure(s).

§ 76-4. Prohibitions.

The following enumerated activities shall be prohibited in coastal erosion hazard areas:

A. In near-shore areas:

- (1) Excavation, grading, mining or dredging which is reasonably anticipated to result in the diminution of erosion protection afforded by existing features of the near-shore area, unless specifically authorized by this chapter;
- (2) The construction of new structure(s);
- (3) Activities not otherwise authorized by this chapter;

B. In beach areas:

- (1) Excavation, grading or mining which diminishes the erosion protection afforded by the beach as then configured;
- (2) Construction of new structure(s) unless otherwise specifically authorized by this chapter;
- (3) Disturbance to active bird nesting and breeding areas unless such disturbance is pursuant to an approved wildlife management activity as evidenced by a duly authenticated written approval by the Department of Environmental Conservation;
- (4) Activities not otherwise authorized by this chapter.

C. In primary dune areas:

- (1) Excavation, grading or mining of a primary dune;
- (2) Vehicular traffic except in areas specifically designated for dune crossing by vehicles;
- (3) The construction and/or installation of any new structure unless otherwise authorized by this chapter;
- (4) Disturbance to active bird nesting and breeding areas unless such disturbance is pursuant to an approved wildlife management activity as evidenced by a duly authenticated written approval by the Department of Environmental Conservation;
- (5) Activities not otherwise authorized by this chapter.
- (6) Pedestrian traffic which causes sufficient damage to primary dunes to diminish the erosion protection afforded by them.

D. In bluff areas:

- (1) Excavation, grading or mining except:
 - (a) The minor alteration of a bluff subject to such reasonable conditions as may be set forth in a coastal erosion management permit issued therefor; and
 - (b) A bluff cut made in a direction perpendicular to the shoreline to provide shoreline access so long as: the ramp slope of the bluff cuts shall not exceed 1:6; the side slopes shall not exceed 1:3, unless terraced or otherwise structurally stabilized; side slopes and other disturbed non-roadway areas are stabilized with vegetation and/or other approved physical means; completed roadways are stabilized with adequate drainage, all of which shall be subject to such reasonable conditions as may be set forth in the permit therefor.
- (2) Vehicular traffic;
- (3) All construction or installation of improvements unless otherwise authorized by the provisions of this chapter;
- (4) Disturbance of soil(s) which may be reasonably anticipated to result in the redirection of surface water runoff over a bluff face;
- (5) Disturbance to active bird nesting and breeding areas unless part of an authorized wildlife management activity, evidenced by a duly authenticated written approval by the Department of Environmental Conservation;
- (6) All other activities unless otherwise authorized by the provisions of this chapter.

§ 76-5. Coastal erosion management permits.

A permit shall be required for any of the following activities when proposed for sites located within a coastal erosion hazard area:

A. In near-shore areas:

- (1) Excavation, grading and dredging activities performed in conjunction with the construction and/or maintenance of navigation channels; the bypassing of sand around natural and man-made obstructions; and artificial beach nourishment;

- (2) The deposit of clean sand or gravel so long as any such material is comprised of grains equivalent to or slightly larger in size to that of existing near-shore area sediments;
- (3) The new construction, modification, or restoration of docks, piers, wharves, groins, jetties, seawalls, bulkheads, breakwaters, revetments, and artificial beach nourishment;

B. In beach areas:

- (1) The deposit of clean sand or gravel so long as any such material shall be composed of an equivalent or slightly larger grain size than existing beach sand or gravel;
- (2) Minor additions to existing structures;
- (3) The modification or restoration of docks, piers, wharves, boardwalks, groins, jetties, seawalls, bulkheads, breakwaters, revetments, and artificial beach nourishment.
- (4) Exceptions. Docks, piers, wharves, or other similar water-access structures built on floats, columns, open timber, piles, or similar open-work supports having a top surface area of 200 square feet or less or docks, piers, wharves, or other structures built on floats and removed in the fall of each year are excepted from this permit requirement.

C. In primary dune areas:

- (1) The deposit of clean sand, so long as composed of material which is of a compatible type and size to that of the existing sands, which deposits shall be vegetatively stabilized, within the time period specified in the permit, using species tolerant of existing conditions and placed in such a manner as to increase the size of and/or restore the dune or dune area;
- (2) Minor additions to existing structures;
- (3) New construction, modification, or restoration of stone revetments or other erosion protection structures compatible with primary dunes, provided they are located at the seaward toe of the primary dune and do not interfere with the exchange of sand between the primary dune and its fronting beach;
- (4) New construction, modification, or restoration of elevated walkways or stairways.

D. In secondary dune areas:

- (1) The deposit of clean sand of a compatible type and size to that existing so long as said deposit increases the size or restores the dune or former dune area;
- (2) Excavation, grading, or mining so long as no diminution of the erosion protection afforded by the secondary or primary dune may be reasonably anticipated to result;
- (3) Minor additions to existing structures;
- (4) The construction of new structures, restoration, or modification of existing structures or major addition to an existing structure so long as built on adequately anchored pilings providing a minimum of three feet of open space between the unobstructed floor joists and dune surface.

E. In bluff areas:

- (1) Minor alterations, excavation, mining and filling associated with the construction of an erosion protection structure;
- (2) Bluff cuts, so long as:

- (a) Made in a direction perpendicular to the shoreline;
 - (b) The ramp slope does not exceed 1:6;
 - (c) The side slopes do not exceed 1:3 unless terraced or otherwise structurally stabilized;
 - (d) The side slopes and other disturbed nonroadway areas are stabilized with vegetation or other physical means;
 - (e) The access roadway, if any, is stabilized and includes adequate drainage facilities;
 - (3) Construction of walkways or stairways;
 - (4) Restoration or modification of existing walkways or stairways;
 - (5) Minor additions to existing structures.
- F. Erosion protection structures requirements. The construction, modification or restoration of erosion protection structures, including the modification or restoration of existing erosion protection structure, excluding normal maintenance, subject to the following:
- (1) The proposed improvement(s) is not reasonably anticipated to result in a measurable increase in erosion at the development site or elsewhere;
 - (2) The proposed improvement(s) minimizes and/or prevents adverse effects upon natural protective features, and natural resources such as significant fish and wildlife habitats to the main extent practicable;
 - (3) Such improvement(s) are designed and constructed in accordance with generally accepted engineering principles and are demonstrably successful in controlling long-term erosion, or for which there is a reasonable probability of controlling erosion at the site for a period of at least 30 years;
 - (4) All materials used in such structures shall be durable and capable of withstanding inundation, wave impacts, weathering, and other effects of storm conditions for a minimum of 30 years. Component materials which have a working life of less than 30 years shall be subject to a program ensuring regular maintenance and/or replacement during a period of 30 years;
 - (5) Where appropriate, the establishment of a long-term maintenance program for the new, modified or reconstructed erosion protection structure and/or improvement, including specifications for regular maintenance of degradable materials and replacement thereof.
- G. Permits shall be issued only upon the Administrator's determination and findings that the proposed activity:
- (1) Is reasonable and necessary upon consideration of alternatives to the proposed activity and its proposed location;
 - (2) Is not likely to cause a measurable increase in erosion at the proposed site and/or at other related locations;
 - (3) Prevents or minimizes, to the maximum extent practicable, adverse effects on:
 - (a) Natural protective features;
 - (b) Their functions and protective values;

- (c) Existing erosion protection structures; and
 - (d) Existing natural resources, including but not limited to significant fish and wildlife habitats and shellfish beds.
- H. Application. The permit application shall be on such form as may be promulgated by the Administrator, which shall include, at minimum, the following information:
 - (1) A description of the proposed activity;
 - (2) A map drawn to a scale no smaller than 1:24,000, showing the location of the proposed activity;
 - (3) Any additional information deemed reasonably necessary by the Administrator to properly evaluate the proposed activity;
 - (4) Fee.
- I. Contents. Permits shall set forth the following elements:
 - (1) The activity(ies) authorized;
 - (2) The address or location of the proposed activity;
 - (3) The name and address of the applicant;
 - (4) Permit number and date of issuance;
 - (5) The period covered by the permit, if not otherwise specified, shall be one year from date of issuance;
 - (6) Terms and conditions as the Administrator deems necessary to ensure compliance with Article 34 of the Environmental Conservation Law, its implementing regulations, (6 NYCRR Part 505) and other relevant provisions of the Code of the Town of Brookhaven;
- J. Consolidated permits. When more than one coastal erosion management permit may otherwise be required for the same property and/or location pursuant to the provisions of this chapter, a consolidated permit may be issued for all such activities with conditions; revocation or annulment of one or more such authorized activity(ies) therein shall not invalidate other activities authorized by the consolidated permit.
- K. Coordination of review. When an application is made for a coastal erosion management permit, or other form of approval required by this chapter and such activity is subject to other permit hearings or approvals pursuant to any federal, state or local law or regulation, the Administrator shall, upon request of the applicant, consolidate and coordinate all required applications, permits, hearings and/or proceedings. Nothing contained herein shall be construed to limit or restrict any other governmental entity's jurisdiction.
- L. Security. The Town Board may require such security as it shall determine appropriate and necessary to insure satisfactory completion of the proposed improvements and/or activity(ies).

§ 76-6. Exceptions.

A permit, as otherwise required by this chapter, shall not be required for the following activities:

- A. In near-shore areas: The normal maintenance of structures.

B. In beach areas:

- (1) The normal maintenance of structures;
- (2) The restoration of existing structures that are damaged or destroyed by events not related to coastal flooding and erosion;
- (3) Beach grooming or clean-up operations.

C. In primary dune areas:

- (1) The normal maintenance of structures;
- (2) The restoration of existing structures that were damaged or destroyed by events other than coastal flooding and erosion;
- (3) Elevated walkways or stairways constructed solely for pedestrian use and built by or for an individual property owner or homeowners' association for the limited purpose of providing noncommercial access to the beach;
- (4) Vegetative planting and sand fencing intended to stabilize or entrap sand in order to maintain or increase the height and width of dunes, provided that the vegetative plantings are native species tolerant to salt spray and sand burial, such as American beach grass.

D. In secondary dunes areas:

- (1) The normal maintenance of structures;
- (2) The restoration of existing structures that were damaged or destroyed by events other than coastal flooding and erosion;
- (3) Elevated walkways or stairways constructed solely for pedestrian use and built by or for an individual property owner or homeowners' association for the limited purpose of providing noncommercial access to the beach.

E. In bluff areas:

- (1) The normal maintenance of structures;
- (2) The restoration of existing structures that are damaged or destroyed by events other than coastal flooding and erosion;
- (3) Elevated walkways or stairways constructed solely for pedestrian use and built by or for an individual property owner or homeowners' association for the limited purpose of providing noncommercial access to the beach.

F. In water and/or shore areas:

- (1) Docks, piers, wharves, or other water-access structures built on floats, columns, open timber, piles, or similar open-work supports having a top surface area of 200 square feet or less;
- (2) Docks, piers, wharves, or other water access structures built on floats which are removed in the Fall of each year.

G. Vehicular and pedestrian travel, subject to the following restrictions:

- (1) No vehicles of any kind whatsoever may be driven on or over a bluff or primary dune, except at Town-designated vehicle crossing areas;

- (2) Vehicle(s) shall not be driven on or over vegetation and/or vegetated areas; vehicles may be driven waterward of the debris line, or where no debris line exists, waterward of the waterward toe of the primary dune or bluff;
- (3) Pedestrians shall not traverse or walk across a primary dune except on elevated walkways, stairways or other dune crossing structures.

§ 76-7. Exemption for emergency activities.

- A. Applicability. Emergency activities necessary to protect public health, safety or welfare, including the prevention of damage to natural resources, shall be exempt from the regulations set forth in this chapter so long as such emergency activities shall be undertaken in such manner as to avoid, prevent and/or minimize damage to natural protective features and other natural resources to the maximum extent practicable under the circumstances and shall comply with the requirements set forth in this section.
- B. Written notification. Written notice of contemplated emergency measures shall be provided to the Administrator at least two days prior to the commencement of such work by the person, governmental body or entity authorized and/or required to undertake such emergency measure(s), which notice shall include the following:
 - (1) Description of the proposed action; and
 - (2) A location map and plan of the proposed action at a scale and in sufficient detail to fully disclose the nature and extent of the contemplated activity; and
 - (3) The rationale for the determination characterizing the circumstances as constituting an emergency.
- C. Findings. Prior to issuing an emergency authorization or emergency permit, the Administrator shall determine that:
 - (1) An emergency situation exists; and
 - (2) The proposed activity will result in the least impact to life, health, property, and natural resources as reasonably practicable under the circumstances; and
 - (3) The proposed activity provides the necessary structural support to threatened building(s) and/or structure(s).
- D. Permit issuances. The Administrator shall grant or deny the emergency authorization and/or emergency permit within 48 hours of receipt of an application.
- E. Duration. Emergency authorization(s) and/or emergency permit(s) shall be limited to a duration of 30 days or less and may be renewed for a maximum of an additional 30 days; if project activities are not concluded within the maximum allowable sixty-day period, the project proponent shall make application for a coastal erosion management permit in order to continue and/or complete the work previously authorized.
- F. Erroneous determination of emergency. In the event that the Administrator determines that regulated activity has been undertaken in the absence of circumstances which constitutes the existence of an emergency the Administrator may:
 - (1) Order the immediate cessation of the activity;
 - (2) Order the removal of any structure constructed or installed without authorization;

- (3) Order the restoration of the site and/or any natural protective feature(s) that was excavated, mined or otherwise disturbed.

§ 76-8. Duties and powers of Administrator.

The Administrator shall be charged with the following duties:

- A. Enforce the provisions of this chapter;
- B. Provide applicants with opportunity for review and explanation of the map(s) which designate the land and water areas subject to regulation by this chapter;
- C. Review and approve, with or without modification(s) and/or condition(s), or deny permit applications;
- D. Provide written notice of any violation(s) to the owner(s), tenant(s) or occupant(s) of property or premises located within designated coastal erosion hazard areas;
- E. Prepare and submit reports to the Town Board;
- F. Perform compliance inspections;
- G. Act as liaison with the Department of Environmental Conservation with respect to the implementation of the provisions of this chapter;
- H. Maintain the official records of all permits, inspections, inspection reports, recommendations, actions of the Coastal Erosion Hazard Board of Review and any other reports or communications relative to the enforcement of the provisions of this chapter;
- I. Perform normal and customary administrative functions authorized by the provisions of this chapter or relative to the provisions of Article 34 of the Environmental Conservation Law, and the implementing regulations set forth at 6 NYCRR Part 505;
- J. Otherwise exercise the powers and duties conferred upon him/her by this chapter.

§ 76-9. Appeals.

- A. Coastal Erosion Hazard Board of Review. The Zoning Board of Appeals is hereby designated as the Coastal Erosion Hazard Board of Review and is hereby authorized to affirm and/or modify and/or annul any order, hear and decide appeals on the Administrator's interpretation of this chapter and to affirm the requirement, decision or determination of the Administrator, by written decision, after a public hearing, which shall be filed within five days in the office of the Town Clerk, the office of the Administrator, and served by mail upon the applicant.
- B. Appeals shall be filed with the Zoning Board of Appeals within 30 days of the date of filing in the office of the Town Clerk of the order, determination or decision of the Administrator.
- C. Appeals shall be in writing in such form as may be prescribed by the Board of Zoning Appeals, with a copy thereof simultaneously served upon the Administrator and shall include ground(s) upon which it is based, including but not limited to the relevant provisions of this chapter and/or the disputed interpretation thereof.
- D. In making its determination the Zoning Board of Appeals shall take into consideration whether or not:

A reasonable, prudent, alternative site(s) is available;

- (2) All reasonable means and mitigation measures limiting adverse impacts on natural systems and their functions and/or values are incorporated into the activity's design;
- (3) The structure or improvement is reasonably calculated to be impervious to flood and erosion damage;
- (4) The relief requested is the minimum necessary to render the proposed activity viable;
- (5) The public benefit(s) clearly outweighs the long-term adverse effects, in a case where public funds are to be utilized for the proposed activity(ies).

§ 76-10. Judicial review.

Any person or persons, jointly or severally aggrieved by any decision/order of the Coastal Erosion Hazard Board of Review, or any officer, department, board or bureau of the Town, may apply to the Supreme Court for review by a proceeding under Article 78 of the Civil Practice Law and Rules, within 30 days of the filing of such order or decision in the office of the Town Clerk.

§ 76-11. Interpretation.

The standards and criteria set forth in this chapter shall be deemed the minimum requirements necessary to satisfy the purposes and goals of this chapter.

§ 76-12. Conflicts.

The provisions of this chapter shall supersede any other local laws or ordinances to the extent that the provisions herein are more stringent. A coastal erosion management permit issued pursuant to the provisions of this chapter shall not relieve the applicant from any obligation to obtain any other permit(s) or approval(s) as may be required for the proposed activities and/or improvements.

§ 76-13. Severability.

The provisions of this chapter shall be severable. If any clause, sentence, paragraph, subdivision, section or part is adjudged invalid by a court of competent jurisdiction, and the effect of such order or judgement shall not affect or invalidate any other provisions of this chapter or its application to other persons and circumstances.

§ 76-14. Environmental review.

All activities regulated by this chapter shall be subject to review pursuant to the Environmental Conservation Law Article 8 (SEQRA).

§ 76-15. Penalties for offenses.

A violation of this chapter and/or the conditions or restrictions established in a coastal erosion management permit is hereby declared to be an offense punishable by a fine not exceeding \$250 or imprisonment for a period not to exceed six months, or both. Each day's continued violation shall

constitute a separate additional violation. Nothing herein shall prevent the Town from taking such other lawful actions or proceedings as may be necessary to restrain, correct or abate any such violation of the provision of this chapter.

§ 76-16. Amendments.

In the event that the Town Board shall consider or undertake to amend the provisions of this chapter, written notice shall be provided to the Commissioner of the Department of Environmental Conservation together with a request for his/her advisement as to whether or not such amendment is consistent with the minimum standards of a certified program. Upon the Town Board's adoption of any amendment(s) to this chapter, said amendment shall be forwarded to the Commissioner of DEC for certification thereof.

*Town of Brookhaven, NY
Thursday, October 3, 2019*

Chapter 78. Water Resources

[HISTORY: Adopted by the Town Board of the Town of Brookhaven as indicated in article histories. Amendments noted where applicable.]

GENERAL REFERENCES

Bay and harbor bottoms — See Ch. 8.

Water — See Ch. 79.

Article I. Appropriation and Use of Subterranean Waters

[Adopted 6-16-1987 by L.L. No. 7-1987]

§ 78-1. Duty and obligation.

- A. By virtue of the Royal Charter from Charles II to James Duke of York dated December 22, 1663, the Dongan Patent from Governor Thomas Dongan to the Town of Brookhaven dated December 27, 1686, and the Constitution of the State of New York enacted on April 20, 1777, the Trustees of the Freeholders and Commonalty of the Town of Brookhaven, now known as the "Board of Trustees," were entrusted with title to all subterranean waters within the boundaries of the Town of Brookhaven and are vested with the duty and obligation to protect these valuable waters so that they are not appropriated, polluted or removed in such a manner as to diminish the supply of water to the detriment of the Trustees of the Freeholders and Commonalty of the Town of Brookhaven.
- B. It is hereby declared to be the policy of the Town of Brookhaven to protect the supply of groundwaters within the Town of Brookhaven from appropriation, pollution and removal so that the residents of the Town of Brookhaven will be ensured of an ample supply of clean and safe drinking water.

§ 78-2. Definitions.

As used in this article, the following terms shall have the meanings indicated:

INDUSTRIAL DISCHARGE

The discharge of any liquid, gaseous, solid or waste substance, or a combination thereof, resulting from any process of industry, manufacturing, trade or business or from the development or recovery of any natural resources, which may cause or might reasonably be expected to cause pollution of the groundwaters located within the Town of Brookhaven.

PERSON

Any corporation, form of partnership, association, trust, estate or one or more individuals, and any unit of government or agency of subdivision thereof.

SUBTERRANEAN WATERS

All those waters lying and being within the aquifers underlying the Town of Brookhaven.

TRUSTEES

The Board of Trustees of the Town of Brookhaven, also known as the "Trustees of the Freeholders and Commonalty of the Town of Brookhaven."

§ 78-3. Permit required.

- A. No person may remove subterranean waters located within the Town of Brookhaven without first having obtained a permit from the Trustees and the Town Board as provided herein.
- B. No person may discharge any industrial waste within the Town of Brookhaven without first having obtained a permit from the Trustees and the Town Board as provided herein.

§ 78-4. Exceptions.

The provisions of this article shall not apply to the removal of subterranean waters for the use of the residents, industries and businesses located within the Town of Brookhaven, provided that said waters are recharged into the ground within the Town of Brookhaven.

§ 78-5. Application procedure; fee.

- A. Procedure. An application for the removal of subterranean waters or for the discharge of industrial waste shall be made simultaneously to the Trustees and the Town Board on such form and in such manner as shall be prescribed by the Town Board. Said application shall be filed with the Town Clerk and shall be accompanied by a fee of \$1,000.
- B. Public hearing. No later than 90 days after receipt of an application, a public hearing shall be held by the Town Board and the Trustees. Said time period may be extended with the consent of the applicant. The Town Clerk shall cause notice of said public hearing to be published in an official newspaper of the Town of Brookhaven no less than 10 days prior to the scheduled date of said public hearing.
- C. Departmental review. All such applications shall be forwarded to the Commissioner of the Department of Planning, Environment and Development, who shall cause a review of said applications to be made and shall report, in writing, to the Trustees prior to the public hearing provided herein. With the permission of the Town Board, said Commissioner shall have the power to employ experts for the purpose of reviewing each application.

§ 78-6. Issuance of permit; conditions.

- A. The Trustees and the Town Board may issue a permit only upon the finding that the appropriation and removal of subterranean waters or the discharge of industrial waste into the groundwaters within the Town of Brookhaven will not diminish or harm the supply of subterranean waters to the detriment of the residents and property owners of the Town of Brookhaven.
- B. The Trustees and Town Board shall have the power to impose such conditions on the issuance of any permit as it deems necessary to protect the supply of subterranean waters located within the Town of Brookhaven.

§ 78-7. Rates.

The Trustees and the Town Board shall have the power to establish rates and charges for the appropriation and removal of subterranean waters from the Town of Brookhaven. Said rates shall be established after a public hearing held on notice as provided herein. Said fees shall be paid to the Town Clerk.

§ 78-8. Penalties for offenses.

A. Criminal sanctions.

- (1) Any person who violates any provision of this article or the conditions imposed by the Trustees upon an approved permit shall, for the first offense, be guilty of a violation punishable by a fine of not less than \$500 nor more than \$1,000, and for a second and each subsequent offense, be guilty of a misdemeanor punishable by a fine of not less than \$1,000 nor more than \$2,000, or a term of imprisonment of not less than 15 days nor more than six months, or both. Each offense shall be a separate and distinct offense, and, in the case of a continuing offense, each day's continuance thereof shall be a separate and distinct offense.
- (2) Any corporation which violates any provision of this article or the conditions imposed by the Trustees upon an approved permit shall, for the first offense, be guilty of a violation punishable by a fine of not less than \$500 nor more than \$1,000, and for a second and each subsequent offense, be guilty of a misdemeanor punishable by a fine of not less than \$1,000 nor more than \$2,000 or a term of imprisonment of not less than 15 days nor more than six months, or both. Each offense shall be a separate and distinct offense, and, in the case of a continuing offense, each day's continuance thereof shall be a separate and distinct offense.

- B. Equitable relief. The Town of Brookhaven shall have the right to seek equitable relief to restrain any violation or threatened violation of any provisions of this article.

Article II. Discharge Standards for Existing and New Intermediate Flow Sanitary Systems in Carmans River One-Hundred-Year Groundwater Contributing Area

[Adopted 1-29-2015 by L.L. No. 1-2015, effective 2-17-2015]

§ 78-9. Purpose.

The Town Board finds that it is the policy of the Town of Brookhaven to maintain and, through time, improve water quality in the Carmans River and its associated aquatic and wetland environments, and in groundwater beneath terrestrial environments situated in the watershed of the Carmans River, by reducing the concentration levels of various nitrogen compounds in surface and groundwater in accordance with the short- and long-term water quality goals established by the Town Board. To that end, the Town Board in 2013 adopted the Carmans River Conservation and Management Plan. Implementation of the Plan included setting forth discharge standards for existing and new intermediate flow sanitary systems and sewage treatment facilities within the one-hundred-year groundwater contributing area to the Carmans River at levels below current standards accepted by the Suffolk County Department of Health Services. The stricter standard is being implemented in order to protect the ecological integrity of the Carmans River. The stricter standard is necessary because the standard in use by the Suffolk County Department of Health Services is generally intended to protect human health, but is not sufficient to protect ecological health and to avoid ecological impacts to the Carmans River.

§ 78-10. Designation of district.

- A. The discharge standards for existing and new intermediate flow sanitary systems in the Carmans River one-hundred-year groundwater contributing area is applicable to the entire one-hundred-year groundwater contributing area of the Carmans River as set forth within the Carmans River Conservation and Management Plan and applies to all properties with existing or future intermediate sanitary flow of wastewater between 1,000 gallons per day and 30,000 gallons per day.
- B. The criteria set forth in this article are in addition to any and all other approvals required by other government agencies.

§ 78-11. Water quality discharge standard.

All new sanitary systems and sewage treatment plants requiring Suffolk County Department of Health Services approval and SPDES permit, producing a sanitary flow of between 1,000 gallons per day and 30,000 gallons per day, shall utilize best available technology (BAT), which results in nitrogen not exceeding three parts per million over a twelve-month rolling average. At no point shall the monthly average exceed five parts per million.

§ 78-12. Implementation.

- A. All new sanitary systems and sewage treatment facilities shall be required to comply with the terms and conditions herein as of the effective date of this article.
- B. All intermediate flow sanitary systems and sewage treatment plants existing prior to the effective date of this article shall make the necessary improvements and upgrades to comply with the terms and conditions herein within 10 years of the effective date of this article.
 - (1) The Town Board may grant an extension of time for implementing the necessary improvements and upgrades, upon written request from the applicant/owner to the Town Clerk. The Town Board may grant a maximum of one extension, not to exceed five years. Said request must sufficiently demonstrate that:
 - (a) The applicant is diligently pursuing other required governmental permits or other approvals; and
 - (b) The applicant is subject to substantial hardship delaying compliance; and
 - (c) The extension request is received by the Town Clerk prior to the expiration of the ten-year period.

§ 78-13. Application procedure.

- A. Any applicant/owner of a project that requires Suffolk County Department of Health Services approval for an existing or proposed intermediate sanitary flow of wastewater between 1,000 gallons daily and 30,000 gallons daily within the designated district shall also submit an application to the Division of Environmental Protection, which shall include a copy of such Suffolk County Department of Health Services application.
- B. The Division of Environmental Protection, or its designee, shall review such application for conformance with the discharge standards set forth herein. If the application is in conformance

with discharge standards, the Division of Environmental Protection shall issue a notice of compliance. If the application is not in conformance with the discharge standards, the Division of Environmental Protection will issue a notice of non-compliance and notify the Suffolk County Department of Health Services that the application is in violation of Town Code standards.

C. Permitting and reporting.

- (1) Any application shall demonstrate that all permitting fees and reporting requirements are in compliance with requirements of the Suffolk County Sanitary Code and/or ECL Article 17 relating to the State Pollution Discharge Elimination System (SPDES) program. A copy of any and all monitoring reports, engineer's reports, and performance and maintenance reports required pursuant to the Suffolk County Sanitary Code and/or ECL Article 17 shall also be submitted to the Division of Environmental Protection of the Town of Brookhaven in the same manner as required by the Suffolk County Department of Health Services.

§ 78-14. Penalties for offenses.

A. Penalties and fines.

- (1) Any person who violates any provision of this article shall, for the first offense, be guilty of a violation punishable by a fine of not less than \$500 nor more than \$1,000, and for a second and each subsequent offense, be guilty of a fine of not less than \$1,000 nor more than \$2,000. Each offense shall be a separate and distinct offense, and, in the case of a continuing offense, each day's continuance thereof shall be a separate and distinct offense.
- (2) Any corporation which violates any provision of this article shall, for the first offense, be guilty of a violation punishable by a fine of not less than \$500 nor more than \$1,000, and for a second and each subsequent offense, be guilty of a fine of not less than \$1,000 nor more than \$2,000. Each offense shall be a separate and distinct offense, and, in the case of a continuing offense, each day's continuance thereof shall be a separate and distinct offense.

B. Any fines collected pursuant to this article shall be deposited in the Carmans River Conservation and Management Plan Fund, the purpose of which shall be to provide funding to implement recommendations of the Plan, as recommended by the Carmans River Conservation and Management Plan Performance Committee, and approved by resolution of the Town Board.

C. Equitable relief. The Town of Brookhaven shall have the right to seek equitable relief to restrain any violation or threatened violation of any provisions of this article.

§ 78-15. General severability.

If any clause, sentence, paragraph, section or item of §§ **78-9** through **78-15** shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not impair nor invalidate the remainder hereof; but such adjudication shall be confined in its operation to the clause, sentence, paragraph, section or item directly involved in the controversy in which such judgment shall have been rendered.

Town of Brookhaven, NY
Thursday, October 3, 2019

Chapter 80. Critical Environmental Areas; Seqra Implementation

[HISTORY: Adopted by the Town Board of the Town of Brookhaven 10-6-1987 by L.L. No. 24-1987. Amendments noted where applicable.]

GENERAL REFERENCES

Zoning — See Ch. 85.

Subdivision regulations — See Appendix.

ATTACHMENTS

080a Exhibit A 

§ 80-1. Intent; designation of areas.

- A. The Town of Brookhaven contains vast and precious natural and human environmental resources, specifically with regard to woodland and open spaces, flora and fauna, wetlands, groundwater, unique geological features, air quality, agriculturally fertile land, historical and archeological resources and other areas of important aesthetic and scenic quality. These valuable resources are located throughout the Town of Brookhaven.
- B. The Town Board recognizes that there is now and will continue to be significant development pressure within the Town which, through unrestricted growth, may tend to destroy or impair the Town's environmental resources as a result of sewage disposal, groundwater contamination, air impacts, solid waste and traffic generation, loss of wetlands and destruction of wooded and open areas.
- C. It is the intention of the Town Board of the Town of Brookhaven to protect these valuable resources to the maximum extent possible for the benefit and enjoyment of the Town residents.
- D. It is not the Town's intention to create an undue burden upon applicants for land use proposals or to economically impact in any way applicants for small projects for which no significant environmental impact is anticipated, such as small divisions of land, construction of or additions to individual residential structures.
- E. Actions which are specifically identified as unlisted actions which may pose a significant impact upon the environment can be processed in accordance with 6 NYCRR 617.6(b) and, therefore, receive the same thorough environmental review.
- F. Designation of critical environmental areas and strict implementation of the provisions of the New York State Environmental Quality Review Act will help us protect the valuable resources of the Town of Brookhaven. Certain areas within the Town of Brookhaven have heretofore been designated as critical environmental areas by resolution of this Town Board as follows:^[1]
 - (1) Route 25A Corridor Critical Environmental Area.
 - (2) Middle Island; Yaphank Critical Environmental Area.
 - (3) Brookhaven Coastal Zone Area Critical Environmental Area.

[1] *Editor's Note: See § 80-2A for further designation of critical environmental areas.*

§ 80-2. Supersession of previous designations of areas; lead agency.

- A. Those areas described in **Exhibit A**^[1] are hereby designated as critical environmental areas, in accordance with 6 NYCRR 617.4(h) of the State Environmental Quality Review Act. All previous designations of critical environmental areas, as noted in § 80-1, are hereby superseded.

[1] *Editor's Note: Exhibit A is located at the end of this chapter.*
- B. The Town Board is hereby designated "lead agency" under Article 8 of the State Environmental Quality Review Act and 6 NYCRR 617.6 for any proposed actions within the Town of Brookhaven for which the Town Board is an involved agency principally responsible for carrying out, funding or approving.
- C. The various boards and departments of the Town shall act as lead agency on any projects or actions for which they are an involved agency principally responsible for carrying out, funding or approving pursuant to Article 8 of the New York State Environmental Quality Review Act and 6 NYCRR 617.6.

- D. The critical environmental areas designated under this chapter shall supersede all previous Town-designated critical environmental areas.

§ 80-3. Environmental assessment forms.

[Amended 10-19-2010 by L.L. No. 23-2010, effective 11-1-2010]

The following shall not be considered as Type I actions, unless a particular action meets the criteria for Type I actions as noted in § 80-4 of this chapter:

- A. Exempt actions pursuant to 6 NYCRR 617.
- B. Excluded actions pursuant to 6 NYCRR 617.
- C. Type II actions pursuant to 6 NYCRR 617.
- D. Ministerial acts.
- E. Subdivision of land involving four lots or less.
- F. Change in zoning of land from commercial or industrial to residential.
- G. Amendments to existing site plans.
- H. Commercial and industrial site plans involving sites of 20,000 square feet or less.
- I. Drainage acquisitions and highway improvements.

§ 80-4. Type I and II actions.

The Town Board hereby adopts the following list of Type I and Type II actions, respectively, for the purposes of Town procedures for implementation of the State Environmental Quality Review Act. This list shall supersede all previously designated Type I and Type II lists as promulgated by this Board on April 5, 1977, and subsequently amended:

- A. Type I actions. The following actions are Type I if they are to be directly undertaken, funded or approved by an agency:
 - (1) The adoption of a municipality's land use plan, the adoption by any agency of a comprehensive resource management plan or the initial adoption of a municipality's comprehensive zoning regulations.
 - (2) The adoption of changes in the allowable uses within any zoning district, affecting 25 or more acres.
 - (3) The granting of a zoning change, at the request of an applicant, for an action that meets or exceeds one or more of the thresholds given elsewhere in this list.
 - (4) The acquisition, sale, lease, annexation or other transfer of 100 or more contiguous acres of land by a state or local agency.
 - (5) Construction of new residential units which meet or exceed the following thresholds:
 - (a) Fifty units not to be connected (at commencement of habitation) to existing community or public water and sewerage systems, including sewage treatment works.
 - (b) In a city, town or village having a population of greater than 150,000 but less than 1,000,000: 1,000 units to be connected (at the commencement of habitation) to existing community or public water and sewerage systems, including sewage treatment works.
 - (6) Activities, other than the construction of residential facilities, which meet or exceed any of the following thresholds; or the expansion of existing nonresidential facilities by more than 50% of any of the following thresholds:
 - (a) A project or action which involves the physical alteration of 10 acres or more.
 - (b) A project or action which would use ground- or surface water in excess of 2,000,000 gallons per day.
 - (c) Parking for 1,000 vehicles.
 - (d) In a city, town or village having a population of more than 150,000 persons: a facility with more than 240,000 square feet of gross floor area.
 - (7) Any nonagricultural use occurring wholly or partially within an agricultural district (certified pursuant to Agriculture and Markets Law, Article 25, §§ 303 and 304) which exceeds 25% of any threshold established in this section.

- (8) Any unlisted action (unless the action is designed for the preservation of the facility or site) occurring wholly or partially within, or substantially contiguous to, any historic building, structure, facility, site or district or prehistoric site that is listed on the National Register of Historic Places, or that has been proposed by the New York State Board on Historic Preservation for a recommendation to the State Historic Preservation Officer for nomination of inclusion in said National Register, or that is listed on the State Register of Historic Places [the National Register of Historic Places is established by 36 CFR 60 and 63 (1986).] (See 6 NYCRR 617.19.)
- (9) Any unlisted action which exceeds 25% of any threshold in this section, occurring wholly or partially within, or substantially contiguous to, any publicly owned or operated parkland, recreation area or designated open space, including any site on the Register of National Natural Landmarks pursuant to 36 CFR 62 (1986). (See 6 NYCRR 617.19.)
- (10) Any unlisted action which exceeds a Type I threshold established by an involved agency pursuant to 6 NYCRR 617.4.
- (11) Any unlisted action which takes place wholly or partially within or substantially contiguous to any critical environmental area designed by a local or state agency pursuant to 6 NYCRR 617.4(h).
- (12) Historical districts and landmark sites as identified in the HD Zoning Category.

B. Type II actions. The following actions are Type II actions:

- (1) Replacement of a facility, in kind, on the same site, unless such facility meets or exceeds any of the threshold in 6 NYCRR 617.12.
- (2) The granting of individual setback and lot line variances.
- (3) Agricultural farm management practices, including construction, maintenance and repair of farm buildings and structures, and land use changes consistent with generally accepted principles of farming.
- (4) Repaving of existing highways not involving the addition of new travel lanes.
- (5) Street openings for the purpose of repair or maintenance of existing utility facilities.
- (6) Installation of traffic control devices on existing streets, roads and highways.
- (7) Public or private forest management practices, other than the removal of trees or the application of herbicides or pesticides.
- (8) Construction or placement of minor structures accessory or appurtenant to existing facilities, including garages, carports, patios, home swimming pools, fences, barns or other buildings not changing land use or density, including upgrading of buildings to meet building or fire codes.
- (9) Maintenance of existing landscaping or natural growth.
- (10) Mapping of existing roads, streets, highways, uses and ownership patterns.
- (11) Inspections and licensing activities relating to the qualifications of individuals or businesses to engage in their business or profession.
- (12) Purchase or sale of furnishings, equipment or supplies, including surplus government property other than land, radioactive material, pesticides, herbicides or other hazardous materials.
- (13) Collective bargaining activities.
- (14) Investments by or on behalf of agencies or pension or retirement systems or refinancing existing debt.
- (15) Routine or continuing agency administration and management, not including new programs or major reordering or priorities.
- (16) License, lease and permit renewals, or transfers of ownership thereof, where there will be no material change in permit conditions for the scope of permitted activities.
- (17) Routine activities of educational institutions not involving capital construction, including school closings, but not changes in use related to such closings.
- (18) Information collection, including basic data collection and research, water quality and pollution studies, traffic counts, engineering studies, surveys, subsurficial investigations and soils studies that do not commit the agency to undertake, fund or approve any Type I or unlisted action.
- (19) Minor temporary uses of land having negligible or no permanent effect on the environment.
- (20) The extension of utility distribution facilities to serve new or altered single- or two-family residential structures or to

render service in approved subdivisions.

(21) Promulgation of regulations, policies, procedures and legislative decisions in connection with any Type II action.

- C. The potential impacts of any Type I or unlisted action occurring within a Town-designated Critical Environmental Area (CEA) on the environmental characteristics of that CEA must be evaluated in the determination of significance.
[Added 10-19-2010 by L.L. No. 23-2010, effective 11-1-2010]

§ 80-5. Severability.

If any clause, sentence, paragraph, section or part of this chapter shall be adjudged by any court of competent jurisdiction to be invalid, the judgment shall not affect, impair or invalidate the remainder of this chapter but shall be confined to its operation to the clause, sentence, paragraph, section or part of this chapter that shall be directly involved in the controversy in which such judgment shall have been rendered.

CRITICAL ENVIRONMENTAL AREAS; SEQRA IMPLEMENTATION

80 Attachment 1

EXHIBIT A Critical Environmental Areas

A-1. North Shore Critical Environmental Area.

Beginning at the intersection of the western Brookhaven Town line and Main Street Stony Brook; thence running northeast on Christian Avenue to Mount Grey Road; thence running north on Mount Grey Road to the border of the Incorporated Village of Old Field.

Beginning at the intersection of Old Field Road and the Incorporated Village of Old Field line; thence running southeast on Old Field Road to Main Street; thence running southeast on Main Street to Harbor Hill Road; thence running east on Harbor Hill Road to Gnarled Hollow Road; thence running southeast on Gnarled Hollow Road to Old Post Road; thence running east on Old Post Road to the intersection with the Incorporated Village of Port Jefferson line.

Beginning at the intersection of North Country Road and the Incorporated Village of Port Jefferson line; thence running east on North Country Road to Lower Rocky Point Road; thence running east on Lower Rocky Point Road to Noah's Path; thence running north on Noah's Path to Merrit's Path; thence running north on Merrit's Path to Sam's Path; thence running east on Sam's Path to Magnolia Road; thence running east on Magnolia Road to Hickory Road; thence running east on Hickory Road to Sycamore Road; thence running north on Sycamore Road to Uranus Road; thence running east on Uranus Road to Sunburst Drive; thence running south on Sunburst Drive to Twilight Road; thence running east on Twilight Road to Alma Road; thence running south on Alma Road to Dryad Road; thence running east on Dryad Road to the intersection(with the Incorporated Village of Shoreham line.

Beginning at the intersection of Mary Pitkin Path and the Incorporated Village of Shoreham line; thence running east to South Gate; thence running south on South Gate to North Country Road; thence running east on North Country Road to a point 500 feet east of Royal Way; thence running south along a line 500 east of Royal Way to Route 25A; thence running east along Route 25A to the Brookhaven - Riverhead Town Border.

All that tract of land lying north of the above described boundary shall constitute the North Shore Critical Environmental Area.

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A-2. South Setauket Critical Environmental Area. [Amended 3-21-1989 by L.L. No. 12-1989, effective 3-27-1989; 10-3-1989 by L.L. No. 26-1989, effective 10-10-1989]

Beginning at the intersection of Old Town Road and Lower Sheep Pasture Road; thence running west along Lower Sheep Pasture Road to Upper Sheep Pasture Road; thence running west along Upper Sheep Pasture Road to King Arthur's Court; thence running southerly along King Arthur's Court to Cinderella Lane; thence running west along Cinderella Lane to Robinhood Lane; thence running south along Robinhood Lane to Storyland Lane; thence running west along Storyland Lane to Pond Path; thence running south along Pond Path to 34th Street; thence running west along 34th Street to Sycamore Circle; thence running south and west along Sycamore Circle to Sycamore Drive; thence running west along Sycamore Drive to Nicholls Road (County Road 97); thence running southerly along Nicholls Road to Nesconset-Port Jefferson Highway (New York State Route 347) and its intersection with the Incorporated Village of Lake Grove line; thence running southwesterly along the Incorporated Village of Lake Grove line to its intersection with Wood Road; thence running south on Wood Road to a point perpendicular with Sycamore Street; thence running easterly along Sycamore Street to North Washington Street; thence running south along North Washington Street to Forest Road; thence running north and east along Forest Road to Mark Tree Road; thence running north along Mark Tree Road to Bette Anne Drive; thence running east along Bette Anne Drive to Balin Avenue; thence running north along Balin Avenue to Chester Street; thence running east along Chester Street to Wireless Road; thence running south along Wireless Road to Strathmore Village Drive; thence running east along Strathmore Village Drive to Milbury Lane; thence running northeast along Milbury Lane to Patricia Lane; thence running northeast along Patricia Lane to Doe Lane; thence running east along Doe Lane to Fawn Lane West; thence running northeast along Fawn Lane West to Arrowhead Lane; thence running north along Arrowhead Lane to New York State Route 347; thence running east along New York State Route 347 to Old Town Road; thence running northwest along Old Town Road to the point of origin.

That tract of land lying within the above-described geographic boundaries shall constitute the South Setauket Critical Environmental Area.

A-3. Central Pine Barrens Critical Environmental Area.

The northern boundary of the Central Pine Barrens Critical Environmental Area is hereby described as involving all tax parcels immediately adjacent to New York State Route 25A from the eastern terminus of Brookhaven Town westward to the eastern terminus of New York State Route 347.

CRITICAL ENVIRONMENTAL AREAS; SEQRA IMPLEMENTATION

Beginning at the intersection of New York State Route 347 and Hallock Road; thence running west along Hallock Road to Crystal Brook Hollow Road; thence running south along Crystal Brook -Hollow Road to New York State Route 347; thence running west along Route 347 to Davis Avenue; thence running south along Davis Avenue to Canal Road; thence running east along Canal Road to Washington Avenue; thence running south along Washington Avenue to New York State Route 112; thence running northwest along New York State Route 112 to Bicycle Path; thence running south along Bicycle Path to Old Town Road; thence running southeast along Old Town Road to New York State Route 112; thence running south on Route 112 to New York State Route 25; thence running west on Route 25 to County Road 83; thence running south along County Road 83 to Bicycle Path; thence running south along Bicycle Path to Granny Road; thence running northeast on Granny Road to New York State Route 112; thence running south on New York State Route 112 to Horse Block Road; thence running east on Horse Block Road to Maine Avenue; thence running north on Maine Avenue to Fire Avenue; thence running east on Fire Avenue to John Roe Smith Avenue; thence running south on John Roe Smith Avenue to Jeff Street; thence running east on Jeff Street to Hagerman Avenue; thence running south on Hagerman Avenue to the Long Island Expressway; thence running east along the Long Island Expressway to William Floyd Parkway; thence running south along William Floyd Parkway to the Long Island Rail Road; thence running east along the Long Island Rail Road for a distance of 7,500 feet; thence running south along an unnamed road for a distance of 500 feet to Manorville Yaphank Road; thence running south Manorville Yaphank Road to Yaphank Middle Island Road; thence running east along Yaphank Middle Island Road to New York State Route 27; thence running east on Route 27 to the Brookhaven Southampton Town line.

That tract of land lying within the above-described geographic boundaries shall constitute the Central Pine Barrens Critical Environmental Area.

A-4. South Shore Critical Environmental Area. [Amended 3-21-1989 by L.L. No. 12-1989, effective 3-27-1989; 10-3-1989 by L.L. No. 26-1989, effective 10-10-1989]

Beginning at the intersection of County Road 65 and the western Brookhaven-Islip Town line; thence running east along County Road 65 to Blue Point Avenue; thence running north along Blue Point Avenue to Madison Avenue; thence running east along Madison Avenue to Atlantic Avenue; thence running north along Atlantic Avenue to its intersection with the Incorporated Village of Patchogue line.

Beginning at the intersection of County Road 80 and the eastern Incorporated Village of Patchogue line, thence running east along County Road 80 to Phyllis Drive; thence running north a short distance along Phyllis Drive to Swan Lake

BROOKHAVEN CODE

Drive: thence running north along Swan Lake Drive to a point perpendicular with Kathryn Street; thence running easterly along Kathryn Street to Lake Drive; thence running south along Lake Drive to County Road 80, thence running east along County Road 80 to County Road 101; thence running northeast on County Road 101 to Martha Avenue; thence running east along Martha Avenue to Dunton Avenue; thence running south along Dunton Avenue to Patchogue Avenue; thence running west along Patchogue Avenue to Bald Hill Avenue; thence running south on Bald Hill Avenue to Atlantic Avenue; thence running west on Atlantic Avenue to Gazzola Drive; thence running south on Gazzola Drive across County Road 80 to Orchard Road; thence running south on Orchard Road to South Country Road; thence running east along South Country Road to Dunton Avenue; thence running north along Dunton Avenue to Head of the Neck Road; thence running east along Head of the Neck Road to Cook's Road; thence running south along Cook's Road to South Masem Square; thence running east along South Masem Square to East Masem Square; thence running south along East Masem Square to Donnegan Avenue; thence running southerly on Donnegan Avenue to South Country Road; thence running east along South Country Road to its intersection with the Incorporated Village of Bellport line.

Beginning at the intersection of South Country Road and the eastern Incorporated Village of Bellport line; thence running easterly along South Country Road to Arthur Road; thence running north along Arthur Road to Beaver Dam Road; thence running east along Beaver Dam Road to Arthur Avenue; thence running north along Arthur Avenue to New York State Route 27; thence running east on New York State Route 27 to Old Town Road; thence running south along Old Town Road to County Road 80; thence running east on County Road 80 to a point south of the intersection of Gerrard Road and Victory Avenue; thence running north across New York State Route 27 to Gerrard Road; thence running northwest along Gerrard Road to the western boundary of Southaven County Park; thence running north along the western boundary of Southaven County Park to the Long Island Expressway; thence running east along the Long Island Expressway to River Road; thence running south along River Road to Havenwood Drive; thence running east along Havenwood Drive to William Floyd Parkway; thence running south along William Floyd Parkway to Palmetto Drive; thence running east along Palmetto Drive to Commack road; thence running northeast along Commack Road to John's Neck Road; thence running south for a short distance on John's Neck Road to Dogwood Road; thence running east along Dogwood Road to Cranberry Drive; thence running north along Cranberry Drive to Neighborhood Road; thence running east along Neighborhood Road to Hemlock Drive; thence running south along Hemlock Drive to West Elm Road; thence running east along West Elm Road to Orchid Drive; thence running north along Orchid Drive to Washington Avenue; thence running east along Washington Avenue to Wavecrest Drive; thence running northwest a short distance on Wavecrest Drive to Biltmore Drive; thence running north on Biltmore Drive to Riverside Avenue; thence running west along Riverside Avenue to Mastic Road; thence

CRITICAL ENVIRONMENTAL AREAS; SEQRA IMPLEMENTATION

running northeast along Mastic Road to Eleanor Avenue; thence running east along Eleanor Avenue to Edgewood Street; thence running north along Edgewood Street to Overlook Drive; thence running northwest along Overlook Drive to Poospatuck Lane; thence running north along Poospatuck Lane to Wills Avenue; thence running east along Wills Avenue to Babylon Street; thence running north along Babylon Street in a line to the Long Island Rail Road; thence running west along the Long Island Rail Road to Mastic Road; thence running northeast along Mastic Road to Lafayette Avenue; thence running north along Lafayette Avenue to New York State Route 27; thence running east along New York State Route 27 to Moriches-Middle Island Road; thence running south along Moriches-Middle Island Road to Jerusalem Hollow Road; thence running southwest on Jerusalem Hollow Road to County Road 80; thence running east along County Road 80 to Frowein Road; thence running east along Frowein Road to County Road 80; thence running east on County Road 80 to East Moriches-Riverhead Road (County Road 51); thence running northeast on County Road 51 to New York State Route 27; thence running east along New York State Route 27 to the Brookhaven-Southampton Town line.

All that tract of land lying south of the above-described geographic boundary shall constitute the South Shore Critical Environmental Area. However, this described South Shore Critical Environmental Area does not include the lands known as "Fire Island."

Town of Brookhaven, NY
Thursday, October 3, 2019

Chapter 81. Wetlands and Waterways

[HISTORY: Adopted by the Town Board of the Town of Brookhaven 6-14-2011 by L.L. No. 16-2011, effective 7-5-2011.^[1]
Amendments noted where applicable.]

GENERAL REFERENCES

Bay and harbor bottoms — See Ch. 8.

Houseboats — See Ch. 14.

Joseph Macchia Environmental Preservation Capital Reserve Fund — See Ch. 15.

Docks — See Ch. 22.

Harbor complex waterway — See Ch. 74.

Vegetation on beach areas — See Ch. 75.

Coastal erosion hazard areas — See Ch. 76.

Water resources — See Ch. 78.

Zoning — See Ch. 85.

Subdivision regulations — See Ch. SR

[1] *Editor's Note: This local law also repealed former Ch. 81, Wetlands and Waterways, adopted 1-19-1993 by L.L. No. 2-1993, effective 1-25-1993, as amended.*

§ 81-1. Legislative intent.

A. Surface waters, lands underwater and tidal and freshwater wetlands are important natural resources in the Town of Brookhaven. It is hereby declared to be the policy of the Town of Brookhaven (1) to protect and preserve these natural resources with the valuable attributes and functions they provide; (2) to prevent the despoliation and destruction of these natural resources whenever practicable; and (3) to regulate the use and development of these natural resources, thereby securing their natural benefits for the existing and future residents of the Town of Brookhaven; these benefits include flood and stormwater control, commercial and recreational fishing and shellfishing opportunities, pollution treatment, wildlife habitat protection, open space and aesthetic appreciation, erosion control, sources of nutrients for marine and freshwater life, means for scientific and educational research, as well as means to protect subsurface water resources. These natural resources and their benefits shall be protected by the Town of Brookhaven pursuant to the authority conferred upon the Town through the Dongan Patent of 1686 and the authority conferred to the Town by various New York State laws and regulations, including but not limited to Articles 8 and 24 of the Environmental Conservation Law (Environmental Review and Freshwater Wetlands) and regulations thereto, Town Law and the Municipal Home Rule Law. This chapter shall apply to all lands defined as wetlands or waterways, to any activity in a jurisdictional area (as defined herein) of a wetland or waterway, or to any activity that has the potential to adversely impact wetlands or waterways. It shall be the policy of the Town of Brookhaven to:

- (1) Safeguard, protect, and preserve the vegetation and fauna of all wetlands and waterways and to maintain the quality and ecological integrity of all wetlands and waterways by preserving, to the greatest extent possible, surface waters, wetland habitats, and their adjacent upland buffer areas, in order to maintain the ecological processes necessary for their perpetuation;
- (2) Safeguard, protect, and enhance, when and where possible, water quality conditions in wetlands and surface waters by ensuring that applications for development, redevelopment, or the expansion of existing structures incorporate into their design: a sanitary system that meets or exceeds the standards for nitrogen and bacterial removal of the Suffolk County Department of Health Services; a system of containment for stormwater runoff; and expanding or preserving natural buffer areas, minimizing the extent of fertilizer-dependent vegetation, or the creation of vegetated recharge areas to prevent surface contamination from entering adjacent waterways.
- (3) Minimize, to the greatest extent possible, the impacts to wetlands and waterways from erosion and sediment transport caused by existing development, the potential effect of new development, and those existing and proposed structures associated with development such as docks, bulkheads, gabions, and revetments on the ecological integrity of the Town's wetlands and waterways by providing adequate setbacks and buffer zones, using nonstructural shore protection devices, minimizing the impacts of existing structures and developing a site in conformance with the natural topography of the site;
- (4) Minimize adverse ecological impacts to wetlands and surface waters and the flora and fauna which inhabit these areas from dredging and dredge spoil disposal activities;
- (5) Safeguard, protect, and preserve the public's access to the shoreline and their continued use along it.

B. The Town's approximately 155 mile long coastline, on the north and south shores and on the south shore barrier island, is an irreplaceable natural resource and asset to Town residents, significantly adding to the quality of their life. Natural shoreline habitats are vital for a variety of wildlife species, including: baitfish, a variety of important fish species desirable to recreational and commercial fishers which find refugia in the inter-tidal shallows adjacent to and within natural shorelines; horseshoe crabs which spawn in the upper reaches of the inter-tidal zone; diamond-backed terrapins and other turtles which gain access to egg laying sites in adjacent upland areas; and wading birds such as egrets and herons which preferentially inhabit these areas for feeding. Natural shorelines provide numerous benefits, including: providing for unimpeded public access along the coastline; protection of foraging, nesting, and breeding habitat for a wide variety of wildlife species; and unimpeded movement, transport, and deposition of sediments between the shoreline and adjacent tidal areas. The Town recognizes that shoreline hardening devices can have numerous adverse impacts, including: impeding or eliminating public access to and along the coastline, deterioration in scenic and aesthetic quality, water quality deterioration associated with development occurring adjacent to the shoreline; interference with or elimination of littoral and/or depositional processes; destruction of adjacent inter-tidal and upland habitats, and severing the vital ecological linkage between these habitats. Therefore, the Town finds that bulkheads, revetments, and other shoreline hardening devices are generally incompatible with the protection and perpetuation of coastal resources, species, communities, and habitats. Thus, it shall be the policy of the Town of Brookhaven to:

- (1) Protect and maintain the Town's extensive shoreline in its natural condition to the greatest extent possible;
- (2) Restore, where feasible and appropriate, shorelines that are currently damaged or hardened by shoreline hardening structures;
- (3) Utilize nonstructural erosion control devices in all areas where these devices are practicable and effective; and
- (4) Ensure that all structural shore protection devices shall be designed, located and constructed or installed so as to minimize their potential adverse impacts upon the natural protective features found along the shoreline such as beaches, dunes, bluffs, wetlands, flats and other natural habitats and resources and that, whenever possible, nonstructural methods of erosion protection be employed instead of the construction of permanent structural devices.

§ 81-2. Title.

This chapter shall be known as and may be cited as the "Wetlands and Waterways Law."

§ 81-3. Definitions.

For the purposes of this chapter, the following terms and phrases shall be given the meanings indicated herein:

AGRICULTURAL LANDS

Lands that have historically and continuously been used as farmland as established prior to April 1976 and which maintain a continuous agricultural use to present day.

ALTERATION OF VEGETATION

Shall include, but not be limited to, the removal from trees of live limbs which originate more than six feet above the existing ground elevation, topping (the cutting of the trunk of the tree before its natural terminus), girdling and cutting, pruning of indigenous emergent, herbaceous and woody vegetation in such a manner as to cause the death of the plant or to significantly reduce its natural function or benefit thereof to the ecosystem.

APPARENT HIGH WATER LINE

For the purpose of this code, the apparent high water shall be defined as the approximate average monthly high water level for a given body of water at a given location as determined by reference to hydrogeological information concerning water levels, as identified by direct measurement of the water level or wrack line, provided the date and time of the measurement are provided, or as identified by other appropriate tests.

APPARENT LOW WATER LINE

For the purpose of this code, the apparent low water shall be defined as the approximate average monthly low water level for a given body of water at a given location as determined by reference to hydrogeological information concerning water levels, as identified by direct measurement, provided the date and time of the measurement are provided, or as identified by other appropriate tests.

APPLICANT

The owner, contract vendee or authorized agent of the owner or contract vendee of the parcel of property that is the subject of an application under this chapter.

AQUACULTURE

Controlled or partially controlled raising, breeding or growing, planting of aquatic or marine plant or animal life in any marine or aquatic hatchery or through on-bottom or off-bottom cultivation, for human consumption and resource restoration, as permitted by the County of Suffolk, NY State Fish and Wildlife Law (NYS ELC Article 11) and other applicable federal, state, and local laws and regulations.

ARTIFICIAL WETLANDS

Any water body or wetland not part of a natural system with an area of 300 square feet or more and created for the sole purpose of recreation, aesthetics, biofiltration or stormwater management, including but not limited to ponds, vegetated swales, rain gardens, and the equivalent. Artificial wetlands will include the created water body or wetlands and any natural wetlands that, because of the created feature, become established within the area around the artificial wetland. Artificial wetlands remain artificial wetlands until such time that they become a sustainable ecosystem independent of anthropogenic activities or structures as determined by the Director of the Division of Environmental Protection. Artificial wetlands will not be included in the prohibition of development described within the Town Code of the Town of Brookhaven and therefore may be moved or altered by the issuance of a wetlands and waterways permit.

[Amended 5-25-2017 by L.L. No. 15-2017, effective 6-7-2017]

BLUFF

Any bank or cliff with a precipitous or steeply sloped face adjoining a beach or body of water occurring along the north shore of the Town of Brookhaven with an elevation greater than 20 feet above sea level.

BOAT

Any vessel propelled by oars, paddles, sail, or fuel-powered engine which must by law be registered with New York State or documented by the United States Coast Guard, including, but not limited to: power boats, sailboats, personal watercraft, including jet skis and wet bikes.

BUFFER ZONE

The area between a wetlands boundary and the closest permitted location to such boundary for a regulated activity that is not to be disturbed and left in its natural state except for the supplemental planting of native vegetation and those activities approved by the issuance of a wetlands and waterways permit.

BULKHEAD

A vertical structure constructed as a protective barrier between a body of water and a waterfront property.

CATEGORY A PERMIT APPROVAL

A written permit, approved by the Town Board of the Town of Brookhaven, issued in response to an application to conduct a regulated activity as described in § 81-9 or issued in response to an appeal of a denial or an objection to the conditions of a permit issued by the Director of the Division of Environmental Protection.

CATEGORY B PERMIT APPROVAL

A written permit, approved by the Director of the Division of Environmental Protection, issued in response to an application to conduct a regulated activity described in § 81-4, Subsections B and C, in a wetland or within the jurisdictional area of a wetland.

CATWALK

An elevated walkway, usually built to gain access to a commercial or residential dock, built at a fixed height above grade and which is constructed landward of the apparent high water line.

COMMERCIAL DOCK

Any fixed or floating dock or extension of such, designed, used and/or intended for use other than as a residential dock, as defined in this chapter.

COMMISSIONER

The Commissioner of Planning, Environment and Land Management.

COMPLETED PROJECT

A project will be considered complete upon the issuance of a certificate of occupancy, or the equivalent; upon initiation of the project or action and its termination, or expiration of the wetlands and waterways permit; or the use of the structure by the property owner in a manner intended by its construction; whichever comes first.

[Added 5-25-2017 by L.L. No. 15-2017, effective 6-7-2017]

DEVELOPED LAND

A parcel of land that contains residential and/or commercial structures that have been issued certificates of occupancy or the equivalent from the Chief Building Inspector of the Town of Brookhaven. Land that contains structures constructed without valid building permits or other approvals and/or which have not been issued a certificate of occupancy or its equivalent and which do not qualify for a certificate of existing use shall be considered to have no development.

DEVELOPMENT

The construction of a primary structure in accordance with the Town of Brookhaven zoning code.^[1]

DIRECTOR

The Director of the Division of Environmental Protection of the Town of Brookhaven or, when no Director exists, that person appointed by the Commissioner to act as the administrator of the Wetlands and Waterways Code.

[Amended 5-25-2017 by L.L. No. 15-2017, effective 6-7-2017]

DISCHARGE

The emission or release of any water, substance, or material into a wetland or waterway, whether or not such substance

causes pollution.

DOCK LENGTH

The distance as measured from the apparent low water line to the seaward-most portion of the fixed or floating dock or the seaward-most mooring pile, whichever distance is greater.

DREDGING

The removal or excavation of any sand, gravel, aggregate, soil, mud, or sediment from the land lying beneath any waterway or contiguous to any waterway.

EDGE OF A WATERWAY

For waters under tidal influence, the apparent high water line will be considered the landward limit of a waterway. For waters not under tidal influence, the edge will be the maximum landward limit of the surface water as determined by either field survey and/or historical information.

FIXED DOCK

An elevated walkway which is constructed at a fixed height above grade and which extends seaward from the apparent high water line.

FLOATING DOCK

Any structure, raft or floating platform which is designed to float upon the surface of a water body and is secured in place by poles, pilings, anchors, or any other type of mooring system that provides access to the water. A floating dock shall include the float itself, any pilings or mooring system designed to keep the dock at a fixed point and the ramp, which spans the distance from a fixed structure (fixed dock or bulkhead) or shoreline to the floating dock.

FLOATING HOME

Any vessel in fact used, designed or occupied as a dwelling unit, business office or source of any occupation or for any private or social club of whatsoever nature, including but not limited to a structure constructed upon a barge primarily immobile and out of navigation which functions substantially as a land structure while the same is moored or docked within the municipal limits of the Town of Brookhaven, whether such vessel is self-propelled or not.

FRESHWATER WETLANDS

The lands and waters in the Town of Brookhaven including but not limited to those lands and waters as shown on the Freshwater Wetlands Map prepared by or for the State of New York pursuant to § 24-0301 of the New York State Freshwater Wetlands Act and filed with the Suffolk County Clerk on or after May 26, 1993, and entitled "New York State Freshwater Wetlands Maps" or any future revisions thereof, which contain a significant number of the following:

- A. Lands and submerged lands, commonly called marshes, swamps, sloughs, bogs, flats, stream banks, riverine systems, and the like, supporting aquatic or semiaquatic vegetation of the following vegetative types:
 - (1) Wetland trees which depend upon seasonal or permanent flooding or sufficiently waterlogged soils to give them a competitive advantage over other trees, including, among others: red maple (*Acer rubrum*), willows (*Salix* spp.), swamp white oak (*Quercus bicolor*), black gum (*Nyssa sylvatica*) and sweet gum (*Liquidambar styraciflua*), Atlantic white cedar (*Chamaecyparis thyoides*), black ash (*Fraxinus nigra*), green ash (*Fraxinus pennsylvanica*), river birch (*Betula nigra*), and yellow birch (*Betula alleghaniensis*).
 - (2) Wetland shrubs which depend upon seasonal or permanent flooding or sufficiently waterlogged soils to give them a competitive advantage over other shrubs, including, among others: alder (*Alnus* spp.), buttonbush (*Cephalanthus occidentalis*), sweet pepperbush (*Clethra alnifolia*), swamp honeysuckle (*Rhododendron viscosum*), spicebush (*Lindera benzoin*), sheep laurel (*Kalmia angustifolia*), highbush blueberry (*Vaccinium corymbosum*), crimson eyed rose mallow (*Hibiscus moscheutos*), winterberry (*Ilex verticillata*), arrow-wood (*Viburnum dentatum*), common elderberry (*Sambucus canadensis*), inkberry (*Ilex glabra*), wild-raisin (*Viburnum opulus*), serviceberry (*Amelanchier* spp.), red chokeberry (*Aronia arbutifolia*), swamp rose (*Rosa palustris*) and witch-hazel (*Hamamelis virginiana*).
 - (3) Emergent vegetation, including, among others: cattails (*Typha* spp.), pickerelweed (*Pontederia cordata*), bulrushes (*Scirpus* spp.), arrow arum (*Peltandra virginica*), arrowheads (*Sagittaria* spp.), reed (*Phragmites australis*), wild rice (*Zizania aquatica*), bur reeds (*Sparganium* spp.), swamp loosestrife (*Decodon verticillatus*) and water plantain (*Alisma plantago-aquatica*), sweet flag (*Acorus calamus*), skunk cabbage (*Symplocarpus foetidus*), jewelweed (*Impatiens* spp.), blue flag (*Iris versicolor*), marsh marigold (*Caltha palustris*), horsetails (*Equisetum* spp.), swamp milkweed (*Asclepias incarnata*), and yellow flag (*Iris pseudacorus*).
 - (4) Rooted, floating leaved vegetation, including, among others: water lily (*Nymphaea odorata*), water shield (*Brasenia schreberi*) and spatterdock (*Nuphar advena*).
 - (5) Free-floating vegetation, including, among others: duckweed (*Lemna* spp.), big duckweed (*Spirodela polyrrhiza*) and watermeal (*Wolffia* spp.).
 - (6) Wet meadow vegetation which depends upon seasonal or permanent flooding or sufficiently waterlogged soils to give it a competitive advantage over other open land vegetation, including, among others: sedges (*Carex* and *Cyperus* spp.), rushes (*Juncus* spp.), cattails (*Typha* spp.), rice cutgrass (*Leersia oryzoides*), reed canary grass (*Phalaris arundinacea*), purple loosestrife (*Lythrum salicaria*), spotted joe-pye weed (*Eupatorium maculatum*), beggar ticks (*Bidens* spp.), cinnamon fern (*Osmunda cinnamomea*), marsh fern (*Dryopteris thelypteris*), ostrich fern (*Pteris pennsylvanica*), royal fern (*Osmunda regalis*), sensitive fern (*Onoclea sensibilis*), spike rushes

(*Eleocharis* spp.), and switch grass (*Panicum virgatum*).

- (7) Bog mat vegetation, including, among others: sphagnum mosses (*Sphagnum* spp.), pitcher plant (*Sarracenia purpurea*), cranberries (*Vaccinium macrocarpon* and *V. oxycoccos*), sundew (*Drosera rotundifolia*), and leatherleaf (*Chamaedaphne calyculata*).
- (8) Submergent vegetation, including, among others: pondweeds (*Potamogeton* spp.), naiad family (*Najas* spp.), Bladderworts (*Utricularia* spp.), wild celery (*Valisneria americana*), coontail (*Ceratophyllum demersum*), water milfoils (*Myriophyllum* spp.), muskgrass (*Chara*), stonewort (*Nitella* spp.), water weeds (*Elodea* spp.) and water smartweed (*Polygonum amphibium*).
- B. Lands and submerged lands containing remnants of any vegetation that is not aquatic or semiaquatic that has died because of wet conditions over a sufficiently long period, and provided further that such conditions can be expected to persist indefinitely, barring human intervention.
- C. Lands underwater and surface waters substantially enclosed by aquatic or semiaquatic vegetation as set forth herein in Subsection **A** above and/or dead vegetation as set forth in Subsection **B** above.
- D. Those geologic formations commonly known as "perched ponds" or vernal ponds, a seasonally flooded depression void of fish.
- E. Land forms in which the predominant type of soils are considered hydric soils.
- F. Artificial wetlands with an area greater than or equal to 300 square feet.
- G. The waters overlying the areas set forth in Subsections **A**, **B**, **D**, **E**, and **F** above.

HYDRIC SOILS

Soils that are formed under conditions of saturation, flooding, or ponding long enough during the growing season to develop anaerobic conditions in the upper part of the soil profile.

INCOMPATIBLE ACTIVITIES

Any regulated activity described in § 81-7 or a regulated activity that is not compatible with the standards of approval or with the type of wetland involved or with the preservation, protection or enhancement of the present and potential values of the waterway, wetland or adjacent area.

[Amended 5-25-2017 by L.L. No. 15-2017, effective 6-7-2017]

INNOVATIVE AND ALTERNATIVE ON-SITE WASTEWATER TREATMENT SYSTEM (IAOWTS)

An on-site wastewater treatment system that discharges into the ground no more than 19 milligrams of nitrogen per liter of effluent (19 mg/L), or the lowest possible level as approved by the Suffolk County Department of Health Services (SCDHS), on average as measured over 12 samples taken one per month for a year.

[Added 5-25-2017 by L.L. No. 15-2017, effective 6-7-2017]

JURISDICTIONAL AREA

That area that shall be subject to regulations under this chapter of the Town Code and shall include all wetlands and waterways of the Town of Brookhaven and the land area that extends 150 feet landward of and parallel to the wetland boundary or the edge of the waterway with the exception of an artificial wetlands, where the jurisdictional area shall not extend beyond 25 feet of the limit of the artificial wetland.

LANDS UNDERWATER

Those lands lying beneath or subject to predictable or regular immersion by fresh, brackish or saline waters.

MAINTENANCE AND REPAIR

The customary, usual and normal activity to restore the sound and good state of a structure after normal decay or degradation from normal use or exposure to the elements. This includes the routine maintenance necessary from time to time to keep a structure in a state of good repair, including, but not limited to: the incidental replacement of decking lumber for a dock, catwalk, deck or walkway; renovations which do not require a building permit, increase the habitable floor area of an existing structure, or replace structural supports that are anchored or installed firmly into the ground or provide load-bearing support for decking; painting of primary and accessory structures; lawn maintenance activities, including, but not limited to, the mowing of turf grasses, the maintenance of existing landscaping, the mulching of beds or the planting of landscape vegetation within an existing landscaped area and outside of an established buffer zone (if applicable), or the top dressing of lawn areas made up of turf grasses with topsoil, provided no more than two inches of soil are involved and no wetland vegetation is covered.

MAINTENANCE DREDGING

Any dredging action which occurs in a location where dredging has been historically performed to maintain navigational access or which occurs within 10 feet of any bulkhead.

MAJOR LAND DIVISION

The division of a parcel of land that requires the installation of a new Town roadway and/or proposes to create more than four lots.

MINOR LAND DIVISION

The division of a parcel of land that does not require the installation of a new Town roadway and proposes to create no more than four lots.

MITIGATION MEASURES

Those measures used to offset impacts associated with the erection of a structure, clearing of natural vegetation, or the excavation, filling or grading of soils within the jurisdictional area of a wetland.

NAVIGABLE WATERWAY

Any water body that maintains a minimum water depth of three feet as measured at the lowest part of the tidal cycle from a point of origin and then continuously to open water. Channels that undergo routine maintenance dredging shall be considered to be part of a navigable waterway.

NONSTRUCTURAL SHORE PROTECTION DEVICE

Any nonpermanent device, including but not limited to choir logs, jute matting, sacrificial dunes, and vegetative plantings installed to protect upland property from wave action.

PERSON

Any corporation, firm, partnership, association, trust, estate or one or more individuals and any unit of government or agency or subdivision thereof.

POLLUTION

The presence in the environment of man-induced conditions or contaminants in quantities or characteristics which are or may be injurious to human, plant, marine or freshwater life, wildlife or other animal life, or to property; or unreasonably interferes with the comfortable enjoyment of life and property.

POND

A shallow inland body of standing water that exists either permanently or seasonally.

PORT JEFFERSON HARBOR COMPLEX

The waters and lands underwater of Port Jefferson Harbor, Setauket Harbor, Little Bay, the Narrows, Conscience Bay and all tributaries to and embayments thereof.

PRACTICABLE ALTERNATIVE

An alternative which is both available to the applicant and capable of fulfilling the overall purpose of the project. "Available and capable of being done" shall mean that the alternative is feasible, in terms of reasonable costs, existing technology and best available measures (i.e., most up-to-date technology or the best designs, measures or engineering practices that have been developed or are commercially available), proposed use and project purpose. "Project purposes" shall be defined generally (e.g., construction of a single-family home).

PROJECT PROPERTY

The property that is the subject of a wetlands and waterways permit and any adjacent properties under common ownership.

RESIDENTIAL DOCK

Any fixed dock and/or floating dock designed or constructed as a continuous unit to provide access to the surface waters from a lot that is zoned for residential use. The term "dock" shall include all associated structures such as ramps and mooring piles.

RESIDENTIAL HOUSEBOAT

A vessel not designed primarily for residential dwelling units, designed primarily for pleasure craft, recreation and for independent navigation and not considered a floating home, in accordance with the definition set forth above, and which is being used for residential purposes.

RETAINING WALL

A vertical structure constructed as a protective barrier between two land areas of different elevations.

RIPARIAN RIGHT

The right of a waterfront property owner to access the adjoining waterway by the installation of a dock or other means, provided the necessary permits are issued by the Town of Brookhaven. Access to a water body through a deeded right-of-way or easement across a waterfront property does not constitute a riparian right for a non-waterfront lot. The minimum width necessary for a property to have a riparian right, as measured along a straight line parallel to the shoreline between the property boundaries perpendicular to the shoreline, is 44 feet.

STRUCTURAL SHORE PROTECTION DEVICE

Any permanent device, including but not limited to a bulkhead, gabion, revetment, and riprap installed to protect upland property from wave action.

STRUCTURE

Anything constructed or erected which requires location in or upon the ground or attached to something having location in or upon the ground. The word "structure" shall be construed as though followed by words "or part thereof."

TIDAL WETLANDS

The lands and waters in the Town of Brookhaven (including but not limited to those lands and waters in the Town which are included in the inventory of tidal wetlands prepared by or for the State of New York and filed with the Suffolk County Clerk as of September 28, 1982, last revised November 16, 1982, and entitled "Tidal Wetlands Maps") which include a significant number of the following:

- A. Those areas which border on or lie beneath tidal waters, such as but not limited to banks, bogs, salt marshes, swamps, meadows, flats or other low lands subject to tidal action, including those areas now or formerly connected to tidal waters.
- B. All banks, bogs, meadows, flats and tidal marshes subject to such tides and upon which grow or may grow some of but not limited to the following: salt meadow grass (*Spartina patens*), saltgrass (*Distichlis spicata*), black grass (*Juncus gerardi*), saltworts (*Salsola* spp.), sea lavender (*Limonium carolinianum*), glassworts (*Salicornia* spp.), big cordgrass (*Spartina cynosuroides*), prairie cordgrass (*Spartina pectinata*), marsh elder (*Iva frutescens*), sea-blite (*Suaeda maritima*), groundsel-tree (*Baccharis halimifolia*), crimson-eyed rose mallow (*Hibiscus palustris*), seaside goldenrod (*Solidago sempervirens*) and the intertidal zone including salt marsh cordgrass (*Spartina alterniflora*).
- C. The Common Reed (*Phragmites australis*) shall be considered a tidal wetlands indicator when found with other tidal wetlands indicators in hydric soils.
- D. Those areas under tidal influence that contain hydric soils.

UNDEVELOPED LAND

A parcel of land that does not contain residential and/or commercial structures that have been issued certificates of occupancy or the equivalent from the Chief Building Inspector of the Town of Brookhaven. Land that contains structures constructed without valid building permits or other approvals and/or which have not been issued a certificate of occupancy or the equivalent and which do not qualify for a certificate of existing use shall be considered to be undeveloped.

WATERFRONT PROPERTY

A property in which the location of the apparent high water line intersects at least one property boundary that borders a waterway, thus providing the owner of such property riparian rights.

WATERWAY

Any body of water commonly known as streams, rivers, creeks, lakes, ponds, estuaries, bays, harbors, oceans, and the like. A waterway includes those areas defined as lands underwater.

WETLAND BOUNDARY

The landward limit of wetlands as specified in the definitions of "freshwater wetlands" and "tidal wetlands" above.

WETLANDS

Those areas defined in this chapter as tidal or freshwater wetlands, including all waterways.

WETLANDS AND WATERWAYS PERMIT

That form of written Town approval required to conduct a regulated activity as specified under this chapter, hereinafter referred to as a "permit."

WIDTH OF A WATERWAY

The shortest linear distance in feet as measured at the point of construction for a proposed or existing structure from the apparent low water line to the apparent low water line on the opposite shoreline.

WORK RELEASE

A written permit, approved by the Director of the Division of Environmental Protection or the designee of the Director, issued in response to an application to conduct a regulated activity described in § 81-4, Subsections **B** and **C**, in a wetland or within the jurisdictional area of a wetland and which conforms to the issuance standards described in § 81-8.

[1] *Editor's Note: See Ch. 85, Zoning.*

§ 81-4. Regulated activities.

- A. No regulated activity as set forth in Subsections **B** and **D** of this section within a freshwater or tidal wetland, waterway, or jurisdictional area shall occur without first obtaining a permit issued by the Town of Brookhaven.
- B. Regulated activities. Activities subject to regulation shall include any activity within a wetland or within the jurisdictional area of a wetland, including, but not limited to:
[Amended 5-25-2017 by L.L. No. 15-2017, effective 6-7-2017; 8-10-2017 by L.L. No. 21-2017, effective 8-18-2017]
 - (1) Any form of drainage, dredging, excavation or removal of soil, mud, sand, shells, gravel, or other aggregate, and grading activities that change the contours or drainage patterns of existing land or lands under water;
 - (2) The draining of a marsh, pond or other enclosed natural body of water and/or any other action that would alter the hydrogeologic characteristics of a regulated wetland or water body;
 - (3) Any direct or indirect form of dumping or filling or depositing of any material;

- (4) Erecting any buildings or structures, the replacement of buildings or structures in-place and/or in-kind, enlarging of existing structures or other physical improvements to property such as the installation of accessory structures, swimming pools, tennis courts, driveways, constructing roads and bridges, the construction of bulkheads, retaining walls, pilings, docks, catwalks, boat davits, the installation of a fence that does not qualify as an exempt activity, or other activities not considered to be normal maintenance or repair;
 - (5) The placement of a structural or nonstructural shore protection device;
 - (6) The removal or demolition of any existing structure, accessory structure, dock, bulkhead, swimming pool or the like;
 - (7) Building, creating or installing any cesspool, septic tank, leaching field or other in-ground sewage or other waste disposal or storage system, whether new or as part of an existing sanitary system, including any pipe, conduit or other part thereof, but shall not include disturbance that is solely limited to the installation of an I/A OWTS approved by Suffolk County which does not disturb any naturally vegetated land area;
 - (8) Any form of pollution or discharge, including, but not limited to: the spraying or wicking of invasive or natural vegetation with herbicides, running a sewer outfall, discharging sewage treatment or stormwater effluent, stormwater runoff or other liquid wastes into or so as to drain into a wetland, waterway or jurisdictional area;
 - (9) The clearing and/or alteration of vegetation within a wetland, established buffer area or jurisdictional area;
 - (10) The mooring of a residential houseboat or floating home;
 - (11) Any other activity which impairs any of the several functions served by surface waters, lands under water and/or tidal or freshwater wetlands or the benefits derived therefrom, which are set forth in § 81-1 of this chapter if they occur upon the wetland, waterway, jurisdictional area, or the lands under water, or if they impinge upon or otherwise substantially affect the wetlands and waterways;
 - (12) Any aquaculture activity that takes place on or within the jurisdictional area of a wetlands or waterway;
 - (13) Agricultural activities not previously issued a wetland and waterway permit and which take place on lands that do not meet the definition of agricultural lands as defined in § 81-3. The creation of new agricultural lands, whether or not the lands are adjacent to existing agricultural lands by, but not limited to, clearing of existing vegetation, grading, tilling or filling of land, shall be subject to regulation if undertaken within the jurisdictional area; and
 - (14) The excavation, construction and installation of stormwater abatement measures, specifically leaching pool systems, stormwater retention basins or detention ponds, used to control and trap road runoff, sediments and contaminants.
- C. All activities occurring on a project site are subject to review by the Division of Environmental Protection if any of the activity on a project property is subject to regulation.
- D. Subdivisions, site plans, land divisions. Any parcel of land which is waterfront property and/or contains wetlands or is within the jurisdictional area of a wetland or waterway and is the subject of a minor or major subdivision, land division or site plan is subject to regulation.

§ 81-5. Exempt activities.

[Amended 5-25-2017 by L.L. No. 15-2017, effective 6-7-2017; 8-10-2017 by L.L. No. 21-2017, effective 8-18-2017]
The following activities shall not require the issuance of a wetlands and waterways permit:

- A. Any activity that occurs within the boundaries of an incorporated village, with the exception of those regulated activities that occur upon Town-owned upland or underwater land;
- B. Fishing, hunting and related activities. The deposition or removal of the natural products of lands under water, surface waters, tidal wetlands or freshwater wetlands, by recreational or commercial fishing, shellfishing, hunting or trapping, where otherwise legally permitted and regulated;
- C. Public health activities of the Suffolk County Department of Public Works, including mosquito control activities that require the physical change to the wetlands;
- D. Repair and maintenance of existing roadways and bridges that do not require approvals of state and federal agencies, undertaken by the Suffolk County Department of Public Works, the New York State Department of Transportation or the Town of Brookhaven Highway Department;
- E. Maintenance and repair activities;
- F. The finishing of basements, cellars, and/or the conversion of an attached garage into living area;
- G. Any interior construction or renovation (other than the finishing of basements, cellars, and/or the conversion of an attached garage into living area), exterior renovation, or repair of an existing residential or commercial structure which does not

increase the existing footprint and/or habitable living area for a residential structure, or does not increase the existing footprint or floor area of a commercial structure;

- H. Any exterior modification, renovation, or repair of an existing residential or commercial structure which does not increase the existing footprint and/or habitable living area for a residential structure or increase the existing footprint or floor area for a commercial structure;
- I. Operation and maintenance of existing dams, sluices, culverts or other water-control structures or devices which legally existed on the effective date of this chapter by the Suffolk County, the New York State Department of Transportation or the Town of Brookhaven Highway Department;
- J. Conservation, preservation or ecologically sound management activities relating to soil, water, vegetation, fish, shellfish and wildlife, undertaken by federal, state and local governments or subdivisions thereof;
- K. Fences. The erection of a fence shall be excluded from the regulated activities requiring a permit herein, provided the following apply:
 - (1) The fence is elevated six inches above the elevation of the ground in all areas identified as wetlands, within 100 feet of wetlands, or designated as a buffer area as per the issuance of a permit or approval from the Town of Brookhaven;
 - (2) The fence is located landward of the edge of a waterway;
 - (3) The fence conforms to all requirements of Chapter **85**; and
 - (4) No clearing of trees and only the minimal disturbance of native shrubs and emergents will take place during the installation.
- L. The selective clearing of natural vegetation by the use of hand-held tools to facilitate the surveying or inspection process as required by federal, state and local agencies shall be excluded from the regulated activities requiring a permit, provided:
 - (1) The clearing is necessary for the preparation of a survey required for the submission of a wetlands and waterways permit application to the Division of Environmental Protection and the establishment of the paths is necessary for access to the site;
 - (2) All clearing is completed by hand-held tools;
 - (3) No trees are removed from the wetland or jurisdictional area;
 - (4) No wetlands are disturbed unless specifically requested in writing by authorized individuals of the Division of Environmental Protection;
 - (5) No path is more than three feet in width; and
 - (6) No more than three paths are cut per property or as directed by the Division of Environmental Protection.
- M. Selective clearing activities completed either by hand or machine and approved as part of a test hole permit issued by the Town of Brookhaven's Division of Environmental Protection or Division of Planning;
- N. The roof-mounted installation of any energy-generating device such as solar panels (photovoltaic cells), or passive energy-saving devices such as solar hot water heaters. The installation of ground-secured systems shall be exempt when such systems are installed at a location:
 - (1) Greater than 50 feet from a wetland or a waterway; and
 - (2) Where no clearing of natural vegetation, grading of existing soils is required to complete the installation.
- O. The continued tilling or cultivation of existing agricultural lands;
- P. The filling or removal of an artificial pond having an area less than 300 square feet within a residential property and located outside of the jurisdictional area of wetlands;
- Q. The installation, repair, or replacement of: an outside shower and/or shower enclosure, a freestanding hot tub placed upon a previously approved deck or patio, an emergency generator placed within 10 feet of the primary residential structure and not within an established buffer area, an air conditioning unit placed within 10 feet of the primary residential structure and not within an established buffer area, including the concrete pads upon which the air conditioning units and generators are placed, and the installation of cellar or basement entrances; and
- R. Projects solely limited to the installation of an I/A OWTS within the existing cleared area of the subject property.

§ 81-6. Application for permits.

- Any person proposing to conduct or cause to be conducted a regulated activity upon any wetland, waterway or jurisdictional area shall file a permit application, on such forms as shall be supplied by the Division of Environmental Protection for the activity, with the Director or the designee of the Director. Such application shall include a:
- (1) Completed wetlands and waterways application form signed by either the applicant or owner of the property;
 - (2) Statement of authority from the owner for any agent making application;
 - (3) Complete project plans for the proposed activity, which shall be a stamped survey or plan certified by an engineer, architect or landscape architect, or any other professional licensed or authorized to prepare such plan under Education Law Article 130 unless said certification is waived by the Director or the designee of the Director, drawn to a suitable scale, as determined by the Director or the designee of the Director. The following shall be indicated on the project plan and/or a survey, as applicable:
 - (a) The location of all wetlands, including the date they were flagged, if different than the date of the survey, and by whom and their affiliation. The wetland areas will be denoted on the survey by an appropriate vegetative symbol; the name of the adjoining waterway (if applicable), the apparent high water line and apparent low water line, if tidally influenced, on the project property as they existed no earlier than 36 months prior to the date of filing the application unless waived by the Director or the designee of the Director;
 - (b) For any new residential structure or additions to structures that increase habitable living area, a cross-section of a test hole or boring (not less than five years old) indicating the location of the boring on the survey, the elevation at the site of the boring, the depth to groundwater and the types of soils identified;
 - (c) For any new residential structure or the addition to such that increases habitable living area, a cross-sectional view of the existing and/or proposed septic system. All new systems must be in conformance to the rules and regulations of the Suffolk County Department of Health Services and, at the discretion of the Director or the designee of the Director, an existing septic system may require cross-sectional diagrams certified by an engineer;
 - (d) The location of the construction area and the associated area that may be disturbed during construction, and their relation to property lines, roads, buildings and watercourses located adjacent to the project;
 - (e) The locations, elevations, depth of excavation and specifications for all proposed draining, fill, grading, dredging and vegetation removal activities and the procedures to be used;
 - (f) For structures located within a waterway such as docks, the width of the waterway as measured from the apparent low water mark on one shoreline to the opposite apparent low water mark shoreline at the point of construction, and soundings, corrected for low tide (verified by indicating the time and date taken on the project plan or survey) every 10 feet along the entire length of the structure, including any mooring pile, and the location of any significant ecological features such as tidal wetlands vegetation or submerged aquatic vegetation;
 - (g) Existing and proposed contours in Town, USGS or NGV datum at a minimum of two-foot intervals for the proposed project property, and to a distance of 20 feet beyond the limit of the property unless otherwise specified by the Director or the designee of the Director;
 - (h) A drainage system capable of holding and recharging two inches of rainfall from all structures and impervious surfaces on the project site in addition to the capacity necessary for the overflow of any swimming pool (above ground or in-ground) and filter back flush;
 - (i) Properties located in a flood zone as defined by Chapter **33** (Flood Damage Protection) of the Town Code must annotate the flood zone designation, the requirements of said flood zone and if multiple zones cross the property, the boundary and the base flood elevation of each flood zone must be indicated; and
 - (j) Complete construction details prepared and certified by a licensed engineer or architect unless waived by the Director or the designee of the Director.
 - (4) A completed full environmental assessment form as required pursuant to Part 617, Section(s) 617.6 of the SEQRA (State Environmental Quality Review Act, 6 NYCRR Part 617) regulations;
 - (5) Copies of all applicable federal, state, county, or village permits or proof of permit applications that are required for such work;
 - (6) All permit applicants shall submit to the Director or the designee of the Director a notarized affidavit signed by the owner of the project property and the contract vendee, if applicable, which indemnifies and holds harmless the Town of Brookhaven from any claims arising out of or connected with operations under the permit and from all acts, omissions, commissions or negligence on the part of the applicant, his agents or employees, in such form as shall be approved by the Town Attorney;
 - (7) For those actions that are listed in § **81-7**, § **81-9**, or any proposed action which does not conform to the standards for approval listed in § **81-14**, the applicant must propose and agree to, in writing, mitigation measures as described in § **81-15I**, or other practicable alternatives acceptable to the Director that will offset the environmental impacts associated with the proposed activity;

(8) Applications to install a new structural shore protection device must include a narrative that:

- (a) Describes the applicability to utilize nonstructural shore protection devices in lieu of a structural shore protection device;
- (b) Details why the use of nonstructural shore protection devices are not practical and will not be effective in the proposed location; and
- (c) Describes how the proposed structural shore protection devices are designed, located and installed in a manner that best minimizes the potential adverse impact of the structure to the shoreline and adjacent area, provides for the conservation of fish and plant habitat, and is practical and effective.

(9) The applicant shall submit such further application requirements as specified by the Director or the designee of the Director as are deemed necessary to effectuate the provisions and intent of this chapter. Said requirements may include, but are not limited to, permission to physically inspect the subject parcel by personnel of the Town of Brookhaven prior to, during and following completion of the permitted activity. Furthermore, the applicant shall have the burden of demonstrating that the proposed activity will be in accordance with the policies and provisions of this chapter.

B. The Director or the designee of the Director shall determine the adequacy and completeness of the application.

§ 81-7. Incompatible and prohibited activities.

[Amended 1-22-2013 by L.L. No. 4-2013, effective 2-6-2013]

A. The following activities are incompatible with the standards for approval:

- (1) Any activity that would cause or allow the filling or excavation of a tidal or freshwater wetland or within a waterway except for applications to dredge an existing waterway or create wetland habitat.
- (2) Clearing of natural vegetation, the excavation and/or grading of soils within 25 feet of the landward boundary of a tidal or freshwater wetland or water body.
- (3) Any action that would violate the condition(s) of a covenanted buffer zone or a buffer zone established by conditions of a permit or approval.
- (4) Any proposed new residential structure and any additions to an existing residential structure, land divisions and subdivisions, new commercial structures or any additions made to an existing commercial structure, residential and commercial docks, and/or shore protection devices that do not conform to the standards for approval described in **§ 81-14**.
- (5) The construction of private structural shore protection devices on Town-owned upland or lands underwater unless previously approved through an encroachment agreement or its equivalent with the Town of Brookhaven.
- (6) The construction of any structure, other than docks, structural and nonstructural shore protection devices, and the installation of pilings, dolphins or the like; or the installation of any fence seaward of the apparent high watermark of any shoreline.
- (7) Regulated activities initiated or completed without the issuance of a wetlands and waterways permit may be deemed an incompatible activity if the offending structure or activity fails to comply with the standards set forth by § 81-14.A through E or if the Director or his designee makes a determination that the offending action will cause, caused or continues to cause a significant impairment to a wetland, waterway or jurisdictional area.
- (8) Construction of a new bulkhead when:
[Added 5-25-2017 by L.L. No. 15-2017, effective 6-7-2017]

- (a) No existing bulkhead is located within 200 feet of either side of the proposed bulkhead. In the event that one side of the proposed bulkhead is located within 200 feet of another and the other side is not bulkheaded within 400 feet, the proposed bulkhead will be considered incompatible; or
- (b) The bulkhead does not conform to the standards of approval.

B. The following activities shall be prohibited by this code:

- (1) The construction of new primary and accessory structures, the clearing of natural vegetation, and the application of fertilizers, pesticides and herbicides within 20 feet of the landward edge of all wetlands that occur along the Carmans River.

§ 81-8. Work release.

The following activities may, at the discretion of the Director or the designee of the Director, be deemed exempt from the

Category A or Category B permit process and be undertaken upon the issuance of a work release subject to limiting conditions and/or mitigation measures:

- A. Emergency work which is deemed to be immediately necessary in order to protect public health and/or safety or to prevent significant damage to personal or real property;
- B. Activities located within the jurisdictional area of a tidal or freshwater wetland or waterways that conform to the standards for approval and do not significantly impinge or impair the adjoining wetland or waterway or their function, including, but not limited to:
 - (1) A subdivision or land division that does not exceed the yield calculations of the Wetlands Overlay District (Chapter **85**, § **85-621**), and which, through the design of the yield, preliminary and/or final subdivision or land division map or survey, will maintain a structural setback (excluding docks, retaining walls, bulkheads, and access walks) from the wetland boundary a distance greater than 120 feet, and will cause no disturbance to the soils or vegetation within 100 feet of the wetland boundary;
[Amended 5-6-2014 by L.L. No. 8-2014, effective 5-22-2014]
 - (2) A site plan which, through the phases of design, will maintain a structural setback (excluding docks, retaining walls, bulkhead, and access walks) from the limit of the wetland boundary a distance greater than 120 feet, and will cause no disturbance to the soils or vegetation within 100 feet of the wetland boundary;
 - (3) The construction of a new commercial or residential structure with a structural setback from the wetland boundary a distance greater than 120 feet, and the action of construction will cause no disturbance to the soils or vegetation within 100 feet of the wetland boundary;
 - (4) The construction in kind and in place of an existing commercial or residential structure with a valid certificate of occupancy or the equivalent;
 - (5) The addition to an existing commercial or residential structure with a valid certificate of occupancy or the equivalent of less than 10% of the existing floor area that: maintains a setback from the wetlands boundary of 75 feet or the existing setback, whichever is less, involves no or minimal removal of indigenous vegetation, shall not cause any construction within a wetland or waterway, and which will not impair local groundwater or surface water quality;
 - (6) The construction of accessory structures or parts thereof and nonstructural activities (filling, excavating, etc.) that involve no or minimal removal of indigenous vegetation, do not cause any construction within a wetlands or a waterway, and which will not impair local groundwater or surface water quality;
 - (7) Any action upon or within the jurisdictional area of an artificial wetland, provided that a management plan is on file with the Division of Environmental Protection and the proposed action preserves the design function of the artificial wetland; and
 - (8) Minor removal or pruning of wetlands vegetation or natural vegetation within an established buffer area or jurisdictional area to gain access to a waterway, provided such access path does not exceed four feet in width.
 - (9) The alteration, maintenance, dredging, or any activity on or within 25 feet of an artificial wetlands that has an approved management plan and where the proposed activity is included as an acceptable management practice within the management plan.
[Added 5-25-2017 by L.L. No. 15-2017, effective 6-7-2017]
- C. The construction, repair or replacement of a primary or accessory structures or parts thereof which is necessitated as a result of an unusual storm, ice event or other catastrophic event, provided:
 - (1) An application is received by the Division of Environmental Protection within 60 days of the event;
 - (2) The applicant provides proof that the structure previously existed and that the structure's destruction was a direct result of the storm or ice event or other catastrophic event; and
 - (3) That the structure had previously been issued a wetlands and waterways permit under Chapter **81** or a certificate of occupancy under Chapter **85** of the Town Code; and
- D. The installation of a nonstructural shoreline protection device; and
- E. Structures or activities subject to regulation and initiated or completed without the issuance of a wetlands and waterways permit may, at the discretion of the Director or the designee of the Director, be issued a work release subject to limiting conditions and mitigation measures. The Director may also pursue civil and criminal penalties as set forth in § **81-26**.

§ 81-9. Category A permits.

The following projects shall be required to receive a Category A permit:

- A. Appeals of decisions issued by the Director of the Division of Environmental Protection.

- B. New residential construction on undeveloped land that fails to maintain a natural buffer zone of 25 feet and/or request construction of a primary structure within 50 feet of a tidal or freshwater wetland or waterway.
- C. New commercial construction on undeveloped land that fails to maintain a natural buffer zone of 25 feet and/or request construction of a primary structure within 50 feet of a tidal or freshwater wetland or waterway.

§ 81-10. Category B permits.

- A. All actions listed in § 81-4 and not listed in § 81-7, § 81-8, § 81-9, or which are not considered an exempt activity shall be required to receive from the Director of Environmental Protection a Category B permit.
- B. Category B permits may be issued for all projects that conform to the standards for approval as set forth in § 81-14.
- C. Incompatible activities as described in § 81-7 and those projects that do not conform to the standards of approval listed in § 81-14 may, at the discretion of the Director of the Division of Environmental Protection, be issued a Category B permit, provided the applicant provides and agrees to mitigation measures listed in § 81-15I or other practicable alternatives acceptable to the Director that will offset the environmental impacts associated with the incompatible activity.

§ 81-11. Completion notice and local notification, Category A permits.

- A. The Director shall notify the applicant in writing when the application is deemed complete.
- B. Upon notification of a complete Category A permit application by the Director, the Town Board shall schedule a public hearing on such application. The Town Board shall cause notice of such hearing to be published at least once in at least one newspaper having a general circulation in the area where the affected wetland is located. The notice of hearing shall be published not more than 28 days nor less than 14 days prior to the date set for the hearing.
- C. Not less than 15 days prior to the date of the public hearing, the applicant shall conspicuously place along each road frontage of the property which is the subject of the application at least one poster, on such form as shall be supplied at a fee set by the Town Board. Such posters shall contain the following information, printed in letters no less than 1 1/2 inches high:
 - (1) A brief description of the proposed project as approved by the Director.
 - (2) That any person interested in this application and who wishes to become a party of interest may contact the Division of Environmental Protection prior to the Town Board meeting.
 - (3) That a public hearing will be held before the Town Board at a specified date and the time and place with regard to the proposed hearing.
- D. Said poster must remain, in a readable condition, in place until the public hearing has been completed and must be removed no later than seven days thereafter.
- E. The applicant shall also notify all owners of record as shown on the current Town of Brookhaven Assessor's roll of lands within 500 feet of the project property and known claimants to water rights, by registered or certified mail, not less than 15 days prior to the date set for the hearing.
- F. Proof of posting and mail notification must be submitted to the Division of Environmental Protection to determine adequacy at least three days prior to the public hearing.
- G. If the applicant fails to comply with the requirements set forth in Subsections C, D, and E, the Town Board shall have the right to cancel the public hearing and require the applicant to complete the notification process at a later date. The cost to reset a public hearing will be determined by the Town Board.

§ 81-12. Completion notice and local notification, Category B permits.

- A. The Director shall notify the applicant in writing when the application is deemed complete. The notice shall include any additional requirements necessary for the issuance of a permit.
- B. Within six months of being notified by the Director or the designee of the Director that the application is complete, the applicant shall conspicuously place along each road frontage of the property which is the subject of the application at least one poster, in such form as shall be supplied by the Division of Environmental Protection at a fee set by the Town Board. Such posters shall contain the following information, in readable condition:
 - (1) A brief description of the proposed project as approved by the Director; and
 - (2) That any person interested in this application and who wishes to become a party of interest may contact the Division of Environmental Protection within 10 business days of the poster being set.

- C. Said poster must remain in place for a minimum of 14 consecutive days after the application is deemed complete and must be removed no later than seven days after the posting period is completed. Proof of posting, including two pictures of the poster, one indicating the wording on the poster and the second indicating the location of the poster in front of the property, along with an affidavit of posting, must be submitted to the Division of Environmental Protection.
- D. Within 10 days of the posting of the property and during the time that the poster is visible, the applicant shall notify all owners of record as shown on the current assessment roll of the Town of Brookhaven Assessor of parcels within 200 feet of the project property, by registered or certified mail, that written comments will be accepted by the Director for a period of not less than five days and not later than 21 days.

§ 81-13. Standards for approval: Category A permit application.

The Town Board, based upon the information received at the public hearing, any written comments regarding the proposed action received by the Town Clerk or the Division of Environmental Protection during the public comment period, and the recommendations of the Director, will establish the standards for individual approval for all Category A permit applications.

§ 81-14. Standards for approval: Category B permit applications.

A. Standards for residential and commercial docks.

(1) The standards for a residential dock shall be as follows:

[Amended 5-25-2017 by L.L. No. 15-2017, effective 6-7-2017]

- (a) All lots requesting a permit for a dock must have a riparian right to a navigable waterway as defined in § 81-3. Parcels located on a non-navigable waterway may request a dock for nonpowered watercraft access. The standards of approval for this type of dock will be determined by the Director of the Division of Environmental Protection.
- (b) All areas except the Port Jefferson Harbor Complex: In no case shall the dock length be in excess of the minimum length necessary to reach a water depth of three feet below the apparent low water line [For this provision only, the dock shall exclude pilings not attached to the fixed dock or any floating dock(s).], but in any event not to exceed 150 feet in length, or exceed 15% of the width of the waterway, whichever of these provisions is less;
- (c) Port Jefferson Harbor Complex only: In no case shall the dock length be in excess of the minimum length to reach a water depth of three feet below the apparent low water line [for this provision only, the dock shall exclude pilings not attached to the fixed dock or any floating dock(s).], except in cases where the vessel, because of its draft, requires deeper water and adequate depth is within 10 feet of the minus three-foot below the apparent low water line (-3' ALWL), the dock may be extended 10 feet from this point, but in any event may not exceed 150 feet in length, or exceed 15% of the width of the waterway, whichever of these provisions is less;
- (d) Only one residential dock may be constructed on a residential lot that has a riparian right;
- (e) A residential dock and any part thereof, or any vessel tied to a dock, may not be located within or impinge upon that area located within 10 feet of the seaward extension of any property line;
- (f) No more than two boats may be berthed, tied or secured to any residential dock;
- (g) The width of a catwalk, dock or ramp leading to a floating dock may not exceed four feet. All portions of a catwalk or fixed dock that traverse any vegetated tidal or freshwater wetland must utilize open-grate decking as specified by the Director or designee of the Director;
- (h) The width of any single float shall not exceed eight feet in width or 20 feet in length and shall be secured or installed in such a manner that the float shall maintain a six-inch separation from the bottom of the floating dock to the bottom of the water body at any time during the tidal cycle. No more than two floats may be incorporated into a residential dock unless permitted by a previously approved wetlands and waterways permit;
- (i) A dock shall not be permitted in areas of high vessel traffic or vessel congestion where there is a likelihood that the dock will significantly jeopardize public safety or create a public nuisance;
- (j) A dock shall be designed and sited so as to minimize habitat loss and/or fragmentation, and to not impinge or impair upon access to shellfish resources;
- (k) A dock shall be designed and sited so as to not hinder public access to public trust lands and surface waters; and
- (l) A dock and its associated floats and piles shall have adequate lighting and markings.

(2) The standards for commercial docks shall be as follows:

- (a) In no case shall the dock length, excluding that portion landward of the apparent high water line, be in excess of

150 feet nor exceed 40% of the width of the waterway, whichever is less;

- (b) The width of a catwalk or dock may not exceed eight feet and must be elevated a minimum of four feet above the apparent high water line, and a minimum of four feet above grade when traversing any tidal or freshwater wetlands;
 - (c) The width of any single float may not exceed eight feet and shall be secured or installed in such a manner that the float shall maintain a six-inch separation from the bottom of the floating dock to the bottom of the water body at any time during the tidal cycle;
 - (d) All marinas that provide fuel to private vessels must also provide pump-out facilities for vessel sanitary waste;
 - (e) No dock shall be permitted in areas of high vessel traffic or vessel congestion where there is a likelihood that the dock will significantly jeopardize public safety or create a public nuisance;
 - (f) A dock shall be designed and sited so as to: minimize habitat loss and/or fragmentation, and not impinge or impair access to shellfish resources;
 - (g) A dock shall be designed and sited so as to not hinder public access to public trust lands and surface waters;
 - (h) A dock and its associated floats and piles shall have adequate lighting and markings; and
 - (i) The principals or corporate officers of any commercial dock placed above Town-owned underwater land shall either enter into a lease agreement with the Town of Brookhaven (if applicable) or provide to the Town Clerk, on a yearly basis, an affidavit of indemnity and agreement to provide insurance in such form as required by the Town of Brookhaven Town Attorney or her/his designee.
- (3) The Town shall have the right to seek removal of any dock constructed without a permit described herein or built in violation of these standards and/or restrictions established by a permit issued by the Director or the designee of the Director or the Town Board of the Town of Brookhaven.
- (4) Municipal docks are not required to conform to the regulatory dimension of a commercial or residential dock described herein.
- (5) When a bulkhead is used as a residential docking facility:
- (a) Only two boats may be tied within the confines of the seaward extension of the property lines;
 - (b) No vessel or mooring pile may be located within 10 feet of the seaward extensions of the property boundary;
 - (c) When two bulkheads meet at an angle less than 180° and the bulkhead is used as a mooring facility, the area of control for each adjacent property owner will be determined by a line drawn at the median of the angle formed by the two bulkheads. No vessel, dock or mooring pile will be permitted outside the property owners area of control; and
 - (d) If tied perpendicular to the bulkhead, no vessel or mooring pile may protrude into the waterway more than 15% of the total width of the waterway.

B. Standards for shore protection devices:

- (1) The standards for structural shore protection devices constructed along the South Shore of the Town of Brookhaven shall be as follows:
- (a) New bulkheads or other structural shore protection devices shall be prohibited except in those cases that the Director of Environmental Protection deems the structure or device necessary in order to protect public health and safety or to prevent significant damage to personal or real property and must be located at or above the apparent high water mark;
 - (b) New or reconstructed bulkheads or any other structural shore protection device may not be constructed upon the underwater lands of the Town of Brookhaven unless, at the discretion of the Town Board of the Town of Brookhaven, an encroachment agreement is first issued;
 - (c) No bulkhead shall be constructed, as measured from the apparent high water mark to the top plate or sill of the bulkhead, with a height greater than three feet; and
 - (d) Upon completion of the construction of the shore protection device, a ten-foot-wide buffer area, unless a larger buffer area already exists by covenant or previous permit restriction, which does not contain turf grasses or nonindigenous vegetation, must be established landward of the device.
- (2) The standards for structural shore protection devices along the North Shore of the Town of Brookhaven, including those areas surrounding the North Shore Harbors, shall be:

New bulkheads or other structural shore protection devices shall be prohibited except in those cases that the Director of Environmental Protection deems the structure or device necessary in order to protect public health and safety or to prevent significant damage to personal or real property and must be located at or above the apparent high water mark;

- (b) In locations where there is a substantial bluff or beach scarp, new bulkheads or structural shore protection devices must be constructed no further seaward than 10 feet from the existing toe of the bluff, unless otherwise permitted by the Director or his designee;
 - (c) New or reconstructed bulkheads or other structural shore protection devices may not be constructed upon beaches or the underwater lands of the Town of Brookhaven unless, at the discretion of the Town Board of the Town of Brookhaven, an encroachment agreement is first issued;
 - (d) No bulkhead shall be constructed where the top plate or sill of the bulkhead exceeds an elevation of 13 feet as measured in Town, USGS or NGV datum;
 - (e) Upon completion of the construction of any shore protection device, all denuded or eroded areas landward of the device shall be stabilized with coastal tolerant vegetation; and
 - (f) New bulkheads or other structural shore protection devices facing Long Island Sound must install stone armoring, consisting of one ton stone (minimum weight) with a two stone base and two stone height, along the entire length, or if determined by the Director or the designee of the Director, must, at minimum, be installed 20 feet of either side of a point of intersection between two bulkheads or a bulkhead face and a return where the angle created is not equal to 180°.
- (3) Nonstructural shore protection devices.
- (a) Nonstructural shore protection devices must be installed at or above the apparent high water line. For applications that are considered demonstration projects by the NY State Department of Environmental Conservation (DEC) and are issued DEC tidal or freshwater wetlands permits for nonstructural shore protection devices below the apparent high water line, the Director, at his discretion, may approve such application without mitigation measures indicated in § 81-15I.
- (4) The Town shall have the right to seek removal of any shore protection device constructed or installed without a permit described herein or built in violation of these standards and/or restrictions established by a permit issued by the Director or the Town Board of the Town of Brookhaven.

C. Standards for development: residential structures and additions thereto.

- (1) The buffer zone and structural setback requirements for the construction of primary residential structures on undeveloped land within the jurisdictional area of this code shall be as follows:
- (a) New residential structures constructed on lots with subdivisions or land divisions approved on or after August 11, 2003, must provide a minimum one-hundred-twenty-five-foot setback for all primary and accessory structures, excluding driveways and access roadways, landward of the wetlands boundary and a one-hundred-foot buffer zone landward of the wetland boundary;
 - (b) New residential structures constructed on lots with subdivisions or land divisions approved before August 11, 2003, must provide a minimum seventy-five-foot buffer area landward of the wetland boundary; with the following exceptions:
 - [1] When the wetland area is located, in relation to the proposed primary structure, in or adjacent to the front or side yard, the natural buffer area required for any primary or accessory structures (excluding driveways and utility access) will exceed, to the greatest extent practicable, the setback requirements established for a Category A permit application in § 81-9.
 - [2] When the wetland area is located, in relation to the proposed primary structure, in or adjacent to the rear yard, and the shortest distance from the front property line to the wetland area is less than 175 feet, then the greatest extent of the buffer zone will be established minimally from the most landward wetland point a distance equal to 70% of the difference of the linear distance measured from the front property line to the nearest point of wetland and 70 feet. In the event that an easement exists on the front of the property, the distance across the easement will be excluded from the calculation. In no case may the width of the buffer zone be less than 25 feet. The primary structure must be set back a minimum of 25 feet from the edge of the buffer zone.
 - [3] Mitigation measures may be used to reduce the width of the buffer areas but in no case may they have a width less than 50% of the difference of the linear distance measured from the front property line to the nearest point of wetland and 70 feet or 25 feet, whichever is greater.
- (2) The buffer zone and structural setback requirements for the construction of new primary residential structures on previously developed land within the jurisdictional area of this code shall be as follows:

When an existing buffer area has been established by conditions of a previously issued wetlands and waterways permit, a required covenant filed with the County Clerk as part of an approval issued by the Planning Board, Town Board, or Zoning Board of Appeals, that buffer zone and setback requirements shall be maintained.

- (b) When a natural buffer within the jurisdictional area exists, as verified by existing or historical surveys or aerial photography, that buffer area will be maintained to the greatest extent practicable. The building setback line for the primary structure will be at a minimum 25 feet landward of the limit of the buffer zone.
 - (c) If no buffer area exists landward of the wetlands because of legally approved clearing activities or clearing that took place prior to April 1976, a buffer zone of indigenous vegetation, with a minimum width of 20 feet, shall be established adjacent to the wetlands area. The building setback of the primary structure shall be 75 feet landward of the limit of wetlands or at the greatest extent practicable as established by the Director.
- (3) All new residential structures and additions to existing residential structures that exceed 10% of the floor area of the original structure as indicated on the earliest certificate of occupancy or the equivalent or which have undergone more than one addition since the issuance of the earliest certificate of occupancy or the equivalent must:
- (a) Have an existing sanitary system in conformance to, or propose to install a new sanitary system in conformance with, the current standards of the Suffolk County Department of Health Services.
[Amended 5-25-2017 by L.L. No. 15-2017, effective 6-7-2017; 11-30-2017 by L.L. No. 23-2017, effective 12-8-2017]
 - [1] New residential structures within the jurisdictional area must install an innovative and alternative on-site wastewater treatment system.
 - [2] Residential structures within the jurisdictional area constructed on or before December 31, 1986, which propose additions that increase the number of bedrooms or bathrooms, or increase the floor area of the existing structure as indicated on the earliest certificate of occupancy by an area greater than 10%, including the sum of the area of any previous additions, must install an innovative and alternative on-site wastewater treatment system.
 - [3] Residential structures within the jurisdictional area constructed on or after January 1, 1987, which propose additions that increase the number of bedrooms, or increase the floor area of the existing structure as indicated on the earliest certificate of occupancy by an area greater than 50%, including the sum of the area of any previous additions, must install an innovative and alternative on-site wastewater treatment system.
 - [4] Innovative and alternative on-site wastewater treatment systems installed within the Town of Brookhaven must be approved by the Suffolk County Department of Health Services and must be designed using the best available technology.
 - (b) Maintain the maximum setback practicable as determined by the Director or the designee of the Director;
 - (c) Install drywells to capture a minimum two-inch rainfall event from the entire house, including the proposed addition and any other impervious surfaces such as patios, driveways and the like; and
 - (d) Limit landscaping with nonindigenous vegetation to no more than 15% of the total lot area.
 - (e) Revegetate previously cleared areas adjacent to the wetlands with local indigenous vegetation species as directed by the Director or his designee.
- (4) Other actions for residential properties.
[Added 5-25-2017 by L.L. No. 15-2017, effective 6-7-2017]
- (a) Elevation for homes to conform to FEMA standards.
 - [1] Homes that are being elevated using federal, state, or local funds or grants must upgrade the sanitary system to conform to the current standards of the Suffolk County Department of Health Services.
 - [2] Homes in which the sanitary system is located within 150 feet of open water must upgrade to an innovative and alternative on-site wastewater treatment system. Innovative and alternative on-site wastewater treatment systems installed within the Town of Brookhaven must be approved by the Suffolk County Department of Health Services and must be designed using the best available technology.
 - (b) Accessory structures.
 - [1] Accessory structures must conform to the setbacks of the underlying zoning.
 - [2] Accessory structures are prohibited within a buffer zone that exists as a condition of a previously issued wetlands or waterways permit or a covenant required by either the Town Board, Planning Board or Zoning Board of Appeals of the Town of Brookhaven.
 - [3] On an undeveloped lot, new accessory structures must be set back a minimum of 50 feet from any wetland

line or waterway.

- [4] On a developed property, new accessory structures must be set back a minimum distance of 10 feet from any waterways, and a minimum distance of 10 feet landward of the edge of any waterway.

D. Standards for land divisions and subdivisions: The standards for the design of land divisions and subdivisions within the jurisdictional area of this code shall be as follows:

- (1) Yield maps submitted to the Division of Environmental Protection must incorporate into their design, in addition to all of the requirements set forth in Chapter **85** of the Town Code:
 - (a) A minimum adjacent buffer area of 100 feet extending landward from a wetland shall be required on applications for a subdivision or land division for all lots on undeveloped land;
 - (b) Lot numbers consistent with the yield calculations as determined under the constraints of the Wetlands Overlay District described in § **85-626** of the Town Code of the Town of Brookhaven; and
 - (c) The yield map will determine the total number of waterfront lots. Flags, narrow portions of land attached to a larger wider parcel, leading to the adjacent water body with a width less than 44 feet are prohibited.
- (2) Preliminary and final subdivision maps submitted to the Division of Environmental Protection must incorporate into their design, in addition to all of the requirements set forth in Chapter **85** of the Town Code:
 - (a) A minimum adjacent buffer area of 75 feet extending landward from a wetland shall be required on each lot within the jurisdictional area of a wetland or waterway;
 - (b) The number of lots must be consistent with the yield calculations as determined under the constraints of the Wetlands Overlay District described in § **85-624** of the Town Code of the Town of Brookhaven; and
 - (c) The yield map will determine the total number of waterfront lots. Flags, narrow portions of land attached to a larger wider parcel, leading to the adjacent water body with a width less than 44 feet are prohibited.
- (3) Minor land division requests for undeveloped lots submitted to the Division of Environmental Protection must incorporate into their design:
 - (a) Yield calculations restricting the number of lots in conformance to the Wetlands Overlay District described in § **85-626** of the Town Code of the Town of Brookhaven;
 - (b) No reverse flags to the waterfront. Flags are narrow portions of land attached to a larger wider parcel, leading to the adjacent water body with a width less than 44 feet; and
 - (c) A minimum adjacent buffer area of 75 feet extending landward from a wetland shall be required on each lot within the jurisdictional area of a wetland or waterway.
- (4) Developed land which is subject to an application for a major or minor land division or subdivision may be exempt from the minimum adjacent buffer area of 100 feet if: a buffer area was established under a previously issued wetland and waterways permit or is required by a covenant and/or other restrictions established by a previous (made prior to the date of the application) approval of the Town Board, Planning Board, or the Zoning Board of Appeals of the Town of Brookhaven.
- (5) Developed land undergoing a subdivision or land division application and are proposing concurrently or proposing in the future the construction of a new residential structure; an addition, alteration or relocation of the existing primary residential structure; or the installation of any new impervious surfaces (i.e., roads, driveways, accessory structures) will be required to establish a natural and undisturbed buffer area of 100 feet. However, the width of the buffer area may be reduced if, at the discretion of the Director or the designee of the Director:
 - (a) The size of the lot or the expansiveness of the wetlands does not allow for a one-hundred-foot buffer and the applicant proposes or offers adequate mitigation; or
 - (b) The buffer area was disturbed by previously permitted actions or by past actions undertaken prior to April 1976. In this case, the width of the buffer area shall not be less than 50 feet for a new residential structure or 30 feet for an existing residential structure or other impervious surface.
- (6) Disturbed buffer areas must be vegetated with local indigenous vegetation species as directed by the Director or his designee.

E. Standards for development: commercial structures. The standards for the construction of commercial structures within the jurisdictional area of this code shall be as follows:

- (1) New commercial structures constructed on undeveloped land must provide a minimum one-hundred-foot buffer zone;
- (2) Improved commercially zoned lots or developed land which are subject to an application for a site plan may be exempt from the minimum adjacent buffer area of 100 feet if: a buffer area was established under a previously issued wetland

and waterways permit or is required by a covenant and/or other restrictions established by a previous (made prior to the date of the application) approval of the Town Board, Planning Board, or the Zoning Board of Appeals of the Town of Brookhaven;

- (3) Previously developed land undergoing a site plan application and are proposing concurrently or proposing in the future the construction of a new structure; an addition, alteration or relocation of the existing primary structure; or the installation of any new impervious surfaces (i.e., roads, driveways, accessory structures) will be required to establish a natural and undisturbed buffer area of 100 feet. However, the width of the buffer area may be reduced if, at the discretion of the Director or the designee of the Director:
 - (a) The size of the lot or the expansiveness of the wetlands does not allow for a one-hundred-foot buffer; or
 - (b) The buffer area was disturbed by previously permitted actions or by anthropogenic actions undertaken prior to April 1976. In this case, the width of the buffer area shall not be less than 50 feet for a new commercial structure or 30 feet for an existing structure or other impervious surface.
- (4) Disturbed buffer areas must be vegetated with local indigenous vegetation species as directed by the Director or his designee.

§ 81-15. Granting, denying or limiting projects, Category A and Category B.

- A. Within 60 days of the closing of the public hearing for a Category A project and/or the completion of any pre-issuance requirements set forth by the Town Board, the Town Board shall, in writing, approve, approve with conditions, or deny the application in accordance to findings issued by the Town Board.
- B. Within 60 days of the applicant fulfilling all the necessary conditions of the completion notice for a Category B project application, the Director or the designee of the Director shall, in writing, approve, approve with conditions, or deny the application in accordance to findings prepared by the Division of Environmental Protection.
- C. In considering the granting, the conditional granting, or denial of any permit application, it shall be the policy of the Town, through the Town Board in the case of Category A permit applications and the Director in the case of Category B permit applications, to:
 - (1) Safeguard, protect, and preserve the vegetation and fauna of all wetlands and waterways and to maintain the quality and ecological integrity of all wetlands and waterways by preserving, to the greatest extent possible, surface waters, wetland habitats, and their adjacent upland buffer areas, in order to maintain the ecological processes necessary for their perpetuation;
 - (2) Safeguard, protect, and enhance, when and where possible, water quality conditions in wetlands and surface waters by ensuring that applications for development, redevelopment, or the expansion of existing structures incorporate into their design: a sanitary system that meets or exceeds the standards for nitrogen and bacterial removal of the Suffolk County Department of Health Services; a system of containment for stormwater runoff; and expanding or preserving natural buffer areas, minimizing the extent of fertilizer-dependent vegetation, or the creation of vegetated recharge areas to prevent surface contamination from entering adjacent waterways.
 - (3) Minimize, to the greatest extent possible, the impacts to wetlands and waterways from erosion and sediment transport caused by existing development, the potential effect of new development, and those existing and proposed structures associated with development such as docks, bulkheads, gabions, and revetments on the ecological integrity of the Town's wetlands and waterways by providing adequate setbacks and buffer zones, using nonstructural shore protection devices, minimizing the impacts of existing structures and developing a site in conformance with the natural topography of the site;
 - (4) Minimize adverse ecological impacts to wetlands and surface waters and the flora and fauna which inhabit these areas from dredging and dredge spoil disposal activities;
 - (5) Safeguard, protect, and preserve the public's access to the shoreline and their continued use along it.
- D. In considering the granting, the conditional granting, or denial of any permit application for residential and commercial docks, the Town of Brookhaven shall also consider the following:
 - (1) The dock shall be located on the property so as to minimize the obstruction of surface waters, reduce hazards to navigation, minimize the reduction in uses of public trust lands and waters, and minimize negative impacts to natural resources;
 - (2) The dock shall be for riparian access for a waterfront lot and shall not impinge or impair the riparian rights of the adjacent waterfront property owners;
 - (3) The construction of the dock shall be allowable within the underlying zoning of the project site; and
 - (4) The cumulative impacts of a residential and commercial dock shall be considered and the design, construction, and location of the dock shall minimize cumulative impacts.

- E. In considering the granting, the conditional granting, or denial of any permit application for structural or nonstructural shore protection devices, the Town of Brookhaven shall also consider the following:
- (1) That the structural shore protection devices are located on the property so as to minimize the erosive effects of the device on the project property, the adjacent properties, and any adjacent wetland areas;
 - (2) That the structural shore protection devices are sited to minimize the reduction in use of and access to public trust lands and waters, and minimize adverse impacts to natural resources;
 - (3) That the potential cumulative impacts of the approval of the structural shore protection devices or, if applicable, the precedence set by the approval of the device, shall be evaluated and the design, construction, and location of the device shall minimize cumulative impacts; and
 - (4) That the extent to which the structural shore protection devices are necessary to protect personal property from the effects of erosion; in assessing the degree to which the shore hardening device meets this criteria.
- F. In considering the granting, the conditional granting, or denial of any permit application, the Town Board or the Director shall evaluate and consider all comments from the public received during the application process and subsequent public comment period, if applicable, and consider practicable alternatives that reduce or mitigate the identified issues.
- G. In considering the granting, the conditional granting, or denial of any permit application, the Town Board or the Director shall evaluate practicable alternatives that minimize negative impacts to the wetland. The practicable alternative analysis may reduce the scale of the activity, consistent with the project purpose, proposed use and permit issuance standards set forth in **§ 81-14**.
- H. In considering the granting, the conditional granting, or denial of any permit application, the Town Board or the Director shall impose conditions or constraints designed to carry out the intent of this chapter, which may include the imposition of restrictive covenants and/or performance bonds. Such conditions or limitations shall be incorporated in the permit. If the proposed activity causes an unavoidable loss of wetlands or unavoidably adversely impacts a waterway, said impacts having been minimized to the extent practicable, the applicant shall develop a mitigation plan which shall specify mitigation measures that provide the replacement of the resources which are lost due to the proposed activity. If mitigation is required, the mitigation plan will be a condition of the permit and shall be completed prior to the expiration of the permit and maintained for the life of the permitted structure. Any wetland created pursuant to this provision shall be protected and regulated.
- I. In considering the granting, the conditional granting, or denial of any permit application, the Town Board or the Director shall, in consultation with the applicant, impose or accept mitigation measures to provide relief from mandatory restrictions, setbacks and buffer zones established in **§ 81-7** and **§ 81-14**. The decision to accept or reject a mitigation measure is at the sole discretion of the Town Board for a Category A project or the Director for all other projects.
- (1) For applications that propose development or the construction of accessory structures on upland property, the mitigation measures may include, but are not limited to:
 - (a) A one-time payment of \$4 per square foot for each square foot of buffer zone that the proposed project lacks to meet the minimum setback as required;
 - (b) The donation to the Town of Brookhaven, Suffolk County, the NY State Department of Environmental Conservation, or an approved not-for-profit environmental group of a property that has, at a minimum, an equal amount of upland property needed to conform to the buffer area requirements;
 - (c) The donation to the Town of Brookhaven, Suffolk County, the NY State Department of Environmental Conservation, or an approved not-for-profit environmental group of a property that has, at a minimum, three times the amount of wetlands needed to conform to the buffer area requirements; and
 - (d) The purchase of Pine Barrens or Town TDR credits, complete or partially, to provide sufficient yield, as calculated by the methodology of the Wetlands Overlay District, to provide the lot a yield of one unit.
 - (2) For structures that are placed upon or within Town-owned underwater land, the mitigation measures may include, but are not limited to:
[Amended 4-11-2019 by L.L. No. 9-2019, effective 4-18-2019]
 - (a) For structures constructed prior to 1976, a one-time payment of \$1 per square foot for each foot of occupied Town-owned land that exceeds the requirements of §§ **81-7** and **81-14** shall be made to the Division of Environmental Protection.
 - (b) For structures constructed after 1976, a one-time payment of \$10 per square foot for each foot of occupied Town-owned land that exceeds the requirements of §§ **81-7** and **81-14** shall be made to the Division of Environmental Protection.
 - (3) Any funds paid to the Town of Brookhaven pursuant to **§ 81-15(1)(a)** and **§ 81-15(2)(a)** shall be deposited into an account established by the Division of Environmental Protection for wetland and shellfish restoration projects.

- J. Any decision by the Director to grant, deny or place conditions upon a wetland permit or to revoke or suspend any permit previously issued pursuant to this chapter shall be supported by written findings giving the reason for such decisions.

§ 81-16. Withdrawal of application.

- A. An application shall be deemed withdrawn in the following circumstances:
- (1) By the applicant upon the filing of a written request to withdraw at any time prior to the time the Director makes a determination to grant, deny or issue the permit with conditions;
 - (2) Upon the applicant failing to comply with a written request for additional information by the Division of Environmental Protection within six months of the date of such request;
 - (3) Upon the applicant failing to supply to the Town Clerk and/or the Director with written covenants, deeds and/or a title report within six months of the date of the notice of completion, if covenants or deeds are imposed or required by the Director as a condition of receiving approval of a wetlands permit or notice by the Town Clerk requesting the same, whichever is later; and
 - (4) Upon the applicant failing to supply to the Director or the designee of the Director any additional pre-issuance permit requirement(s) established by the Town Board or the Director within six months of the date of notification from either the Town Clerk or the Director.
- B. The Director or the designee of the Director may extend such period of time for good cause upon written application.

§ 81-17. Permit requirements: Category A, Category B permits and work releases.

- A. All permit placards shall be clearly posted on the project site during all work activities and all applicants, their agents or construction crews proceeding with approved operations shall have on site or have readily available the approved permit conditions and shall show same to any authorized inspector of the Town of Brookhaven whenever requested.
- B. The property that is subject of a permit shall be open to inspection at any time by any authorized inspector of the Town of Brookhaven.
- C. The Director or Chief Building Inspector may revoke or suspend any permit where any condition of the permit has been violated.

§ 81-18. Expiration of wetlands and waterways permit.

- A. All activities undertaken pursuant to a Category A or Category B wetlands and waterways permit must be completed within a period of two years of the date of issuance, except dredging permits and aquaculture permits, which shall, at the discretion of the Director or the designee of the Director, be in effect for a period of five years from the date of issuance.
[Amended 5-25-2017 by L.L. No. 15-2017, effective 6-7-2017]
- B. All activities undertaken pursuant to a work release because the activity undertaken is described as emergency work, necessary repair due to a storm or other catastrophic event, or permits issued after-the-fact, shall expire within 120 days of permit issuance. All other work releases shall be valid for a period not to exceed one year from the date of issuance.
[Amended 5-25-2017 by L.L. No. 15-2017, effective 6-7-2017]
- C. Notwithstanding the foregoing, in the event that the applicant has obtained a building permit for the work authorized by any form of a wetlands and waterways permit or other administrative approval, the time for completing a permitted activity shall expire simultaneous with the expiration of the building permit or any renewal thereof.
- D. Wetlands and waterways permits for regulated activities which require the additional approval of either the Planning Board (land divisions, subdivisions and site plans) or the Board of Zoning Appeals shall expire with the latter of the following:
- (1) The expiration date of the wetlands and waterways permit; or
 - (2) The expiration date of the Board's approval.
- E. Structures constructed under a valid wetland and waterways permit shall be constrained by all conditions of that permit for the life of the structure.

§ 81-19. Amending and extending permits.

- A. The Director or the designee of the Director may, at the request of the permittee or property owner, amend any permit. The

Director or the designee of the Director may also amend any permit previously issued, provided all changes are appurtenant to previously permitted structures, result in no substantive changes to the project description and/or it is determined by the Director or the designee of the Director that the changes proposed will not result in an increased impact to the local environment.

- B. In the event a wetlands or waterways permit is due to expire, the Director or the designee of the Director may issue a renewal thereon. In the event that the permit expires and work has not commenced, the Director or the designee of the Director may, at his discretion, renew the permit or require a new application to be filed. Permits which have been expired for more than three years and dredging permits are not renewable.
- C. Minor alterations to a survey which do not alter the footprint of the permitted structure(s), existing or conditioned setbacks and buffer zones and which do not require additional environmental review may, at the discretion of the Director or the designee of the Director, be accepted without alteration of the permit conditions or payment of additional fees.

§ 81-20. Building permit.

- A. All buildings and structures as defined in Chapter **85** (Zoning) of the Town of Brookhaven Code and regulated herein shall, upon the issuance of a wetland permit by the Director or the designee of the Director, be required to apply for and receive a building permit from the Chief Building Inspector.
- B. No structure or building, or part thereof erected or altered and regulated under Chapter **81** of the Brookhaven Town Code shall be occupied or used until a certificate of occupancy or the equivalent has been issued by the Chief Building Inspector.

§ 81-21. Fees.

The Town Board shall reserve the right to require an application fee for all permit applications as well as a permit or license fee for any operations or uses permitted pursuant to this chapter. Such fees shall be collected by the Division of Environmental Protection.

§ 81-22. Jurisdiction of other agencies.

A permit approved by the Town of Brookhaven does not relieve the applicant of the necessity to obtain authorization or other permits from other agencies, which have jurisdiction over the proposed project.

§ 81-23. Appeal of decisions by Division of Environmental Protection.

- A. The Town Board of the Town of Brookhaven is hereby authorized to affirm and/or modify and/or annul any findings of denial, hear and decide appeals on the Director's interpretation of this chapter and to affirm the requirements, decisions or determinations of the Director, by written decision.
- B. Appeals shall be filed with the Town Clerk within 30 days of the date of the issuance of the decision of the Director.
- C. Appeals shall be in writing in such form as may be prescribed by the Division of Environmental Protection, with a copy thereof simultaneously served upon the Division of Environmental Protection, and shall include ground(s) upon which they are based, including but not limited to the relevant provisions of this chapter and/or the disputed interpretation thereof.
- D. Within 90 days of the submission of a request for an appeal to the Town Clerk, the Town Board will set a public hearing. Upon setting a date for the public hearing, both the Town of Brookhaven and the applicant shall follow the completion notice and local notification requirements set forth in § **81-11B, C, D, E, and F**.
- E. In making a determination to annul and/or modify the decision of the Division of Environmental Protection, the Town Board must find that:
 - (1) No practicable alternative is available;
 - (2) The proposed project is compatible with the purposes and legislative intent of this chapter;
 - (3) All reasonable means and mitigation measures limiting adverse impacts to the wetlands and waterways and their functions and/or values thereof have been implemented or incorporated into the project design;
 - (4) The proposed conditions limiting the project or potential mitigation measures required by the Director were neither reasonable nor practicable and/or would not have protected the natural resource in accordance to the legislative intent of this chapter; and
 - (5) The denial of the application by the Director was not a result of the applicant's failure or unwillingness to utilize methods and employ mitigation measures to reduce the overall impact to the system.

- F. In the event that the Town Board does not make a determination to annul or modify the decision of the Director and upholds the findings of the Division of Environmental Protection, the relief mechanism shall be as provided in § 81-24 for all wetlands.

§ 81-24. Appeals of decisions regarding wetlands.

An applicant may appeal a decision by the Town Board regarding a wetlands or waterways permit pursuant to Article 78 of the Civil Practice Law and Rules or any other remedies available by law.

§ 81-25. Violations of permits/restrictive covenants.

- A. It shall be a violation to undertake any regulated activity that does not comply with the conditions set forth by a wetlands or waterways permit or work release.
- B. It shall be a violation to undertake any regulated activity that does not comply with a restrictive covenant required as part of the approval of the Town of Brookhaven Town Board, Planning Board, Zoning Board of Appeals and the Division of Environmental Protection.

§ 81-26. Penalties for offenses; corrective action.

- A. Criminal sanctions.
- (1) Any person who violates any provision of this chapter or the conditions imposed by the Town Board, the Director or the designee of the Director, upon an approved permit, shall, in addition to administrative sanctions, be guilty of a violation punishable by a fine of not less than \$1,000 nor more than \$3,000 and for a second and each subsequent offense be guilty of a misdemeanor, punishable by a fine of not less than \$3,000 nor more than \$10,000 or a term of imprisonment of not less than 15 days nor more than six months, or both.
 - (2) Each offense shall be a separate and distinct offense, and, in the case of a continuing offense, each day's continuance thereof shall be deemed a separate and distinct offense.
- B. Any person who violates any provision of this chapter or the conditions imposed by the Town Board, the Director or the designee of the Director upon an approved permit may, in lieu of administrative and criminal sanctions, enter into an order of consent with the Director of Environmental Protection. Such order may:
- (1) Include a payment to the Joseph P. Macchia Environmental Trust Fund in an amount determined by the Director or the designee of the Director but not to exceed \$10,000; and/or
 - (2) Restoration of the damaged wetland or waterway.
- C. Equitable relief. The Town of Brookhaven shall have the right to seek equitable relief to restrain any violation or threatened violation of any of the provisions of this chapter.

§ 81-27. Stop-work orders.

[Added 11-22-2011 by L.L. No. 23-2011, effective 12-6-2011]

- A. Whenever the Director of the Division of Environmental Protection or the designee of the Director has reasonable grounds to believe that a regulated activity as described in § 81-4 of this code is being performed: (i) in violation of the provisions of the applicable codes or regulations; or (ii) not in conformity with the provision of an application, plans, specifications or other documents upon the basis of which a permit was issued; he shall notify the owner of the property or the owner's agent or the person performing the work to suspend all work, and any such persons shall forthwith stop such work and suspend all regulated activities until the stop-work order has been rescinded. Such order and notice shall be in writing, shall state the conditions under which the work may be resumed and may be served upon a person to whom it is directed either by delivering it personally to him or by posting the same upon a conspicuous portion of the primary structure, or the project site, or the structure under construction, and sending a copy of the same by certified mail to the property owner.
- B. It shall be a violation to allow or cause to be continued a regulated activity on the subject premises after the issuance of a stop-work order pursuant to this chapter.
- C. A stop-work order may be rescinded only by the Director or his designee upon evidence of compliance with this chapter.

*Town of Brookhaven, NY
Thursday, October 3, 2019*

Chapter 85. Zoning

Article X. Zoning Districts; Map; General Regulations

§ 85-134. Designation of districts.

[Amended 8-2-2018 by L.L. No. 15-2018, effective 8-13-2018]

The Town of Brookhaven, outside of the incorporated villages, is hereby divided into the following use districts, which shall be classified and listed from most restrictive to least restrictive:

Wetland Overlay
A Residence 10
A Residence 5
A Residence 2
A Residence 1
A Residence
B Residence 1
B Residence
C Residence
D Residence
Horse Farm Residence
K Business
Ocean Front Dune (Fire Island)
Residential District (Fire Island)
Commercial District (Fire Island)
J Business
MF Residence District (Multifamily)
J Business 4
Planned Retirement Community Residence
Planned Retirement Congregate Housing Community Residence
NH-H Health Facility
Mobile Home Community Residence
L Industrial 1
Pet Cemetery
Commercial Recreation
J Business 2
J Business 6
J Business 8
Marine Commercial
L Industrial 4
J Business 5
L Industrial 2
Planned Development District

§ 85-135. Building Zone Map.

The boundaries of said districts are hereby established as shown upon the 200 scale Building Zone Map, which map, with all explanatory matter thereon, shall be deemed to accompany, be and is hereby made a part of this chapter.

§ 85-136. Interpretation of district boundaries.

- A. With respect to the boundaries of any of the aforesaid districts as shown on the Building Zone Map accompanying and made a part of this chapter, the following rules shall apply:
- (1) Where boundaries approximately follow streets. Where district boundaries are indicated as approximately following the center line or street line of streets, such lines shall be construed to be such district boundaries.
 - (2) Where boundaries parallel street lines. Where district boundaries are so indicated that they are approximately parallel to the center lines or street lines of streets, such district boundaries shall be construed as being parallel thereto and at such distances therefrom as indicated on the Building Zone Map. If no distance is given, such dimension shall be determined by the use of the scale shown on said Building Zone Map.
 - (3) Where boundaries follow lot lines. Where district boundaries are indicated as approximately following lot lines, such lot lines shall be construed to be said boundaries.
 - (4) Where the boundary follows a railroad line. Where the boundary of a district follows a railroad line, such boundary shall be deemed to be located adjacent to said boundary.
 - (5) Vacation of public ways. Whenever any street or other public way is vacated in the manner authorized by law, the district adjoining each side of such street or public way shall be automatically extended to the center of such vacation, and all area included in the vacation shall then and henceforth be subject to all regulations of the extended districts.
 - (6) Where the zoning classification has been imposed by petition, or by the Town Board upon its own motion, the description contained in the petition shall indicate the boundaries of the district.
 - (7) Where property is located in more than one zone, it must meet the most restrictive zoning classification affecting the parcel unless more than 75% of the parcel is located within the less restrictive district. In such instances, all development must be situated within the less restrictive district, including access thereto, and all other zoning requirements of the less restrictive district must be met. In such instances, the more restrictive zone shall not be utilized for yield.
- B. All lands under water within the Town of Brookhaven, outside of the incorporated villages, which are not shown on the Building Zoning Map as specifically included within a district shall be classed as lying and being within the boundaries of the A Residence 1 District.
- C. In every case where property has not been specifically included within a district, the same shall be classed as lying and being within the boundaries of the A Residence 1 District.

§ 85-137. Conformance required.

Except as otherwise provided in this chapter:

- A. Conformity of buildings and land. No building, structure or premises shall be used or occupied and no building or part thereof or other structure shall be erected, moved, placed, enlarged or altered except in conformity with the regulations herein specified for the district in which it is located.
- B. Conformity of buildings. No building, structure or premises shall be erected, altered or used so as to produce greater heights, smaller yards or less unoccupied area, and no building shall be occupied by more families than prescribed for such building, structure or premises for the district in which it is located.
- C. Conformity of open spaces. No yard, court or open space or part thereof shall be included as a part of the yard, court or open space similarly required for any other building, structure or premises under this chapter.
- D. Where 40% of one side of a street between two intersecting streets is improved with permitted buildings, the average front yard depth established shall be maintained, provided that it shall not be required to exceed 75 feet in an A Residence District, A Residence 1 District and A Residence 2 District; 60 feet in a B Residence District, B Residence 1 District and K Business District; 50 feet in a C Residence District and D Residence District, 35 feet in a J Business 1 District, J Business 2 District and L Industrial District.

§ 85-138. Transition between districts.

- A. Lots in business or industrial districts adjacent to a residential district. Where a lot in a business or industrial district abuts a lot in a residential district, there shall be provided along such abutting lines a yard equal in width or depth to that required in the residential district. In addition, in order to screen and protect nearby residential uses, the Planning Board of the Town of Brookhaven may require the construction and maintenance of a planting strip of evergreens or other plants or the construction and maintenance of a substantial sightly fence not less than four feet high in such location as the Planning Board directs.

- B. Front yard transition. Where the frontage on one side of a street between two intersecting streets is zoned partly as residential and partly as business or industrial, the front yard depth in the business or industrial district shall be equal to the required front yard depth of the residential district for a distance of 50 feet into the business or industrial district.
- C. Garage entrances. No public or private garage for more than five motor vehicles shall have a driveway or passageway for motor vehicles within 25 feet of a residential district.
- D. Parking areas and driveways abutting a residence district. Whenever an off-street parking area or a driveway to an off-street parking area is hereafter established in other than a residence district so as to abut the side or rear line of a lot in a residence district, a solid evergreen planting strip or a substantial sightly stockade-type fence not less than four feet high and not more than six feet high shall be constructed and maintained along said side or rear lot line up to but not beyond the setback building line; provided, however, that where any use or district regulation requires a greater requirement, the greater requirement shall govern. In all districts, the lighting, including any permitted illuminated sign, on any off-street parking area or driveway shall be arranged so that there will be no annoying glare directed or reflected toward residence buildings or residence districts.

§ 85-139. through § 85-143. (Reserved)

Town of Brookhaven, NY
Thursday, October 3, 2019

Chapter 85. Zoning

Article II. Building Permits and Certificates of Occupancy

§ 85-11. Enforcement official.

It shall be the duty of the Chief Building Inspector and/or his designee and he and/or his designee are hereby given the power and authority to administer and enforce this chapter. No building permit or certificate of occupancy shall be issued by him except where the provisions of this chapter have been complied with.

§ 85-12. Issuance of building permits and universal design permit to build; restrictive covenants.

[Amended 10-1-2015 by L.L. No. 18-2015, effective 10-15-2015; 9-13-2018 by L.L. No. 24-2018, effective 9-24-2018]

- A. No building or structure shall be erected, altered or maintained until a building permit or universal design permit therefor has been issued by the Chief Building Inspector. All applications for such permits shall be in accordance with the requirements of this chapter, and, except upon written order of the Board of Appeals, no such building permit, universal design permit or certificate of occupancy shall be issued for any building or structure where said construction or alteration or use thereof would be in violation of any of the provisions of this chapter.
- B. A building permit shall not be required for minor repairs to existing plumbing systems. When accessory to one- and two-family dwellings, a building permit shall not be required for the following:
 - (1) Detached residential storage sheds not greater than 144 square feet and conforming to the provisions of § 85-190;
 - (2) Decks, patios and walkways not above grade greater than eight inches at any point, constructed of any material;
 - (3) Gazebos not greater than 144 square feet and with walls no higher than 36 inches;
 - (4) Trellises, pergolas and arbors not greater than 144 square feet.
- C. All in-ground irrigation systems installed for residential, commercial, industrial uses, and which are subject to a plumbing permit, shall require a rain sensor.
- D. With respect to all premises located in any residential, business, industrial or multiple-residence zone, the applicant shall furnish the Building Division with a copy of any restrictive covenant in favor of the Town affecting such property. If there is no restrictive covenant affecting the premises, the applicant shall furnish an affidavit to that effect. Any false statement, intentional or unintentional, may subject the building permit or the certificate of occupancy, if one has been issued, to immediate revocation if the premises in any way violates the terms and conditions of the restrictive covenant. The term "restrictive covenant" shall mean a covenant executed by the present owner of the property or a predecessor in title in favor of the Town but shall not mean covenants executed between private parties.

§ 85-13. Information to be submitted with building permit application or universal design permit application or solar energy fast-track permit application.

- A. There shall be submitted with every application for a building permit or universal design permit four copies of a survey, prepared by a registered land surveyor, of the proposed building plot with respect to any construction, alteration or use having a cost in excess of \$2,000, showing the following information:
 - (1) The proposed structure, showing front, side and rear yards.
 - (2) The elevation of the first floor in relation to the existing street elevation.
 - (3) The location and number of the two nearest utility poles.
 - (4) The total area of the plot and the dimensions of the plot indicated by metes and bounds.

- (5) The total area of the proposed building or structure, including area of all floors listed separately.
- (6) The distance of the plot from the nearest intersecting street.
- (7) Streets:
 - (a) State, county or Town.
 - (b) Width of right-of-way.
 - (c) Width and type of pavement.
 - (d) Existing curbs and walks.
 - (e) Elevation of property corners along the street line and the rear property line.
- (8) Use district classification.
- (9) The name and address of the surveyor.

B. Solar energy fast-track permit application.

- (1) There shall be submitted with every application for building permits for the installation of solar electric panels and solar hot water installations:
 - (a) On a residential building or structure or legal accessory structure in all residence districts; and
 - (b) On a roof with a single layer of roof covering; and
 - (c) Which are flush-mounted parallel to the roof surface no more than six inches above the surface; and
 - (d) Which have an eighteen-inch clearing at the roof ridge provided along at least one side of the roof ridge on either the same side as the solar equipment or on another side of the ridge that does not have solar equipment on it and an eighteen-inch clearing path to the ridge provided from at least one eave or gutter connecting to that eighteen-inch roof ridge clearing; and
 - (e) Which create a roof load of no more than five pounds per square foot for photovoltaic (PV) and six pounds per square foot for residential solar hot water (RSHW); and
 - (f) Which are installed by prescreened contractors; and
 - (g) Which use PV panels that have been certified by a nationally recognized testing laboratory as meeting the requirements of the Underwriters Laboratory (UL) Standard 1703 and inverters must be on a list of NYS Public Service Commission type-tested inverters which are tested by either UL or other nationally recognized laboratories to conform with UL 1741; and
 - (h) Which use RSHW equipment that has been certified by the Solar Rating and Certification Corporation under its OG-100 standard for solar collectors; and
 - (i) Which use equipment such as modules, combiner boxes and a mounting system that have been identified for use in grid-tied PV systems; and
 - (j) Which is in full compliance with all current National Electric Code (NEC) requirements; and
 - (k) Which include a sign on the utility meter and at an alternating current (AC) disconnect switch indicating that there is an operating electric co-generation system on site.
- (2) The following shall be submitted with solar energy fast-track permit applications:
 - (a) The Solar Energy Fast Track Permit Application Requirements Checklist; and
 - (b) Three sets of plans which shall include:
 - [1] A cover sheet including the following:
 - [a] Project address, map, section, block and lot number of the subject property; and
 - [b] Owner's name(s), address and phone number; and
 - [c] Name, address and phone number of the person preparing the plans.
 - [2] Sheet index indicating each sheet title and number; and

- [3] Legend for symbols, abbreviations and notations used in the drawings; and
- [4] Configuration diagrams prepared by a professional engineer or registered architect which are sketched (hand-drawn or better) as follows:
 - [a] Roof diagram depicting modules or collectors and racking configuration on designated surface(s) to scale and dimensioned. The diagram should include any eighteen-inch clearance/access required pursuant to Subsection **B(1)(d)** above; and
 - [b] Equipment location diagram indicating the location(s) of the:
 - [i] Modules or collectors;
 - [ii] Main electrical service;
 - [iii] Inverter(s)
 - [iv] The location of all equipment disconnects on the outside of the structure (i.e., A/C disconnect); and
 - [v] Any interior equipment locations; and
 - [c] One-line standard electrical diagram.
- [5] Property survey if the system is proposed for an accessory structure.
- (c) Solar Energy System Fast Track Permit Application Information Sheet; and
- (d) Payment of the fees as established by Town Board resolution.
[Amended 11-20-2018 by L.L. No. 26-2018, effective 12-3-2018]
- (3) Upon receipt of a solar energy fast-track permit application, the Chief Building Inspector shall:
 - (a) Notify the Historic District Advisory Committee if the subject property is located within an historic district, which shall meet and make a determination on said application within 14 days of receipt of same; and
 - (b) Make a determination within 14 days of receipt of a complete application; and
 - (c) Maintain a list by address of all solar energy installations, to be shared with the applicable first-responder organizations; and
- C. In areas where grades are established, grades shall be shown as United States Coast and Geodetic Survey datum. In all other areas, grades may be shown in an assumed datum.
- D. The Chief Building and Zoning Inspector or the Planning Board, or both, may require the applicant to submit such additional information as may be necessary to determine whether or not the building permit or universal design permit or solar energy fast-track permit application should be issued.
- E. A fee in the sum of \$50 shall be paid to the Planning Division simultaneously with the filing of an application for a building permit or universal design permit for review of any proposed one-family or two-family residential building permit or universal design permit application.
- F. One copy of such plot plan shall be returned when approved by the Building Inspector, and the building permit or universal design permit or shall be issued to the applicant upon the payment of the required fee.

§ 85-14. Foundation permits.

- A. The Chief Building Inspector is hereby authorized to issue building permits for the installation of foundations, inclusive of the minimum necessary clearing and excavation therefor, for any premises which is the subject of a valid final conditional site plan approval for nonresidential development, subject to the following requirements:
 - (1) Construction plans approved by the Chief Building Inspector.
 - (2) Fire prevention permit(s) for the ultimate structure/building in accordance with the provisions of Chapter 30, Fire Prevention, of the Code.
 - (3) Authorization for construction access from the agency having jurisdiction over proposed point of access.
 - (4) Clearing, grading and ground disturbance shall be limited to the minimum necessary for the installation of the foundation(s).
 - (5) Satisfaction of any condition(s) of the Planning Board's grant of final conditional approval that pertains to building

location, on-site grading, clearing or ground disturbance in the immediate vicinity of the proposed building.

B. Application(s) shall include the following information and/or documents:

- (1) An application form as may be designated by the Commissioner of the Department of Planning, Environment and Land Management.
- (2) Site plan depicting building foundation location, clearing limits, grading or ground disturbance, proposed construction access point, construction driveways, staging areas and any other information reasonably deemed necessary by the Commissioner of the Department of Planning, Environment and Land Management.
- (3) Submission of a copy of the current tax bill for the subject property and all certificates of occupancy or equivalents for all existing buildings, structures or use(s).
- (4) Certificate of indemnity.
- (5) Suffolk County Department of Health Services permit, highway work permits from New York State Department of Transportation and/or Suffolk County Department of Public Works, and other applicable permit(s) required by law or regulation.
- (6) Payment of the following fees:
 - (a) Application fee. Payment of application, inspection, recreation, excess material removal permit fees as established by Town Board resolution.
[Amended 11-20-2018 by L.L. No. 26-2018, effective 12-3-2018]
 - (b) Additional site plan inspection and additional building permit fees in the event that any clearing, grading, or ground disturbance not authorized by the foundation permit occurs.

C. Expiration of foundation permit. All foundation permits shall expire 120 days from the date of grant. The Commissioner of Planning, Environment and Land Management may authorize an extension of said permit for a period not to exceed 60 days from the date of expiration thereof; the Planning Board, in its sole discretion, may grant an additional sixty-day extension where compelling circumstances are demonstrated to the Board's satisfaction.

§ 85-15. Certificates of occupancy.

- A. No land shall be occupied or used and no building or structure hereafter erected or altered shall be used or changed in use until a certificate of occupancy shall have been issued by the Chief Building Inspector, stating that the building or structure or proposed use thereof complies with the provisions of this chapter. Before a certificate shall be issued for any construction or alteration or use, there shall be submitted to the Building Inspector the affidavit required under § 16-4 of the Code of the Town of Brookhaven and a survey prepared by a registered land surveyor showing the following information:
- (1) The actual dimension of the lot and the location on the lot of the buildings and structures thereon.
 - (2) The elevation of the first floor (lowest livable area) and of the garage floor related to existing street elevation.
 - (3) Where established grade was given with the permit, all elevations, including established street elevations, shall be shown in United States Coast and Geodetic Survey datum.
 - (4) A final survey prepared by a licensed surveyor with original seal or stamp showing the construction or alteration as built. The Chief Building Inspector shall have the discretion to waive this requirement for decks when deemed appropriate. A final survey is not required for the installation of roof-mounted photovoltaic panels on a one- or two-family dwelling.
- B. All certificates of occupancy shall be applied for coincident with the application for a building permit. Said certificate shall be issued within 10 days after the erection or alteration shall have been approved.
- C. The Chief Building Inspector shall maintain a record of all certificates, and copies shall be furnished, upon request, to any person having a proprietary or tenancy interest in the building, structure or premises affected.
- D. No certificate of occupancy for new construction shall be issued unless and until a certificate of assessment is issued in accordance with the requirements of Chapter 65, Taxation, of the Code of the Town of Brookhaven.

§ 85-16. Certificates of existing use.

- A. Intent. The Town Board recognizes that certain structures exist in the Town of Brookhaven which were erected prior to the adoption of the Zoning Code in 1937 and, therefore, do not have certificates of occupancy. The Town Board also recognizes that other structures were erected between 1937 and June 30, 1959, when records of the Building Division were destroyed, and, therefore, no certificates of occupancy are available for these structures. The Town Board further recognizes that, prior

to 1984, Fire Districts and the Town of Brookhaven were not required to obtain building permits and thus did not receive certificates of occupancy or their equivalent. As it is in the public interest to provide the Town of Brookhaven and Fire Districts with the ability to expand or otherwise receive required approvals for preexisting and new structures, the Town Board makes the provisions for same in Subsection **E** below. It is the intent of this section to develop a simplified procedure to authorize the Chief Building Inspector to issue certificates of existing use for these structures, upon the presentation of the proof required below.

- B. Existing one-family residences and accessory structures. No existing one-family residential dwelling, use and/or accessory structure shall be maintained or occupied without a certificate of existing use having first been issued by the Chief Building Inspector.
- C. Nonconforming structures or uses other than one-family dwellings. No nonconforming use or structure other than that for a sole single-family dwelling on a single lot shall be maintained or renewed without a certificate of existing use having first been issued by the Chief Building Inspector after a public hearing and approval by the Zoning Board of Appeals.
- D. Procedure for issuance of certificates of existing use.
 - (1) The Chief Building Inspector shall cause an examination to be made of the records of the Building Division to determine if any records are on file relating to the subject application.
 - (2) The Chief Building Inspector shall cause a physical inspection to be made of the premises to verify the approximate date(s) of construction of the structure(s).
 - (3) An application for a certificate of existing use shall be accompanied by one or more forms of proof of the date of construction and/or erection of the structures. These proofs shall include one or more of the following:
 - (a) Owner affidavit affirming the applicant's claims.
 - (b) Assessor's records showing the date the property was improved.
 - (c) Tax search certified by a licensed New York State title insurance or abstract company showing the date the property was improved.
 - (d) Utility bills/tax bills.
 - (e) Original surveys showing improvements on the site.
 - (f) Dated newspaper advertisements, photographs or similar proofs establishing the date of improvements or other proofs as to the existence of the structure; or such other proofs as the Chief Building Inspector or Zoning Board of Appeals shall deem appropriate, upon review by the Town Attorney.
- E. Issuance of certificates of existing use or their equivalent for Town of Brookhaven and Fire Districts municipal buildings.
 - (1) Structures built prior to January 1, 1984.
 - (a) For those structures built prior to January 1, 1984, to receive a certificate of existing use or its equivalent, in addition to any construction documents which may be required by the Chief Building Inspector, the Town of Brookhaven or Fire District will have to provide proof of the structure's existence prior to January 1, 1984. Such proof may be provided in the form of two affidavits or such verified documentation attesting to the structure's pre-January 1, 1984, existence. Such documentation or other proof to be supplied to the satisfaction of the Chief Building Inspector or his designee.
 - (b) Upon submission of and compliance with Subsection **E(1)(a)** above, the structure will be required to undergo a maintenance inspection to be conducted by and to the satisfaction of the Chief Building Inspector and the Chief Fire Marshal or their designees.
 - (c) Upon compliance with Subsection **E(1)(a)** and **(b)**, a certificate of existing use or its equivalent may be issued by the Chief Building Inspector or his designee.
 - (2) Structures built between January 1, 1984, and January 1, 2003.
 - (a) For those structures built between January 1, 1984, and January 1, 2003, to receive a certificate of existing use or its equivalent, in addition to any construction documents which may be required by the Chief Building Inspector, the Town of Brookhaven or the Fire District will have to provide proof from a design professional that these structures were in compliance with the New York State Uniform Fire Prevention and Building Code which existed at the time the structure was built. Such proof may be provided in the form of two affidavits or such verified documentation attesting to the structure's date of construction/completion and compliance with the aforementioned code existing at that time. Such documentation or other proof to be supplied to the satisfaction of the Chief Building Inspector or his designee.
 - (b) Upon submission of and compliance with Subsection **E(2)(a)** above, the structure will be required to undergo a maintenance inspection to be conducted by and to the satisfaction of the Chief Building Inspector and the Chief

Fire Marshal or their designees.

- (3) Structures built on or after January 1, 2003, shall be required to conform and comply with current New York State Uniform Fire Prevention and Building Code standards at the time of the building permit application.

§ 85-17. Letters of correction.

The Chief Building Inspector is hereby authorized to issue letters of correction to certificates of occupancy so long as based on reliable evidence similar to that required for a certificate of existing use demonstrating that the subject structure(s) complied with the requirements applicable at the time the certificate of occupancy was issued.

§ 85-18. Temporary use of second home.

- A. The Chief Building Inspector of the Building Division is hereby authorized to issue a temporary permit to allow for the continued occupancy of an existing single-family residence during the construction of a new single-family residence on the same lot.
- B. Said temporary permit shall not exceed a maximum period of one year and shall automatically be revoked upon the issuance of a certificate of occupancy for the newly constructed residence.
- C. The Chief Building Inspector shall require the posting of a bond, in satisfactory form, in order to guarantee the demolition of the existing residence upon the completion of the proposed residence.
- D. The Chief Building Inspector shall also be empowered to require additional conditions in order to assure compliance.
- E. Upon issuance of said temporary permit, the Chief Building Inspector is authorized to issue the building permit for the new single-family residence.

§ 85-19. through § 85-28. (Reserved)

*Town of Brookhaven, NY
Thursday, October 3, 2019*

Chapter 85. Zoning

Article V. Board of Zoning Appeals

§ 85-53. Establishment; membership.

- A. The Town Board shall appoint a Board of Zoning Appeals consisting of seven members and shall designate the Chairperson of such Board as provided herein. Of the seven members at least one will be a licensed architect, and additionally at least two members will be either a licensed architect, a licensed engineer, a licensed attorney, an environmentalist or a certified planner. Additionally, four positions will be appointed as community members at large. Said composition to be phased in with any reappointment and/or new appointment effectuated on or after the effective date of this section. Nothing herein contained will invalidate decisions of this Board during this phase-in period.
- B. Office established.
- (1) There shall be in the Town of Brookhaven an Office of the Board of Zoning Appeals. The principal executive officer and administrative head of such Office shall be the Chairperson of the Board of Zoning Appeals, who shall be appointed by the Town Board to said Office for such term and at such compensation as may from time to time be fixed by the Town Board.
 - (2) The Town Board may appoint a Deputy Chairperson at such compensation and for such term as may from time to time be fixed by the Town Board, who shall generally act in behalf of the Chairperson and who shall perform such duties as may be directed by the Chairperson and as are vested in and imposed upon that office by the provisions of this chapter, by statute or by other lawful authority.
 - (3) Before entering upon the duties of his office, the Chairperson shall execute and file with the Town Clerk an official undertaking, if the same is required by the Town Board, in such sum as prescribed by the Town Board and in such form as approved by the Town Attorney.
 - (4) The Chairperson shall have such powers as prescribed by law as shall be necessary for the proper administration of the office consistent with applicable provisions of law.
- C. Powers of the Town Supervisor. Nothing herein contained shall be construed to delegate or transfer any power of the Town Supervisor, as outlined in the Town Law of the State of New York, or any statutory or other powers which may be lawfully executed by said Supervisor.
- D. The Town Board may appoint any person as a member of the Board of Zoning Appeals for a term of three years, at such compensation as may from time to time be fixed by the Town Board. After the expiration of the terms of the members serving on the Board of Zoning Appeals, any member reappointed or any successor in office shall serve for a term of three years. If a vacancy shall occur other than by expiration of term, it shall be filled by the Town Board by appointment for the unexpired term. However, no such appointment shall exceed three years. Any new appointment, reappointment or appointment to a vacancy shall not exceed three years.

§ 85-54. Adoption of rules; meetings; records.

- A. The Board of Appeals shall adopt rules necessary to the conduct of its affairs, in keeping with the provisions of this chapter. Meetings shall be held at the call of the Chairman and at such other times as the Board may determine.
- B. The Board shall keep minutes of its proceedings and records of its examinations and other official actions, all of which shall be a public record.

§ 85-55. Appeal procedure.

[Amended 10-28-2014 by L.L. No. 22-2014, effective 11-4-2014]

- A. Appeals to the Board of Appeals concerning the interpretation or administration of this chapter may be taken by any person aggrieved or by any officer or department of the governing body of the Town affected by the decision of the administrative official.

- B. All appeals and applications made to the Board shall be in writing, on forms prescribed by the Board. The Board of Appeals shall fix a reasonable time for the hearing of the appeal and give public notice thereof, as well as due notice to the applicant.
- C. The applicant shall mail notice at least 10 days prior to the hearing by either certified or registered mail, return receipt requested, to every property owner, as shown on the current Brookhaven assessment rolls and certified by the Department of the Assessor on a tax map excerpt radius map prepared by that Department within the area immediately adjacent and directly opposite thereto for a distance of 200 feet from the perimeter of the property; those properties from 201 feet to 500 feet shall be notified by regular mail, with the exception of applications seeking relief in connection with accessory structures, which radius notification of the hearing by certified or registered mail, return receipt requested, shall remain at 200 feet.
[Amended 2-14-2019 by L.L. No. 3-2019, effective 2-25-2019]
- D. The following shall be submitted with such application:
- (1) A copy of the notice sent to property owners.
 - (2) The Assessor-certified Tax Map excerpt radius map in duplicate, containing the names and addresses of the owners to whom notices were sent.
 - (3) Return receipts.
 - (4) An affidavit of mailing of the aforesaid notices.
 - (5) Three surveys, giving an exact description and location of the property with all existing and proposed structures and setbacks from all property lines.
 - (6) Radius map.
 - (a) In the event that the application is for a variance based upon a claim of conformity with the lots and development in the surrounding area, the application must be accompanied by a radius map, prepared by a licensed engineer or licensed surveyor, depicting the following information:
 - [1] Showing, by courses and distances, the property which is the subject of the application and all of the properties within 500 feet of the perimeter line of said property. This five-hundred-foot notice requirement shall be required for all applications submitted on or after the effective date of this amendment.
 - [2] Showing to scale all structures within the area, indicating the use, and showing the current zoning of all areas depicted and showing the distance and direction of the nearest intersecting street.
 - (b) All such radius maps shall contain the following certification: "I do hereby certify that the radius map accurately describes the uses of the property surrounding the subject premises as of (date). Signature
"
 - (c) In the event that the application is for a variance other than lot area, the Chairman may waive the above requirements.
 - (7) An affidavit of posting of the notice required herein.
- E. Forms of notice shall be kept available at the office of the Board of Zoning Appeals.
- F. Posting.
- (1) For applications involving variances or special permits on residential parcels, at least one poster, not less than one foot by two feet in size, must be conspicuously posted along each street frontage of the property which is the subject of the application at least 10 days prior to the date set for the public hearing before the Board of Zoning Appeals. For applications involving variances or special permits on commercial or industrial parcels, said poster must be not less than three feet by four feet in size and must be conspicuously posted along each street frontage of the property which is the subject of the application at least 10 days prior to the date set for the public hearing before the Board of Zoning Appeals. Such posters shall contain the following information. This ten-day posting requirement shall be required for all applications submitted on or after the effective date of this amendment.
 - (a) A brief explanation of the proposed variance or special permit requested.
 - (b) That a public hearing will be held before the Board of Appeals at a specified date, and the time and place with regard to the proposed hearing.
 - (2) Said poster must remain in place until the public hearing has been completed and must be removed not later than seven days thereafter. The applicant or applicant's agent shall verify that said poster is still in place on a daily basis, and shall promptly replace said poster should it be removed or defaced.
 - (3) The Board of Zoning Appeals shall adopt regulations governing the format of said poster and the manner and place in which it is posted. Said Board may require the applicant to use a poster supplied by it, in which event the Board of Appeals may set a fee to cover the cost of said poster.

§ 85-56. (Reserved)

[1] *Editor's Note: Former § 85-56, Delegation of authority to Town Board, was repealed 2-14-2019 by L.L. No. 3-2019, effective 2-25-2019.*

§ 85-57. Powers and duties.

The Board of Zoning Appeals shall have the following powers and duties:

A. Special permits.

- (1) To ensure special permits for any of the areas for which this chapter requires the obtaining of such permits from the Board of Zoning Appeals. In granting such permits, the Board may limit the duration of the special permits and prescribe appropriate conditions and safeguards in conformity with this chapter. No special permit shall be granted by the Board of Appeals unless it shall determine:
 - (a) That the use will not prevent the orderly and reasonable use of adjacent properties or of properties in the surrounding area or impair the value thereof.
 - (b) That the use will not prevent the orderly and reasonable use of permitted or legally established uses in the district wherein the proposed use is to be located or of permitted or legally established uses in adjacent districts.
 - (c) That the safety, health, welfare, comfort, convenience or order of the Town will not be adversely affected by the proposed use and its location.
 - (d) That the use will be in harmony with and promote the general purposes and intent of this chapter.
- (2) In making such determination, the Board of Zoning Appeals shall give consideration, among other things, to:
 - (a) The character of the existing and probable development of uses in the district and the peculiar suitability of such district for the location of any of such permissive uses.
 - (b) The conservation of property values and the encouragement of the most appropriate uses of land.
 - (c) The effect that the location of the proposed use may have upon the creation or undue increase of traffic congestion on public streets, highways or waterways.
 - (d) The availability of adequate and proper public or private facilities for the treatment, removal or discharge of sewage, refuse or other effluent, whether liquid, solid, gaseous or otherwise, that may be caused or created by or as a result of the use.
 - (e) Whether the use or materials incidental thereto or produced thereby may give off obnoxious gases, odors, smoke or soot.
 - (f) Whether the use will cause disturbing emission of electrical discharges, dust, light, vibration or noise.
 - (g) Whether the operation in pursuance of the use will cause undue interference with the orderly enjoyment by the public of parking or of recreational facilities, if existing or if proposed by the Town or by other competent governmental agency.
 - (h) The necessity for an asphaltic or concrete surfaced area for purposes of off-street parking and loading of vehicles incidental to the use and whether such area is reasonably adequate and appropriate and can be furnished by the owner of the plot sought to be used within or adjacent to the plot wherein the use shall be had.
 - (i) Whether a hazard to life, limb or property because of fire, flood, erosion or panic may be created by reason or as a result of the use or by the structures to be used therefor or by the inaccessibility of the plot or structures thereon for the convenient entry and operation of fire and other emergency apparatus or by the undue concentration or assemblage of persons upon such plot.
 - (j) Whether the use or the structures to be used therefor all cause an overcrowding of land or undue concentration of population.
 - (k) Whether the plot area is sufficient, appropriate and adequate for the use and the reasonable anticipated operation and expansion thereof.
 - (l) The physical characteristics and topography of the land.
 - (m) Whether the use to be operated is unreasonably near to a assembly.

B. Area variances.

- (1) To hear and authorize, upon appeal, such variances from the terms of this chapter. In making its determination, the Board of Zoning Appeals shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination, the Board shall also consider:
 - (a) Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance;
 - (b) Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance;
 - (c) Whether the requested area variance is substantial;
 - (d) Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and
 - (e) Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Board of Zoning Appeals, but shall not necessarily preclude the granting of the area variance.
- (2) No nonconforming use of neighboring lands, structures or buildings in the same district and nonpermitted use of lands, structures or buildings in other districts shall be considered grounds for the issuance of a variance.

C. Use variances.

- (1) To hear and authorize, upon appeal, such use variances from the terms of this chapter. No use variance shall be granted by the Board of Zoning Appeals without a showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary hardship. In order to prove such unnecessary hardship, the application shall demonstrate that for each and every permitted use under the zoning regulations for the particular district where the property is located:
 - (a) The applicant cannot realize a reasonable return, provided that the lack of return is substantial as demonstrated by competent financial evidence;
 - (b) The alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood;
 - (c) The requested use variance, if granted, will not alter the essential character of the neighborhood; and
 - (d) The alleged hardship has not been self-created.

§ 85-58. (Reserved)

[1] *Editor's Note: Former § 85-58. General severability, was redesignated as § 85-61 2-14-2019 by L.L. No. 3-2019, effective 2-25-2019.*

§ 85-59. Duration of special permits, variances and land divisions.

- A. Every application for a special permit, variance or land division, granted by the Board of Zoning Appeals or other authorized board pursuant to the provisions of this chapter, shall be and become null and void and of no further force or effect, unless:
 - (1) Within 24 months after the date of the grant, determination or decision of the Board of Appeals or other authorized board, a building permit shall have been obtained or the transfer of one of the lots created by a land division has occurred and a deed filed with the Suffolk County Clerk's office such that there is no common ownership of the parcels; or
 - (2) The use so granted shall actually have commenced upon the premises, is duly incorporated in a site plan application pursuant to § 85-113H, or the erection and construction of the building or structure shall be commenced pursuant to a duly issued building permit; or
 - (3) Notwithstanding the provisions of Subsection A(1) and (2), if the applicant for a building permit has otherwise fulfilled all the requirements of the Town of Brookhaven and completed all necessary filings associated with that building permit and the applicant is awaiting a determination from the Town of Brookhaven or another governmental agency in order to obtain a building permit, upon written request by the applicant to the Board of Zoning Appeals, the Board of Zoning Appeals may extend its prior grant, on no more than two occasions, for a period of no more than six months on each occasion.
- B. All prior unexpired and valid special permits, variances or land division grants with no date of expiration shall be and become null and void and of no further force and effect one year from August 31, 2004, unless:
 - (1) A building permit shall have been obtained or the transfer of one of the lots created by a land division has occurred and

a deed filed with the Suffolk County Clerk's office such that there is no common ownership of the parcels.

- (2) The use so granted shall actually have commenced upon the premises, is duly incorporated in a site plan application pursuant to § **85-113H** or the erection and construction of the building or structure shall be commenced pursuant to a duly issued building permit.
- (3) Notwithstanding the provisions of Subsection **B(1)** and **(2)**, if the applicant for a building permit has otherwise fulfilled all the requirements of the Town of Brookhaven and completed all necessary filings associated with that building permit and the applicant is awaiting a determination from the Town of Brookhaven or another governmental agency in order to obtain a building permit, upon written request by the applicant to the Board of Zoning Appeals, the Board of Zoning Appeals may extend its prior grant, on no more than two occasions, for a period of no more than six months on each occasion.

§ 85-60. Filing fees.

[Amended 11-20-2018 by L.L. No. 26-2018, effective 12-3-2018]

For each appeal to the Board of Zoning Appeals, the filing fees shall be those as established by Town Board resolution.

§ 85-61. General severability.

If any clause, sentence, paragraph, section or item in this article shall be adjudged by an court of competent jurisdiction to be invalid, such judgment shall not impair nor invalidate the remainder hereof, but such adjudication shall be confined in its operation to the clause, sentence, paragraph, section or item directly involved in the controversy in which such judgment shall have been rendered.

§ 85-62. through § 85-65. (Reserved)

*Town of Brookhaven, NY
Thursday, October 3, 2019*

Chapter 85. Zoning

Article VIII. Planning Board

§ 85-99. Membership; terms of office.

- A. Legislative intent. The Town Board wishes to increase the Planning Board membership to seven members and appoint each member for a three-year term. It is the intent of this article, pursuant to the Municipal Home Rule Law, that the Town Board supersede Town Law § 271 to establish terms of office which are inconsistent with Town Law § 271.
- B. Authority of Chairperson.
- (1) The principal executive officer and administrative head of such Planning Board shall be the Chairperson, who shall be appointed by the Town Board for such term and at such compensation as may from time to time be fixed by the Town Board.
 - (2) The Town Board may appoint a Deputy Chairperson at such compensation and for such term as may from time to time be fixed by the Town Board, who shall generally act in behalf of the Chairperson and who shall perform such duties as may be directed by the Chairperson and as are vested in and imposed by the provisions of this chapter, by statute or by other lawful authority.
 - (3) Before entering upon the duties of his office, the Chairperson shall execute and file with the Town Clerk an official undertaking, if the same is required by the Town Board, in such sum as prescribed by the Town Board and in such form as approved by the Town Attorney.
 - (4) The Chairperson shall have such powers as prescribed by law as shall be necessary for the proper administration of the Planning Board consistent with applicable provisions of law.
- C. Any person appointed as a member of the Planning Board shall serve for a term of three years, at such compensation as may from time to time be fixed by the Town Board. After the expiration of the terms of the members serving on the Planning Board, any member reappointed, or any successor in office, shall serve for a term of three years. If a vacancy shall occur other than by expiration of term, it shall be filled by the Town Board, by appointment, for the unexpired term; however, no such appointment shall exceed three years. Any new appointment, reappointment or appointment to a vacancy shall not exceed three years.
- D. Of the seven members so appointed, at least one will be a licensed architect, and additionally at least two members will be either a licensed architect, a licensed engineer, a licensed attorney, an environmentalist or a certified planner. Additionally, four positions will be appointed as community members at large. Said composition to be phased in with any reappointment and/or new appointment effectuated on or after the effective date of this article. Nothing herein contained will invalidate decisions of this Board during this phase-in period.
- E. General severability. If any clause, sentence, paragraph, section or item of this article shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not impair nor invalidate the remainder hereof, but such adjudication shall be confined in its operation to the clause, sentence, paragraph, section or item directly involved in the controversy in which such judgment shall have been rendered.

§ 85-100. through § 85-102. (Reserved)

§ 85-103. Assignment and delegation of powers, functions and responsibilities.

- A. Legislative intent. Certain powers, functions and responsibilities previously delegated to the Planning Board were not mandated by any statute or other law. The intent of this section is to delegate certain nonmandated powers, functions and responsibilities previously performed by the Planning Board to various boards, departments and officers of the Town of Brookhaven as determined appropriate and in the best interest of the Town by the Town Board. It is not the intent of this section to delegate the following former Planning Board functions out of the Planning Board:
- (1) Subdivision (including land division and resubdivision) applications.
 - (2) Commercial and residential site plan applications.

- (3) Any other power or function mandated by Town Law.
- B. The powers, functions and responsibilities currently reposed in the Planning Board be and hereby remain in the Planning Board, except that the following powers, functions and/or responsibilities are hereby delegated or assigned as follows:
 - (1) Appeals of Chapter **57A** (Signs) to the Zoning Board of Appeals to be processed as variances.
 - (2) Tree preservation Planning Board powers to the Commissioner of Planning, Environment and Land Management.
 - (3) Bond default recommendations to the Planning Division.
 - (4) Road improvements on existing mapped roads, establishing road specifications, bond approvals and releases thereon, to the Planning Division.
 - (5) Recommendations to Zoning Board of Appeals on Zoning Board of Appeals applications to the Planning Division.
 - (6) Review and recommendations on change of zone and special exception applications to the Planning Division.
- C. General severability. If any clause, sentence, paragraph, section or item of this section shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not impair nor invalidate the remainder hereof, but such adjudication shall be confined in its operation to the clause, sentence, paragraph, section or item directly involved in the controversy in which such judgment shall have been rendered.
- D. This section shall take effect the date upon which it is filed in the office of the Secretary of State.

§ 85-104. through § 85-106. (Reserved)

§ 85-107. Special permits from Planning Board.

- A. As provided by this chapter, special permits from the Planning Board shall be granted only where said Board shall determine:
 - (1) That the use will not prevent the orderly and reasonable use of adjacent proportion or of properties in the surrounding area or impair the value thereof.
 - (2) That the use will not prevent the orderly and reasonable use of permitted or legally established uses in the district wherein the proposed use is to be located or of permitted or legally established uses in adjacent districts.
 - (3) That the safety, health, welfare, comfort, convenience or order of the Town will not be adversely affected by the proposed use and its location.
 - (4) That the use will be in harmony with and promote the general purposes and intent of this chapter.
- B. In making such determination, the Planning Board shall give consideration, among other things, to:
 - (1) The character of the existing and probable development of uses in the district and the peculiar suitability of such district for the location of any of such permissive uses.
 - (2) The conservation of property values and the encouragement of the most appropriate uses of land.
 - (3) The effect that the location of the proposed use may have upon the creation or undue increase of traffic congestion on public streets, highways or waterways.
 - (4) The availability of adequate and proper public or private facilities for the treatment, removal or discharge of sewage, refuse or other effluent, whether liquid, solid, gaseous or otherwise, that may be caused or created by or as a result of the use.
 - (5) Whether the use or materials incidental thereto or produced thereby may give off obnoxious gases, odors, smoke or soot.
 - (6) Whether the use will cause disturbing emission of electrical discharges, dust, light, vibration or noise.
 - (7) Whether the operation in pursuance of the use will cause undue interference with the orderly enjoyment by the public of parking or of recreational facilities, if existing or if proposed by the Town or other competent governmental agency.
 - (8) The necessity for an asphaltic or concrete surfaced area for purposes of off-street parking and loading of vehicles incidental to the use and whether such area is reasonably adequate and appropriate and can be furnished by the owner of the plot sought to be used within or adjacent to the plot wherein the use shall be held.
 - (9) Whether a hazard to life, limb or property because of fire, flood, erosion or panic may be created by reason or as a

result of the use or by the structures to be used therefor or by the inaccessibility of the plot or structures thereon for the convenient entry and operation of fire and other emergency apparatus or by the undue concentration or assemblage of persons upon such plot.

- (10) Whether the use or the structures to be used therefor all cause an overcrowding of land or undue concentration of population.
 - (11) Whether the plot area is sufficient, appropriate and adequate for the use and the reasonable anticipated operation and expansion thereof.
 - (12) The physical characteristics and topography of the land.
 - (13) Whether the use to be operated is unreasonably near to a church, school, theater, recreational area or place of public assembly.
- C. Expiration. All special permits granted by the Planning Board pursuant to this chapter shall expire two years after the date of the Planning Board's grant of approval thereof, unless a building permit has been issued and substantial construction has commenced in reliance thereon. The Planning Board may grant a maximum of two extensions, not to exceed one year each, of the grant of approval where a building permit has been issued and substantial construction, with sufficient proof of such substantial construction, having commenced in reliance thereon.

§ 85-108. Area variances from Planning Board.

- A. Purpose. In order to achieve the goals of well-planned, environmentally sensitive, balanced development, and to provide for comprehensive, unified review of development proposals in a timely manner, we find that it is necessary and desirable to confer upon the Planning Board the authority to grant area variances in order to facilitate the attainment of the aforesaid goals and objectives in connection with its review and approval of site plan applications for development proposals subject to its jurisdiction and for which the Planning Board is lead agency. It is the Town Board's express intent and purpose to supersede, by this section, pursuant to the Municipal Home Rule Law, to the extent necessary, the provisions of Town Law § 267-b by this delegation of authority to the Planning Board as aforesaid.
- B. The Planning Board is hereby authorized to grant reasonable area variances in connection with site plan applications solely limited to parking, buffer, drainage and landscaping standards as set forth in this chapter and/or as contained in the Subdivision and Land Development Regulations.
- C. The Planning Board is hereby expressly authorized to grant reasonable variances from the parking requirements set forth in this chapter.
- D. In making its determination, the Planning Board shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination, the Board shall also consider:
- (1) Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance;
 - (2) Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance;
 - (3) Whether the requested area variance is substantial;
 - (4) Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and
 - (5) Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Planning Board, but shall not necessarily preclude the granting of the area variance.
- E. Public hearings shall be required in connection with site plan review for the following:
- (1) All applications involving a parking relaxation of greater than 10% or a relaxation of minimum landscape standards of greater than 10% or for any relaxation of buffer area;
 - (2) Any other application, as determined by the Commissioner of the Department of Planning, Environment and Land Management, that may result in significant adverse impacts to surrounding properties; or
 - (3) As otherwise provided by any other provision of this chapter.
- F. Notification.
[Amended 10-28-2014 by L.L. No. 22-2014, effective 11-4-2014]
- (1) The applicant shall mail notice of the hearing by either certified or registered mail, return receipt requested, to every property owner, as shown on the current Brookhaven assessment rolls and certified by the Department of the Assessor

on a tax map excerpt radius map prepared by that Department within the area immediately adjacent and directly opposite thereto for a distance of 200 feet from the perimeter of the property. The applicant shall mail notice of the hearing by regular mail, to every property owner, as shown on the current Brookhaven assessment rolls and certified by the Department of the Assessor on a tax map excerpt radius map prepared by that Department within the area immediately adjacent and directly opposite thereto for a distance of 201 feet to 500 feet from the perimeter of the property. This five-hundred-foot notice requirement shall be required for all applications submitted on or after the effective date of this amendment.

(2) The following shall be submitted with such application:

- (a) A copy of the notice sent to property owners.
- (b) The Assessor-certified tax map excerpt radius map in duplicate, containing the names and addresses of the owners to whom notices were sent.
- (c) Return receipts of mailing.
- (d) An affidavit of mailing of the aforesaid notices.
- (e) An affidavit of posting of the notice required herein.

G. Posting.

- (1) For applications involving residential variances, at least one poster, not less than one foot by two feet in size, must be conspicuously posted along each street frontage of the property which is the subject of the application at least 10 days prior to the date set for the public hearing before the Planning Board. For applications involving variances on commercial or industrial parcels, said poster must be not less than three feet by four feet in size and shall be conspicuously posted along each street frontage of the property which is the subject of the application at least 10 days prior to the date set for the public hearing. This ten-day posting requirement for applications involving variances on commercial or industrial parcels shall be required for all such applications submitted on or after the effective date of this amendment. Such posters shall contain the following information:
 - (a) A brief explanation of the proposed variance.
 - (b) That a public hearing will be held before the Planning Board at a specified date, time and place with regard to the proposed application and variance.
- (2) Said poster must remain in place until the public hearing has been completed and must be removed not later than seven days thereafter. The applicant or applicant's agent shall verify that said poster is still in place on a daily basis and shall promptly replace said poster should it be removed or defaced.
- (3) The Planning Board shall adopt regulations governing the format of said poster and the manner and place in which it is posted. Said Board may require the applicant to use a poster supplied by it, in which event the Planning Board may set a fee to cover the cost of said poster.

H. Expiration of variances.

- (1) Area variances granted by the Planning Board pursuant to this chapter shall expire within two years of the date of the grant of the Board unless a building permit has been issued and substantial construction has commenced in reliance thereon. The Planning Board may grant a maximum of two extensions, not to exceed one year each, of the grant of approval where a building permit has been issued and substantial construction, with sufficient proof of such substantial construction having commenced in reliance thereon.
- (2) Area variances granted by the Planning Board pursuant to this chapter for site plans shall expire simultaneously with the expiration of the subject site plan grant of approval.

§ 85-109. Restrictive covenants.

- A. The Planning Board, upon its review and approval of a subdivision map, land division, resubdivision or site plan, may require a restrictive covenant be imposed upon the subject property as a condition of said grant.
- B. The Planning Board, after a public hearing, held upon notice as required in Article VI of this chapter, may amend, modify, vacate or repeal any such covenant(s) and restriction(s) and restoration(s) previously imposed.
- C. An application for relief of covenant shall include:
 - (1) The name and address of the applicant property owner.
 - (2) The location and description, including Suffolk County Tax Map numbers, of the subject property.
 - (3) The subject covenant, as recorded.

- (4) The specific relief requested.
 - (5) A concise description of the factual circumstances upon which the application is based.
 - (6) Copy of survey(s) showing existing and prior conditions, where appropriate.
 - (7) Such other and further information deemed necessary and/or appropriate by the Commissioner of Planning, Environment and Land Management and/or the Planning Board.
- D. Fee. An application fee for requests for relief of covenants and restrictions shall be as established by Town Board resolution. [Amended 11-20-2018 by L.L. No. 26-2018, effective 12-3-2018]

§ 85-110. through § 85-112. (Reserved)

§ 85-113. Site plan review and approval.

- A. Site plan review and approval is required in all zoning districts for all buildings and structures or land use and/or for all alterations or changes in use thereto, except for the following: single-family dwellings; subdivision maps or plats, including residential land divisions, notwithstanding any provision to the contrary in this chapter; permitted agricultural uses other than horse farms, and customary accessory uses thereto; and the exceptions set forth in § **85-116**. Notwithstanding the aforementioned requirements, the Town Board may, upon proper application therefor, grant a waiver from the within site plan review and approval requirements for properties located within the Fire Island National Seashore (a/k/a Great South Beach at Fire Island National Seashore).
 - B. In each case where a site plan is required, the applicant shall submit a site plan, prepared by a registered New York State landscape architect, land surveyor, architect or engineer, to the Planning Board prior to the filing of the application for a building permit with the Chief Building Inspector. Elevations, showing front, side and rear architectural features of the proposed structures, shall be submitted with the site plan and shall be considered a part thereof. The applicant shall demonstrate that the architectural and aesthetic features of the proposed structure will conform to and enhance the architectural features of the neighborhood. In appropriate cases, the Planning Board and/or the Commissioner of Planning, Environment and Land Management may require a landscape plan prepared by a registered New York State landscape architect.
 - C. The Planning Board is hereby authorized to review and approve, approve with modifications or disapprove said site plan in accordance with all applicable standards contained herein or within the Subdivision Regulations and to adopt such rules as it deems necessary to exercise the powers herein granted.^[1]
 - (1) Requirement of stormwater pollution prevention plan (SWPPP). A stormwater pollution prevention plan (SWPPP) consistent with the requirements of Chapter **86**, Stormwater Management and Erosion Control, shall be required for site plan approval. The approved SWPPP shall meet the performance and design criteria and standards and be consistent with the provisions as set forth in Chapter **86**, Stormwater Management and Erosion Control, of the Town Code.
- ^[1] *Editor's Note: See Ch. SR, Subdivision Regulations.*
- D. The Chairman of the Planning Board may require a public hearing in conjunction with site plan review for development in any zoning district upon making a determination that construction on or the use of the subject site may have a significant impact on the surrounding community.
 - E. The Planning Board shall consider the following elements in its review process: ingress to and egress from all public highways to the premises, subject to the approval of the appropriate municipal agencies having jurisdiction of such highways, the traffic pattern within the premises, the location and placement of parking spaces, parking areas, loading areas and spaces, curbs, sidewalks and access driveways as may be required under this chapter, or by any municipal agency, all drainage facilities, grading, lights, the placement of signs on the premises, the location and dimensions of all existing and proposed structures upon the site, open spaces, landscaping, screening, architectural features, all other physical features and improvements, the impact of the proposed use on adjacent land and land uses and such other elements as may be reasonably related to the health, safety and general welfare of the community.
 - F. (Reserved)^[2]
 - ^[2] *Editor's Note: Former Subsection F, Landbanked parking, was repealed 10-28-2014 by L.L. No. 23-2014, effective 11-4-2014.*
 - G. There shall be submitted with the application for site plan approval a copy of any restrictive covenant running in favor of the Town, or, if there is no such restrictive covenant, the applicant shall furnish an affidavit to that effect.
 - H. In any case where the site plan submitted by the applicant indicates that a variance and/or special permit is needed in order to construct or use the premises as shown on said site plan, the applicant shall submit an application for said variance and/or special permit to the appropriate board upon the filing of the application for approval of the site plan with the Planning Board. Upon adoption by said board of a resolution with respect to the application for a variance and/or special permit, the applicant shall submit to the Planning Board the date and case number of said resolution as well as the decision rendered

by the issuing board. If the variance and/or special permit is granted, said variance and/or special permit shall be deemed to be incorporated in the site plan submitted by the applicant. In those cases where a variance and/or a special permit is required, there shall be no final approval of the site plan by the Planning Board until such variance and/or special permit has been granted by the appropriate board. Upon issuance, said variance/special permit shall be deemed incorporated within the site plan, and shall remain valid for the duration of the site plan or any authorized extension thereof for all site plans approved on or after the effective date herein.

- I. If no public hearing is held, the Planning Board shall render its decision with respect to site plan approval within 62 days after receipt of the application unless an extension has been agreed upon.
- J. In all cases, the Planning Board shall notify the applicant of the decision rendered and shall set forth its reasons for the action taken.
- K. Final site plan approval and all other permits, approvals and authorizations as may be required from other municipal and governmental agencies and departments shall be obtained prior to the issuance of a building permit(s).
- L. Any property developed or used pursuant to an approved site plan shall be developed, maintained and used in conformity with the provisions of said site plan. Any variations from or amendments to an approved site plan must be reviewed and approved by the Planning Board. No site work, including the removal of trees or other vegetation, shall proceed until all permits required therefor have been issued.
- M. Change of use/expansion of use.
 - (1) Requirements for additions, rehabilitations, revisions or changes.
 - (a) Where an addition to an existing nonresidential building of 500 square feet or less or any change or alteration of use is proposed for a building or structure, which may include an addition of 500 square feet or less, for which a site plan was required and/or is exempt from site plan review as otherwise provided in this article, the owner or tenant in possession shall give written notice thereof to the Commissioner of the Department of Planning, Environment and Land Management within 30 days of any such proposed change of use on such form as shall be prescribed by the Commissioner. For purposes of this subsection, reinstatement of a discontinued permitted use on an improved site shall be deemed a change of use except where prior site plan approval was obtained.
 - (b) Where rehabilitation, revision or change in the facade of an existing commercial site is proposed for which a site plan was required and/or is exempt from site plan review as otherwise provided in this article, the owner and/or tenant in possession, or its designated agent, shall make application for a change of use for said facade improvements, in accordance with the provisions of this section, and shall be subject to the requirements of this section herein.
 - (2) The Commissioner of the Department of Planning, Environment and Land Management, or his/her designee, is hereby authorized to review and approve said change(s) of use so long as s/he finds that the deviation in use from the prior use is minor, that the proposed use is a permitted use under this chapter.
 - (3) The applicant shall provide any information and documentation which the Commissioner deems necessary and appropriate for his/her review of the application and may provide additional information that is pertinent to such application.
 - (4) The Commissioner shall take existing improvements into consideration and determine whether or not additional on-site improvements are necessary and/or appropriate, including but not limited to drainage, parking, curbs and walks, landscaping and fencing, and may require such improvements as part of his/her approval of said change of use.
 - (5) The Commissioner may, at his/her discretion, refer any change of use application to the Planning Board as s/he deems appropriate.
 - (6) Any owner or tenant in possession found guilty of violating this subsection shall be fined at the rate of \$100 per day.
 - (7) Amendment to certificate of occupancy required.
 - (a) Where new construction is authorized pursuant to this section, the resultant certificate of occupancy shall be consistent with the redesignated use as set forth in the applicable provision(s) of this chapter.
 - (b) Where modification(s) and/or remodeling to an existing site or building(s) is authorized to this section, the existing certificate of occupancy (or functional equivalent) shall be amended consistent with the redesignated use as set forth in the applicable provision(s) of this chapter.
- N. Upon the recommendation of the Chief Building Inspector or the Planning Board, the Town Board may revoke an existing certificate of occupancy or certificate of zoning compliance and may direct that such occupancy or use be discontinued upon a showing that the subject premises is being occupied or used in violation of the approved site plan. Said order of the Town Board shall be made after a hearing held on notice to the last owner of record of the subject premises as indicated by the current assessment roll of the Town of Brookhaven. In the event that the Town Board directs that such occupancy or use be discontinued or in the event that a parcel is being used or occupied without an approved site plan, the Town Attorney is authorized to commence proceedings in a court of appropriate jurisdiction to restrain said use or occupancy.

- O. Posting for applications involving site plans, preliminary subdivisions or final subdivisions. At least one poster, not less than one foot by two feet in size, must be conspicuously posted along each street frontage of the property which is the subject of the application, at least 10 days prior to the date set for the hearing before the Planning Board. This ten-day posting requirement for all applications involving site plans, preliminary subdivisions or final subdivisions shall be required for all such applications submitted on or after the effective date of this amendment. Such poster shall contain the following information:
- (1) A brief explanation of the proposed site plan approval requested.
 - (2) That a hearing will be held before the Planning Board at a specified date and the time and place with regard to the proposed hearing.
 - (3) Said poster must remain in place until the hearing has been completed and must be removed no later than seven days thereafter. The applicant, or applicant's agent, shall verify that said poster is still in place on a daily basis and shall promptly replace that poster should it be removed or defaced.
 - (4) The Planning Board shall adopt regulations governing the format of said poster and the manner and place in which it is posted. Said Board may require the applicant to use a poster supplied by it, in which event the Planning Board may set a fee to cover the cost of said poster.
 - (5) On the date of said hearing, the applicant or applicant's agent shall submit an affidavit in such form as shall be approved by the Planning Board, together with a photograph of said poster, said affidavit to state that said poster was posted in conformity with this chapter and in all manners complies with its requirements.
- P. Expiration of site plans.
[Amended 6-24-2014 by L.L. No. 12-2014, effective 7-8-2014]
- (1) All site plans shall expire three years after the date of final conditional approval, unless a building permit has been issued and substantial construction, with sufficient proof of such substantial construction, having been commenced in reliance thereon.
 - (2) All site plans and special permits granted pursuant to Article **XXVII** shall expire one year after the date of final conditional approval, unless a building permit has been issued and substantial construction, with sufficient proof of such substantial construction, having been commenced in reliance thereon.
- Q. Extension of final conditional site plan approval.
[Amended 6-24-2014 by L.L. No. 12-2014, effective 7-8-2014]
- (1) Upon application to the Commissioner of Planning, Environment and Land Management seeking an extension of the final conditional site plan approval, the Commissioner may grant the final conditional site plan approval a maximum of three extensions, not to exceed one year each, subject to the applicant sufficiently demonstrating that for each such application:
 - (a) The extension request is made prior to the expiration of the final conditional site plan approval;
 - (b) The applicant is diligently trying to meet the conditions of the final conditional site plan approval; and
 - (c) The applicant is diligently pursuing all other required governmental permits and approvals.
 - (2) Upon application to the Commissioner of Planning, Environment and Land Management seeking an extension of the final conditional site plan approval granted pursuant to Article **XXVII**, the Commissioner may grant the final conditional site plan approval a maximum of one extension, not to exceed one year, subject to the applicant sufficiently demonstrating that for each such application:
 - (a) The extension request is made prior to the expiration of the final conditional site plan approval;
 - (b) The applicant is diligently trying to meet the conditions of the final conditional site plan approval; and
 - (c) The applicant is diligently pursuing all other required governmental permits and approvals.
- R. Inactive site plan applications. Site plan applications which remain incomplete and/or for which the applicant initiates no activity for a period in excess of one year may be deemed withdrawn by the Commissioner of Planning, Environment and Land Management, so long as written notice is provided to the applicant informing said applicant of the Commissioner's intent to deem the application withdrawn at least 30 days prior to the Commissioner's determination. If an application is inactive for more than two years, it shall be deemed withdrawn.
- S. For each application for site plan approval, review of an amended site plan or inspection of a site plan, the fee shall be that as established by Town Board resolution. For purposes of said section, the term "on-site improvements" shall include but not be limited to the installation of drainage facilities, the paving of the parking field, and the installation of any curbs or sidewalks.
[Amended 11-20-2018 by L.L. No. 26-2018, effective 12-3-2018]

- T. Amendment of site plans. An application for an amendment to a previously approved site plan shall include the previously approved site plan, together with all amendments noted thereon. The Commissioner shall determine compliance with the applicable Town Code provisions as of the date of submission thereof.
- U. Upon its review of an application for amendment(s), modification(s) and/or addition(s) to a previously approved site plan and/or existing site development, the Planning Board shall review the entire site plan and existing site development; the Planning Board, in conjunction with its review and approval of the application for amendment(s), modification(s) and/or addition(s) to said site plan, may impose such reasonable conditions as it deems appropriate with respect to existing improvements including parking, landscaping, including but not limited to planting screens, maintenance, additional and/or enhanced landscaping, and any other site features it deems appropriate, and/or to require any reasonable modification to the existing site plan and/or site development as it deems appropriate in connection with its grant of approval of the proposed additional and/or modified site plan development.

§ 85-114. Public hearings.

- A. Public hearings shall be required in connection with site plan review for the following:
 - (1) All applications involving a parking relaxation of greater than 10% or a relaxation of minimum landscape standards of greater than 10% or for any relaxation of buffer area;
 - (2) Any other application, as determined by the Commissioner of the Department of Planning, Environment and Land Management, that may result in significant adverse impacts to surrounding properties; or
 - (3) As otherwise provided by any other provision of this chapter.
- B. The Planning Board shall fix a time within 45 days from the date an application for site plan or use approval is received by said Planning Board for the public hearing of any matter referred to it under this section.
- C. The Planning Board shall give public notice of said public hearing by the publication in an official newspaper circulating in the Town of Brookhaven of such hearing 10 days prior to the date thereof. This ten-day publication requirement shall be required for all applications submitted on or after the effective date of this amendment.
- D. The applicant shall cause notice of said public hearing to be sent by registered mail, return receipt requested, at least 10 days prior to the date of said public hearing, to all contiguous property owners as shown on the current assessment roll of the Town of Brookhaven. The applicant shall file an affidavit with the Planning Board attesting to the mailing of such notices. This ten-day notice requirement shall be required for all applications submitted on or after the effective date of this amendment.
- E. The Planning Board shall render its decision with respect to site plan approval within 45 days from the date of the public hearing, unless an extension of such period is mutually agreed upon by the parties. The decision of the Planning Board shall be filed with the Town Clerk forthwith, and a copy thereof mailed to the applicant.

§ 85-115. Preliminary site plans.

- A. Preliminary site plans may be required for PRC and MHC development. The Commissioner of the Department of Planning, Environment and Land Management may waive this requirement as deemed appropriate.
[Amended 6-27-2019 by L.L. No. 16-2019, effective 7-8-2019]
- B. The preliminary site plan shall contain the following information:
 - (1) The topography of the tract as shown in the United States Coast and Geodetic Survey datum, showing the location of woodland, streams and water areas and other significant land features.
 - (2) The location, size and use of the site and all existing and proposed structures.
 - (3) Streets, service driveways, parking areas, a comprehensive drainage plan and other proposed on-site improvements.
 - (4) If the site is not to be developed in its entirety, section lines shall be drawn to indicate the initial and subsequent construction phase.
- C. The Planning Board shall consider the preliminary site plan in view of standards and purposes of the proposed development so as to achieve maximum coordination between such proposed development and surrounding uses, the preservation of environmentally significant features and a maximum level of safety, convenience and amenity for the residents of the community.
- D. The Planning Board shall approve, approve with modifications or disapprove the preliminary site plan after holding a public hearing in accordance with the procedures set forth at § 85-114 herein.
- E. Upon the Planning Board's approval of the preliminary site plan, the applicant shall submit a final site plan which shall be in

conformity with the approved preliminary plan.

- F. An approved preliminary site plan shall be valid for a period of one year.

§ 85-116. Site plans.

- A. For each application for site plan approval, review of an approved site plan or inspection of a site plan, the fee shall be as established by Town Board resolution. For purposes of said section, the term "on-site improvements" shall include but not be limited to the installation of drainage facilities, the paving of the parking field, and the installation of any curbs or sidewalks.
[Amended 11-20-2018 by L.L. No. 26-2018, effective 12-3-2018]
- B. Exceptions to site plan approval. Notwithstanding any of the provisions of this chapter to the contrary, site plan approval need not be obtained for the addition to a building or structure upon the following conditions:
- (1) The addition shall not be more than 20% of the floor area of the existing structure or 1,000 square feet of floor area, whichever is less.
 - (2) Only one addition to a building or structure may be erected without site plan approval as provided in this section. With respect to a second or further addition, site plan approval shall be required as provided in this chapter. This limitation shall apply regardless of whether or not the applicant or his predecessor in title made application for the building permit for the first addition.
 - (3) A certificate of occupancy was issued for the existing building or structure prior to August 1, 1961.
 - (4) All other requirements of this chapter shall be complied with except as may be varied by the Board of Appeals.
- C. Amendment of site plans. Whenever an application for an amendment to a previously approved site plan shall be submitted to the Planning Board, the applicant shall submit the previously approved site plan, together with all amendments noted thereon. The Planning Board shall determine compliance with the applicable Town Code provisions as of the date of submission of the application for an amended site plan.

§ 85-117. Minor site plans.

- A. The Commissioner of the Department of Planning, Environment and Land Management is hereby authorized to review, approve, approve with modification or deny minor site plan applications. The Commissioner shall apply the criteria applicable to site plan review set forth in this chapter at Article VI in his/her review of said application(s). The Commissioner, at his/her sole discretion, may decline jurisdiction by referral of any minor site plan application to the Planning Board for its review and determination.
- B. Minor site plans are those which meet the following criteria:
- (1) Addition to existing building(s). Said addition(s) shall not be more than 20% of the floor area of the existing structure or 1,000 square feet of floor area, whichever is less; or
 - (2) The existing building(s) has been previously exempted under the provisions of this article; or
 - (3) Sites for which the Commissioner determines that on-site improvements are necessary and/or appropriate, including but not limited to the installation of drainage facilities, paving of parking areas, curbs and walks, landscaping, fencing and additional parking spaces.
- C. The minor site plan procedure set forth in Subsection B above shall not apply under the following circumstances:
- (1) The proposed development requires variances, special permits or special exceptions or otherwise fails to fully comply with the requirements of this chapter; or
 - (2) A public hearing is required pursuant to this article for the proposed development.
- D. The application shall comply with the requirements for site plan application(s) set forth in this article as to form and content.
- E. The Commissioner shall notify the applicant in writing of this determination that the site plan application shall be treated as a minor site plan subject to his review in accordance with this article.
- F. Posting.
- (1) Within seven days of receipt of such notification, the applicant shall affix at least one poster, not less than one foot by two feet in size, in a conspicuous manner along each road frontage of the property which is the subject of the application; such posters shall be supplied by Department of Planning, Environment and Land Management and shall contain a brief explanation of the proposed site plan approval requested.

- (2) The Commissioner shall adopt regulations governing the format of said poster, the manner and place in which it is posted, and may set a fee to cover the cost of said posters.
- (3) The applicant or his agent shall submit an affidavit in such form as shall be required by the Commissioner, together with a photograph of said poster, stating that the posting of the notice was made in compliance with this article.

G. Commissioner's review.

- (1) Written comments from the public shall be accepted and considered by the Commissioner, for a period of at least 10 days, but no more than 20 days, after his determination that the application is complete.
- (2) Within 30 days of the Commissioner's determination that the application is complete, s/he shall approve, approve with modifications, approve with conditions or deny the site plan.
- (3) In the event the Commissioner fails to make a determination within said thirty-day period, the application shall be deemed referred to the Planning Board for its review in accordance with the provisions of this chapter.

H. Emergency minor site plans.

- (1) Damaging winds, torrential rainfall, flooding and storm surge from hurricanes or natural disasters can cause significant damage to motor vehicles. These damaged motor vehicles can impede emergency response efforts and pose a persistent threat to the security, life and health to persons and property in the affected areas and, therefore, are deemed a public health hazard and a public nuisance.
- (2) The Commissioner of the Department of Planning, Environment and Land Management is hereby authorized to review emergency minor site plan applications for the temporary storage of motor vehicles. Upon favorable recommendation from the Commissioner of the Department of Planning, Environment and Land Management, the Town Board of the Town of Brookhaven, by resolution, may designate a parcel suitable for temporary parking and storage of damaged motor vehicles, subject to conditions as the Town Board may deem appropriate.
- (3) Emergency minor site plans shall be subject to the following criteria:
 - (a) A State of Emergency was declared by the Supervisor of the Town of Brookhaven or the Governor of the State of New York.
 - (b) The proposed site is not located within the Core Area of the Central Pine Barrens.
 - (c) The proposed site is commercially or industrially zoned.
 - (d) The proposed site has received prior site plan approval and all proposed storage shall be located on existing asphalt or stabilized base which was designated for parking of motor vehicles or similar activity on the prior approved site plan.
 - (e) A bond is submitted which is equal to \$200 per vehicle stored on the site.
 - (f) Within six months of approval, submission of proof to the Commissioner that all fluids have been removed from all vehicles stored. Properties cited as noncompliant shall be subject to penalties in accordance with Article XII.
 - (g) All site plan application and expedited review fees as set forth in Town Board resolution have been paid.
[Amended 11-20-2018 by L.L. No. 26-2018, effective 12-3-2018]
- (4) The Commissioner may apply the criteria applicable to site plan review set forth in this chapter at his/her discretion in review of said application(s) and in making a recommendation to the Town Board. The Commissioner, at his/her sole discretion, may decline jurisdiction of any minor emergency site plan request and such application shall require site plan review and approval pursuant to § 85-113 of this chapter.
- (5) The applicant shall be responsible for obtaining building permits and a temporary certificate of use or certificate of occupancy, as applicable.
- (6) Expiration. All approvals for the temporary parking and storage of motor vehicles shall expire six months after the date of emergency minor site plan approval.
 - (a) An applicant may submit a request to the Town Board seeking an extension of time limits herein. The Town Board may grant a maximum of one extension, not to exceed six months.
- (7) No application for emergency minor site plan approval may be submitted under this Subsection H, entitled "Emergency minor site plans," after March 31, 2013.

§ 85-118. through § 85-122. (Reserved)

Town of Brookhaven, NY
Thursday, October 3, 2019

Chapter 85. Zoning

Article XIV. Residence Districts

§ 85-175. Residence District standards.

Within the residence districts, a building, structure, lot or lands shall only be utilized in conformance with the provisions of § 85-177, Table of Dimensional Regulations.^[1] In addition, such use shall also comply with all other applicable provisions of this chapter. The table comprising § 85-177 is hereby declared to be a part of this chapter.

[1] *Editor's Note: The Table of Dimensional Regulations is included as an attachment to this chapter.*

§ 85-176. Maximum building and driveway size.

Within all residential districts, any permitted principal structure or building and driveway shall not exceed the maximum size as set forth herein. Any proposed structure or driveway in excess of the maximum size shall be required to obtain an area variance from the Board of Zoning Appeals.

A. Maximum permitted principal structure or building sizes within residential zones are hereby established as follows:

| District | Maximum Size (square feet) |
|----------------|-------------------------------|
| A Residence | 11,250 |
| A-1 Residence | 15,000 |
| A-2 Residence | 30,000 |
| A-5 Residence | 30,000 |
| A-10 Residence | 30,000 |
| B Residence | 7,500 |
| B-1 Residence | 11,200 |
| C Residence | 7,875 |
| D Residence | 11,250 |

B. Within all above-referenced residential districts, the maximum amount of front yard area consisting of asphalt, gravel, stone, or dirt or other nonvegetative material to be used primarily for the parking of vehicles or as a driveway shall not exceed 35% of the area of the primary front yard of any residential lot or shall not be greater than 24 feet in width, whichever is less restrictive.

(1) Repairs or replacements of driveways in existence prior to the enactment of this section shall not be deemed a violation of this chapter.

(2) Exception. The calculation of front yard area for interior lots known as "flag lots" shall exclude the area encompassed by or attributable to the portion of said lot which is 20 feet or less in width.

C. Notwithstanding the above, any provision set forth in the Table of Dimensional Regulations which yields a smaller principal structure/building shall be controlling and prevail.

D. Religious institutions are exempt from the limitations contained within this section.

§ 85-178. through § 85-182. (Reserved)

§ 85-183. Minimum habitable area.

§ 85-184. One-family dwellings; floor area.

- A. In all use districts, except in Use Districts PRC Residence, MHC Residence, RD Residential and CD Commercial (Great South Beach), no such dwelling shall hereafter be erected or altered for one-family use, unless provision shall be made therein for not less than 1,000 square feet for the minimum floor area for a single-family dwelling, exclusive of attached garages, carports, open porches and open breezeways. In Use Districts RD Residential and CD Commercial (Great South Beach), no dwelling shall hereafter be erected or altered for one-family dwelling use, unless provision shall be made therein for not less than 720 square feet for the minimum ground floor area for a single-family dwelling, exclusive of attached garages, carports, open porches and open breezeways. For one-family dwellings to be constructed on lots less than 50 feet in width pursuant to § 85-883 of the Code of the Town of Brookhaven, the minimum habitable area shall be 700 square feet, and for one-family dwellings to be constructed on lots less than 60 feet but equal to or greater than 50 feet in width pursuant to § 85-883 of the Code of the Town of Brookhaven, the minimum habitable area shall be 700 square feet, and for one-family dwellings to be constructed on lots less than 60 feet but equal to or greater than 50 feet in width pursuant to § 85-883 of the Code of the Town of Brookhaven, the minimum habitable area shall be 850 square feet, all exclusive of attached garages, carports, open porches and open breezeways.
- B. The computation of floor area shall be as follows except for lots less than 60 feet in lot width:
- (1) One-story residence, with all rooms on one level: a minimum of 1,000 square feet.
 - (2) One-story residence with expansion attic: A maximum of 200 square feet of the floor area of the second story may be used and applied to the floor area requirements of the dwelling unit. To qualify as floor area, the second floor shall have:
 - (a) Rough flooring installed.
 - (b) A minimum ceiling height of seven feet.
 - (c) Walls or knee walls of not less than four feet in height between which the floor area shall be computed.
 - (d) Access from the floor below by a permanent built-in stairway.
 - (e) At least one window in each gable end.
 - (3) Two-story residence, where both floors have a minimum ceiling height of 7 1/2 feet: A maximum of 300 feet of the floor area of the lower level may be used and applied to the floor area requirements of the dwelling unit. To qualify as floor area, the lower level shall:
 - (a) Have more than half of its height, measured from floor to ceiling, above the average established curb level or finished grade of the ground adjoining the building.
 - (b) Be completely enclosed by ceilings and sidewalls which have been properly finished with approved construction materials.
 - (c) Have a floor finished with approved construction materials, excluding paint.
 - (4) Raised ranch, where both floors have a minimum ceiling height of 7 1/2 feet: A maximum of 300 feet of the floor area of the lower level may be used and applied to the floor area requirements of the dwelling unit. To qualify as floor area, the lower level shall:
 - (a) Have more than half of its height, measured from floor to ceiling, above the average established curb level or finished grade of the ground adjoining the building.
 - (b) Be completely enclosed by ceilings and sidewalls which have been properly finished with approved construction materials.
 - (c) Have a floor finished with approved construction materials, excluding, however, paint.
 - (5) Split-level, where the two height levels are completely above finished grade, with minimum ceilings of 7 1/2 feet: A maximum of 250 feet of the floor area of the lowest level may be used and applied to the floor requirements of the dwelling unit. To qualify as floor area, the lowest level shall meet the same standards as those applied to raised ranch homes as noted in Subsection B(4) above.
- C. This section shall not apply to or in any way affect the minimum habitable area of dwellings erected upon lots shown on a final subdivision plat which has been approved by the Planning Board of the Town of Brookhaven subsequent to the first day of July 1962 and prior to the 22nd day of September 1962, provided that the required performance bonds and fees have been filed with and paid to the Planning Board prior to the 22nd day of September 1962.
- D. The provisions of the former Building Zone Ordinance of the Town of Brookhaven, in effect prior to January 1, 1988, shall be applicable to dwellings erected upon such lots.

§ 85-185. Two-family dwellings.

Where two-family dwellings are allowed, no dwelling shall be hereafter erected or altered for two-family dwelling use unless provision shall be made therein for not less than 2,000 square feet for the minimum ground-floor area, exclusive of garages, carports, open porches and open breezeways; provided, however, that a maximum of 1,000 square feet of the floor area of the second story may be used and applied to the area requirement of the first floor. To qualify as floor area for the purpose of this section, the requirements set forth in § 85-184 shall apply.

§ 85-186. Multiple dwellings.

Where multiple dwellings are allowed, no dwelling shall be hereafter erected or altered for multiple-dwelling use unless provision shall be made therein for not less than 400 square feet of habitable floor area for each family unit; provided, however, that in the MF-1 Residence District, the minimum habitable floor area for each family unit shall be 600 square feet. To qualify as floor area for the purpose of this section, the requirements set forth in § 85-184 shall apply.

§ 85-190. A Residence District.

A. Principal uses are as follows:

- (1) One-family dwellings, except that mobile homes shall not be a permitted principal use.
- (2) Churches or similar places of worship and parish houses.
- (3) Convents and monasteries.
- (4) Open farming; provided, however, that no storage of manure, compost, mulch or odor- or dust-producing substances shall be permitted within 150 feet of any street line. The sale at retail or wholesale of farm, garden or nursery products produced on the premises shall be permitted; however, nothing herein shall permit the screening and sale to others of compost or mulch materials.
[Amended 5-21-2015 by L.L. No. 7-2015, effective 6-2-2015]
- (5) Public and parochial schools and private schools having a curriculum similar to that ordinarily given in public schools, but not including day-care facilities.

B. Accessory uses, when located on the same lot with a permitted principal use, are as follows:

- (1) Private garages.
- (2) Offices of a physician, lawyer, architect, teacher or similar professional person residing on the premises and when such use is incidental to such residence; provided, however, that such use shall be within the main building and occupying not more than one-third of the first-floor area.
- (3) Customary home occupations only when conducted by the person residing on the premises.
- (4) Fences. No fence may be erected having a height greater than four feet from the ground, except as follows:
 - (a) Where a residence has been erected, a six-foot fence may be erected in the rear yard, provided that, if it is on an interior lot, said six-foot fence may be erected in the rear yard to extend along the rear lot line and along the side lot lines to a point not forward of the front foundation line of the residence, and thence from said lot lines to the front point of said foundation; on a corner lot, a six-foot fence may be erected in the rear yard to extend along the rear lot line and along the secondary front lot lines, except that no such fence shall project into the required primary front yard; and on a through lot, a six-foot fence may be erected in the rear yard along the two side lot lines and the secondary front lot line. Notwithstanding the foregoing, on corner lots, fences less than six feet in height may be located not closer than eight feet to the primary front lot line, provided the applicant demonstrates, to the satisfaction of the Commissioner of the Department of Planning, Environment and Land Management, that said fence will not interfere with vehicular traffic sight visibility. A six-foot fence in the primary and secondary front yards on corner lots and in the secondary front yard on through lots shall be considered a structure requiring a building permit. All such fences shall comply with the site visibility requirements of this Code.
[Amended 10-3-2019 by L.L. No. 22-2019, effective 10-16-2019]
 - (b) If such fence shall be erected along any street, the permitted height thereof shall be measured from the existing elevation of the center line of such street opposite such fence, unless such fence is of open woven wire or other such design as will not obstruct sight visibility. Such height so measured shall not exceed 2 1/2 feet in any point within a radius of 30 feet of the corner formed by any intersecting streets. The provisions hereof shall also apply to hedges or any other densely growing shrubbery.
 - (c) Wire strand and open woven wire fences six feet in height above ground level shall be permitted on all lot lines of property principally devoted to agriculture, provided that such height so measured shall not exceed four feet at any point within a radius of 30 feet of the corner formed by any intersecting streets.
 - (d) Use of barbed-wire fencing, ribbon-wire fencing or electrical fencing shall be subject to approval by the Planning

Division or, in the event that Planning Division review is not otherwise required, approval by the Zoning Board of Appeals pursuant to Subsection **C** below.

- (5) Signs, as permitted and regulated in Chapter **57A**.
 - (6) Barns, as defined in this chapter, subject to the following:
 - (a) A maximum height of 18 feet;
 - (b) A fifty-foot rear yard and fifty-foot side yard setback shall be provided;
 - (c) To be located in the rear yard only; and
 - (d) No more than twenty-five-percent lot coverage of the rear yard shall be occupied by such structure, except that in the A-5 and A-10 Residential Zoning Districts, it shall be pursuant to the Residential Districts Table of Dimensional Regulations.^[1]
- [1] Editor's Note: The Residential Districts Table of Dimensional Regulations is included as an attachment to this chapter.*
- (7) Other customary accessory uses, structures and buildings, provided that such uses are clearly incidental to the principal use and do not include any activity commonly conducted as a business. Except with regard to construction on property principally used for agriculture, any accessory building shall be located on the same lot with the principal building, and no accessory building shall be constructed on a lot until the construction of the main building has actually been commenced, and no accessory building on the lot shall be used until the main building is completed and used.
 - (8) Accessory apartments, subject to all requirements and limitations set forth in § **85-258**.
 - (9) Detached storage sheds, not greater than 12 feet in height above surrounding grade and not exceeding 600 square feet in floor area. All storage sheds shall be considered structures; however, storage sheds less than or equal to 144 square feet in floor area may be located not closer than three feet to a side or rear property line.
 - (10) Model dwellings. Model dwellings where the same are to be located on lots on an approved final subdivision map or an approved residential site plan and are intended to be used as model dwellings for the sale of homes to be located within the subject project site. Permission for location of said models shall be obtained from the Planning Board and shall be issued for a period not to exceed two years. The Planning Board may renew said permit upon application, provided that the model dwelling has been constructed and used in accordance with the approved site plan.
 - (11) Greenhouses. Greenhouses, so long as the use of said structure(s) is solely incidental to the permitted principal use and otherwise conforms with the applicable dimensional requirements set forth in this chapter.

C. The following uses shall be permitted when authorized by special permit from the Board of Appeals:

- (1) Dwelling models, except for dwelling models approved by the Planning Board pursuant to Subsection **B(9)** above, provided that the following conditions are met:
 - (a) Site plan review and approval by the Planning Board shall be obtained simultaneously with or prior to the issuance of a special permit.
 - (b) Off-street parking for at least four automobiles for one model dwelling unit and two additional spaces for each additional adjoining model dwelling unit shall be required.
 - (c) No exterior spotlighting or floodlighting shall be permitted which will result in annoying glare directed or reflected toward residential dwellings or residential zoning districts.
 - (d) Prior to the issuance of a special permit for a model dwelling built on a lot that does not conform to the requirements of the zone in which it is located, the owner must execute a consent, in a form acceptable to the Town Attorney, which consent will authorize the Chief Building Inspector to demolish or cause to be removed said model dwelling if the same is not removed by the owner thereof within 45 days of the expiration of the special permit. The applicant shall also consent that all costs and expenses incurred by the Town of Brookhaven in connection with the removal of the model dwelling shall be assessed against the land on which said buildings are located. The amount of such cost and expense shall be determined and audited by the Town Board and shall be reported to the Board of Assessors of the Town of Brookhaven as an amount to be levied and assessed against said premises as an assessment for an improvement to be included in the next succeeding assessment roll of the Town of Brookhaven to be thereafter prepared. Thirty days after the expiration of the special permit, the Chief Building Inspector shall mail a notice to the applicant for the special permit and the latest assessed owner of record for the subject property. Such notice shall indicate that, unless the subject model dwelling is removed within 15 days, the Town will proceed to remove the dwelling and assess the costs against the property. The Chief Building Inspector shall also cause such notice to be posted on the front door of the subject model dwelling. If the dwelling is not removed, the Building Division may cause it to be removed or demolished as above provided.
 - (e) The special permit shall be issued for a period not to exceed five years. The Zoning Board of Appeals may renew said permit upon application, provided that the model dwelling has been constructed in accordance with the site

plan, the conditions attached to the special permit, and this chapter.

- (2) Day-care facilities.
 - (3) Upon a showing of need to protect private property, where the safety of residents will not be placed in jeopardy, barbed-wire fencing, ribbon-wire fencing or electrical fencing, unless the Planning Division has approved or disapproved such use during site plan review.
 - (4) Other agriculture.
 - (5) A one-family dwelling occupied by more than eight persons living and cooking together as a single housekeeping unit though non-related by blood, adoption, or marriage, provided that all of the following conditions are met:
 - (a) Submission of proof of a valid operating certificate, permit, and/or approval having been issued by the appropriate federal, state and/or county agency or department for the proposed use when the same is mandated by law; and
 - (b) The location of the use does not unduly increase traffic congestion, off-site parking, and noise levels on public streets.
- D. The following uses shall be permitted when authorized by special permit from the Planning Board:
[Amended 5-12-2016 by L.L. No. 10-2016, effective 5-25-2016]
- (1) Colleges and universities; provided, however, that the plot has an area of not less than 75 acres and a continuous street frontage of not less than 400 feet; and provided further that the total building area shall not exceed 20% of the total plot area; the location of all buildings and structures shall be subject to approval by the Planning Board.
 - (2) Golf courses and country clubs having a plot area of not less than 50 acres.
 - (3) Human cemeteries.
 - (4) Museum reuse of historic structures identified on the State or National Register of Historic Places or designated as a local landmark.
 - (5) Parks, playgrounds, athletic fields, bathing beaches, bathhouses or boathouses, excluding uses permitted as set forth in § 85-511 of this chapter.
 - (6) Private community center, recreation buildings and outdoor recreation facilities as part of a homeowners', condominium or community association.
 - (7) Voluntary nonprofit ambulance companies.

§ 85-191. through § 85-196. (Reserved)

§ 85-197. A Residence 1 District.

A. Permitted uses are as follows:

- (1) All principal uses, accessory uses and uses authorized by special permit which are permitted in the A Residence District.
- (2) All uses identified as incentive uses within the Transitional Area Overlay District established in connection with the Montauk Highway Corridor Study Land Use Plan for Mastic and Shirley Phase II.

§ 85-239. A Residence 5 District.

A. In the A Residence 5 District, no building, structure or premises shall be used or occupied and no building or part thereof or other structure shall be erected or altered unless otherwise provided in this chapter, except for one or more of the following uses:

- (1) Permitted uses:
 - (a) All principal uses, accessory uses and uses authorized by special permit which are permitted in the A Residence District.

B. Height. In the A Residence 5 District, no building or structure shall be erected or altered to a height in excess of 35 feet or 2 1/2 stories.

C. Building area. In the A Residence 5 District, the total building area shall not exceed 6% of the total lot area.

- D. Lot area. In the A Residence 5 District, no building or structure shall be erected or altered on a lot having an area of less than 200,000 square feet or upon a lot having a frontage of less than 300 feet at a point 70 feet back of the street line.
- E. Front yard. In the A Residence 5 District, there shall be a front yard having a depth of not less than 70 feet.
- F. Side yards. In the A Residence 5 District, there shall be two side yards, one on each side of the building, the total width of both to be 85 feet, and no one side yard shall be less than 35 feet wide.
- G. Rear yard. In the A Residence 5 District, there shall be a rear yard having a minimum depth of 80 feet.
- H. Accessory buildings and structures. In the A Residence 5 District, accessory buildings and structures may occupy 12 1/2% of the required rear yard and shall not exceed 18 feet in height; provided, however, that no building or structure shall be built less than 20 feet from any side or rear lot line nor less than 90 feet from any street line.
- I. Transfer of development rights. In the event that the Town Board or Planning Board is authorized to permit the transfer of development rights, said Board shall have the authority to require an applicant for development of a conventional subdivision plat within this zoning category to transfer the development rights in accordance with the provisions of any general, special or local law authorizing said Board to permit the transfer of development rights.
- J. Site plan. With the exception of one-family dwellings, permitted agricultural uses and accessory uses thereto, site plan review and approval shall be required.

ZONING

85 Attachment 1

Town of Brookhaven Residential Districts: Table of Dimensional Regulations § 85-177

| Use | A Residence One-Family | A Residence 1 One-Family | A Residence 2 One-Family | B Residence One-Family | B Residence 1 One-Family | C Residence One-Family | D Residence One- and Two-Family | D-1 Residence | A Residence 5 One-Family | A Residence 10 One-Family |
|--------------------------------------------------------------------------|------------------------------|--------------------------------|--------------------------------|------------------------------|--------------------------------|------------------------------|------------------------------------------|------------------|--------------------------------|---------------------------------|
| Maximum height (feet/stories) | 35/2 1/2 | 35/2 1/2 | 35/2 1/2 | 35/2 1/2 | 35/2 1/2 | 35/2 1/2 | 35/2 1/2 | 35/2 1/2 | 35/2 1/2 | 35/2 1/2 |
| Minimum area (square feet) | 30,000 | 40,000 | 80,000 | 15,000 | 22,500 | 9,000 | 15,000 | 15,000 | 200,000 | 400,000 |
| Maximum total building area (percentage of lot area) | 15% | 15% | 15% | 20% | 20% | 35% | 30% | 30% | 6% | 3% |
| Minimum road frontage (feet/at a point in feet back from street line) | 150/40 | 175/50 | 200/60 | 100/40 | 125/40 | 75/30 | 150/40 | 150/40 | 300/70 | 400/80 |
| Minimum front yard (depth in feet) | 40 | 50 | 60 | 40 | 40 | 30 | 40 | 40 ¹ | 70 | 80 |
| Minimum side yard (width in feet) | 20 | 25 | 30 | 18 | 20 | 12 | 12 | 12 | 35 | 40 |
| Minimum total side yards (feet) | 60 | 75 | 80 | 40 | 45 | 30 | 30 | 30 | 85 | 90 |
| Minimum rear yard (feet) | 60 | 60 | 75 | 50 | 60 | 30 | 30 | 30 | 80 | 85 |
| Accessory Structures | | | | | | | | | | |
| Maximum height (feet) | 18 | 18 | 18 | 18 | 18 | 18 | 18 | 18 | 18 | 18 |
| Minimum setback from any lot line (feet) | 10 | 10 | 20 | 7 1/2 | 7 1/2 | 5 | 10 | 10 | 20 | 20 |
| Minimum setback from street (feet) | 60 | 70 | 80 | 60 | 60 | 50 | 50 | 50 | 90 | 95 |
| Maximum lot coverage (percentage of required rear yard area) | 25 | 25 | 25 | 25 | 25 | 25 | 25 | 25 | 12 1/2 | 10 |

NOTES:

¹ See § 85-232E.

*Town of Brookhaven, NY
Thursday, October 3, 2019*

Chapter 85. Zoning

Article XVIII. Great South Beach in Fire Island National Seashore

§ 85-376. Applicability; legislative intent; definitions; use districts.

- A. Application of this article. This article shall apply only to land situate within bounds of the Fire Island National Seashore where the same lies within the Town of Brookhaven, but excluding any lands which lie within the boundaries of incorporated villages.
- B. Legislative intent.
- (1) In order to promote the health, safety and welfare of residents and visitors of the Town of Brookhaven on the barrier beach known as "Fire Island," the Town Board of the Town of Brookhaven has enacted this article. The provisions of this article shall protect said barrier beach from development which is inconsistent with prudent resource management and its ecological capabilities.
 - (2) The Town Board is cognizant of the unique characteristics of Fire Island communities and, as such, adopts this article to encourage the most appropriate use of land throughout said communities.
 - (3) The Town Board recognizes the need for the conservation and preservation of natural resources on Fire Island while at the same time ensuring the widest possible use.
- C. Definitions. As used in this article, the following terms shall have the meanings indicated:

ABANDONMENT

Nonpayment of taxes for one year and intent to abandon as manifested by noncontinuous use of any use within a building for a three-year period as measured by three summer seasons from Memorial Day to Labor Day.

ACCESSORY BUILDING, STRUCTURE OR USE

A building, structure or use customarily incidental and subordinate to the principal building or use and located on the same lot with such principal building or use.

ALTERATION

A change or rearrangement in the structural parts of a building or other structure, including interior partitions, exterior porches, exits and decks, interior load-bearing walls, capacities of utility pipes, ducts or conduits.

BATHHOUSE

A building or portion thereof containing dressing rooms and/or lockers for bathers.

BOARDINGHOUSE

A building, other than a hotel or restaurant, where lodging and meals for five or more persons are served for compensation, including tourist houses, rooming houses and lodging houses.

BUILDING

An enclosed structure having a roof supported by columns, walls or cantilevers, and if separated by a party wall without openings, it shall be deemed a separate building.

BUILDING AREA

The total areas taken on a horizontal plane at the main grade level of the principal building and all accessory buildings on a lot, excluding uncovered steps.

BUILDING HEIGHT

The vertical distance between the average existing ground elevation up to the highest point of the roof. In no case shall the building height be measured from a point less than the minimum elevation necessary to meet the prerequisite for federal flood insurance, designated within the Flood Risk Zone by the National Flood Insurance Programs, Federal Emergency Management Agency, indicated on the Flood Insurance Rate Map for the Great South Beach, Brookhaven Town, Community No. 365-334B.

DANCE HALL OR DISCOTHEQUE

A public place in which people assemble, where the main purpose of assembly is dancing to musical accompaniment,

live or recorded. Such establishment may or may not serve alcoholic beverages.

DEVELOPED PROPERTY

Any property which has been altered from its natural state by the construction or erection of materials located in, upon or attached to something located in or upon the ground. Such alterations may include buildings, decks, aboveground swimming pools, storage sheds, patios, docks, tennis courts, septic systems or leaching fields, walkways, groins, fences and signs (except dune protection fences and signs), roads, retaining walls, grading, artificial fill or other structures or materials, excluding live vegetation.

DEVELOPMENT

Any activity, action or alteration which changes undeveloped property into developed property.

DWELLING, MULTIPLE

A building designed for or occupied by three or more families living independently of each other with separate cooking facilities, including cooperative apartments, garden apartments and condominium apartments.

DWELLING, SINGLE- OR ONE-FAMILY

A detached building arranged, designed for or occupied exclusively as a home or residence by one family doing its own cooking.

DWELLING, TWO-FAMILY

A detached building designed for or occupied exclusively as a home or residence for not more than two families living independently of each other with separate cooking facilities.

FAMILY

One or more persons related by blood, adoption or marriage, living and cooking together as a single housekeeping unit, or a number of persons living and cooking together as a single housekeeping unit though not related by blood, adoption or marriage.

FLOOR AREA, GROUND

The area within the exterior walls of a building at the first floor.

GUESTHOUSE

An accessory structure, on the same lot as the principal building, for the temporary accommodation of guests of residents living in the principal building, without any cooking facilities.

HOTEL

A building designed to provide individual sleeping accommodations for short-term transient occupants, with or without direct outside access, with or without restaurant facilities and with or without a common entrance, common heating system or general dining room.

IMPROVED PROPERTY

A type of developed property which is defined by the Fire Island National Seashore Act, Public Law No. 88-587, Section 2(F), 1964, to mean any building, the construction of which was begun prior to July 1, 1963, and such amount of land, not in excess of two acres in the case of a residence or 10 acres in the case of a commercial or industrial use, on which said building is situated as the Secretary of the Interior considers reasonably necessary to the use of the building. The Secretary of the Interior may exclude from such improved property any beach or waters, as well as land adjoining such beach or waters, which he deems necessary for public access thereto.

LOT

A parcel of land, exclusive of public walk areas, used or designed to be used by one use or building or by a related group of uses or buildings and the accessory uses of buildings customarily incident thereto, including such open spaces as are required by this chapter.

LOT AREA

The total area measured inside of all the lot lines, excluding underwater areas below mean high water.

NONCONFORMING USE

Any building, structure or land lawfully occupied by a use that does not conform to the regulations of the use district in which it is situated.

PREMISES

A tract of land with buildings thereon.

RESTAURANT

A building or part of a building or plot on or in which food and/or beverages are prepared and served to patrons, either inside and/or outside, whether counter service or carry-out, fast-food or table service.

SIGN

Any device intended for use for the purpose of advertisement, identification, publicity or notice when visible from the exterior of a structure in or on which the sign is located. The term "sign" shall include any billboard illustration, insignia,

lettering, picture, display banner, pennant or flag, however made, displayed, painted, supported or attached, and shall exclude house numbers in the residence district not larger than 1/2 square foot.

STORY

That portion of a building included between the surface of any floor and the surface of the floor next above it or, if there is no floor above it, then the space between such floor and ceiling, which shall not exceed 28 feet in height. In structures of more than one story, the definitional footage measurement to be used to determine height is 10 feet.

STRUCTURE

Anything constructed or erected which requires location in or upon the ground or attached to something having location in or upon the ground, including all types of signs. The word "structure" shall be construed as though followed by the words "or part thereof."

UNDEVELOPED PROPERTY

Any property which has not been altered from its natural state, with the exception of such dune protection measures as snow fencing, beach nourishment or dune grass planting.

UNIMPROVED PROPERTY

Either undeveloped property or property which is developed or built after July 1, 1963.

USE

The purpose for which land or a building or structure is designed, arranged or intended or for which it is or may be occupied or maintained. The term "permitted use" shall not be deemed to include any nonconforming use.

WALK

A public or private right-of-way, as shown on the Zoning Map, which affords the principal means of access to abutting properties. Neither tidal nor nontidal waters nor the shores, strands or beaches along the same shall be deemed walks for the purpose of this chapter.

YARD, FRONT

The open space between the walk or right-of-way and the nearest part of any building.

YARD, REAR

Open space on the same lot with the main building between the rear line of said building and the rear line of the lot.

YARD, SIDE

Open space on the same lot with the main building situated between the building and the side line of the lot and extending through from the walk or from the front yard to the rear yard of the lot. Any lot line not a walk line or a rear line shall be deemed a "side line."

D. Use districts.

- (1) For the purposes of this article, those portions of the Great South Beach within the Town of Brookhaven are hereby divided into three use districts which shall be designated as follows:
 - (a) RD Residential District.
 - (b) OFD Oceanfront Dune District.
 - (c) CD Commercial District.
- (2) For the purposes of this article, the zoning districts presently assigned to properties located on the Great South Beach within the Town of Brookhaven are hereby converted as follows in order to conform to the three use districts aforementioned:
 - (a) All properties zoned D, E and F Residential shall become RD Residential.
 - (b) All properties zoned G and H Business, J-2 Business and L-1 Industrial shall become CD Commercial.

§ 85-377. Conformance required; nonconforming uses; certificates of occupancy.

A. Conformity with article provisions. All buildings or land shall be used and all buildings shall be erected or structurally altered in compliance with the provisions of this article, except as follows:

- (1) An existing nonconforming building used as a one- or two-family dwelling with a certificate of occupancy, a certificate of existing use or its equivalent, located in the Residential District, whether situated on a conforming lot or a nonconforming lot, if severely damaged, destroyed or rendered a hazard due to fire, natural disaster, abandonment or neglect, may be structurally altered, restored, repaired or reconstructed, in whole or in part, provided that said building does not encroach deeper into any nonconforming height, lot occupancy, front yard, side yard or rear yard than the distance into said height, lot occupancy, front yard, side yard or rear yard than the existing building encroaches and the degree of nonconformity shall not be increased.

- (2) A nonconforming accessory building(s) or structure(s), when accessory to a one- or two-family dwelling with a certificate of occupancy, a certificate of existing use or its equivalent, situated in the Residential District, whether located on a conforming lot or a nonconforming lot, if severely damaged, destroyed or rendered a hazard due to fire, natural disaster, abandonment or neglect, may be structurally altered, restored, repaired or reconstructed, in whole or in part, provided that said accessory buildings or structures do not encroach deeper into any nonconforming height, lot occupancy, front yard, side yard or rear yard than the distance into said height, lot occupancy, front yard, side yard or rear yard than the existing building(s) or structure(s) encroaches and the degree of nonconformity shall not be increased.
- B. Legal nonconforming use defined. The term "legal nonconforming use," as used in this article, shall mean any nonconforming use which, at such time such use was commenced, was maintainable as a matter of right under the code and general rules of law in effect in the Town of Brookhaven.
- C. Continuation or change of nonconforming use.
- (1) Any legal nonconforming use may be continued; provided, however, that a legal nonconforming use shall not be changed unless changed to a conforming use. A legal nonconforming use, if changed to a conforming use, may not thereafter be changed or returned to any nonconforming use.
- (2) A legal nonconforming use, if discontinued by virtue of fire, explosion, acts of God or other causes to the extent of not more than 75% of the total use, shall not be deemed to have lost its legal nonconforming use status. Reconstruction and restoration of said use, where discontinued to more than 75% of the total use, shall be determined by the following guidelines:
- (a) Those legal nonconforming uses established prior to October 17, 1984, shall be reconstructed in accordance with the building dimensions as stated in this article. Such legal nonconforming uses shall constitute developed improved property.
- (b) Those legal nonconforming uses established subsequent to October 17, 1984, with the permission of the Town of Brookhaven, as evidenced by the acquisition of a valid variance from the Zoning Board of Appeals, shall be reconstructed in accordance with the dimensions as stated in this article.
- (c) Those nonconforming uses established subsequent to October 17, 1984, without the permission of the Town of Brookhaven, as evidenced by the lack of acquisition of a valid variance from the Zoning Board of Appeals, shall be reconstructed in accordance with the dimensions as stated in this article.
- (d) A legal nonconforming use, if discontinued by virtue of abandonment, shall be deemed to have lost its legal nonconforming use status and will be required to have any and all new structures or uses conform to the dimensions of this article.
- (3) The aforementioned guidelines of this section shall be applicable in the RD Residential District, OFD Oceanfront Dune District and the CD Commercial District.
- D. Extension within a building of a nonconforming use. Any existing building designed, arranged, intended or devoted to a use which is not permitted in the district in which such building is located shall not be enlarged, extended, altered or reconstructed unless such use is changed to a use which is permitted in the district in which such building is located. This Subsection **D** is subject to the provisions of Subsection **C** of this section.
- E. Certificate of occupancy. Certificates of occupancy shall be issued in accordance with the provisions of this chapter.
- F. Building permits. Permits for the erection or alteration of any building or structure shall be issued in accordance with the provisions of this chapter. In addition to all other requirements of the Zoning Chapter of the Town of Brookhaven and the Building Construction Code, no permit shall be issued by the Chief Building Inspector unless the owner of the property or his duly authorized representative meets the following conditions:
- (1) That the premises upon which the structure is to be erected fronts on a Town-owned and Town-maintained boardwalk or that a boardwalk giving access to such proposed structure is shown upon a plat approved by the Planning Board as provided in §§ 276 and 277 of the Town Law and that a performance bond has been furnished to the Town by the owner of the property shown on said plat.
- (2) That the premises upon which the structure is sought to be erected is located in an area on Fire Island which is west of the eight-mile district, as defined by the east line of Ocean Ridge, formerly known as "Sammis Lot No. 42, Section 3 (western boundary)," to the west boundary of Smith Point County Park (eastern boundary).
- (3) That the erection of the proposed structure will not further contribute to the process of erosion on the Great South Beach and will not in any manner further damage the Great South Beach.

§ 85-378. RD Residential District.

- A. Application of this section. The provisions of this section shall apply to all residential properties on the Great South Beach,

Town of Brookhaven, New York.

- B. Legislative intent. The Town Board recognizes the unique characteristics of Fire Island. The Town Board encourages land use which is consistent with the characteristics of Fire Island and which constitutes wise resource management. To this end and in order to promote the health, safety and welfare of the public, the Town Board of the Town of Brookhaven has enacted this section.
- C. Permitted uses. In the RD Residential District, no building, structure or premises shall be used or occupied and no building or part thereof or other structure shall so erected or altered except for one or more of the following purposes:
 - (1) Single-family detached dwellings.
 - (2) Accessory buildings may be erected on the same lot, provided that all requirements of this chapter are met.
 - (3) Municipal parks, municipal playgrounds or municipal recreation buildings or uses.
 - (4) Accessory uses as enumerated in § **85-381B** of this article.
- D. Uses permitted by special permit.
 - (1) With the approval of the Zoning Board of Appeals, after public hearing, except for property owned or leased by the Town of Brookhaven, the following uses may be permitted:
 - (a) Public utilities.
 - (b) Community buildings and places of worship.
 - (c) Historical or memorial monuments.
 - (2) In addition, recommendations of the advisory committee(s) from the community area(s) affected shall be considered by the Zoning Board of Appeals.
- E. Prohibited uses. Consistent with the objectives of the Town of Brookhaven, buildings or land hereafter may not be altered, changed, expanded, converted, constructed or used for any of the following purposes:
 - (1) Those uses not expressly permitted herein.

§ 85-381. RD Residential District and OFD Oceanfront Dune District; dimensional requirements.

- A. Application of this section.
 - (1) This section shall control over §§ **85-378** and **85-379** and, where applicable, shall be utilized in conjunction with §§ **85-376**, **85-377**, **85-378** and **85-379** of this article.
 - (2) Any development or construction permitted in §§ **85-378** and **85-379** of this article shall be subject to the building requirements as delineated within this section.
- B. Accessory uses.
 - (1) In the RD Residential District, the following accessory uses shall be permitted when located on the same lot with the authorized use:
 - (a) Office of a physician, lawyer, architect, teacher or similar professional person residing on the premises when such use is incidental to such residence; provided, however, that such use shall be within the main building and occupying not more than 1/3 of the first-floor area.
 - (b) Signs as regulated by Subsection J.
 - (c) Other customary accessory uses, structures and buildings, including but not limited to aboveground swimming pools, sheds for storage, patios, decks and ramps, excluding primary walks, provided that such uses are clearly incidental to the principal use and are not equipped with facilities for cooking. An accessory use does not include any activity commonly conducted as a business.
 - (d) Accessory enclosures subject to the following:
 - [1] Dimensional requirements: Said structures shall be limited to a maximum height of 10 feet with a combined square footage of 100 square feet.
 - [2] Location: Such enclosures may be located on the property owner's access walkway or the Town's right-of-way adjacent to the subject lot.

[3] The property owner or homeowners' association secures and maintains liability insurance for the benefit of the Town, which policy or coverage is subject to the Town Attorney's approval and in such limits as the Town Attorney from time to time shall determine.

- (e) Existing accessory enclosures shall be permitted, provided that the property owner thereof fully complies with all requirements, set forth in this section, except the dimensional criteria.
 - (f) Existing accessory enclosures erected before the date of this enactment which are destroyed or damaged by fire, explosion, acts of God or other causes to the extent of more than 75% of their full value may not be reconstructed or repaired; replacement enclosures shall be permitted so long as in conformity with all applicable requirements set forth in this section.
 - (g) Existing gatehouses or accessory structures located on or near a property owner's access walkway shall be permitted from the effective date of this section, provided that where such structures encroach upon the Town's right-of-way, such structures may be permitted so long as the property owner or homeowners' association secures and maintains liability insurance naming the Town as an insured in such limits as the Town Attorney shall determine.
- (2) Any accessory building shall be located on the same lot with the principal building, and no accessory building shall be constructed on a lot until the construction of the main building has actually been commenced, and no accessory building shall be used unless the main building on the lot is completed and used.
- (3) Whenever a use has been authorized by special permit pursuant to § **85-378D**, no accessory use shall be permitted unless the same shall have been specifically authorized by the special permit issued.

C. Height.

- (1) In the RD Residential District, no building or structure shall be erected to a height in excess of 28 feet or 2 1/2 stories, whichever is less, as measured from the average existing ground elevation, but not less than the minimum elevation necessary to meet the prerequisites for federal flood insurance, designated within the Flood Risk Zone by the National Flood Insurance Program/Federal Emergency Management Agency, indicated on the Flood Insurance Rate Map for the Great South Beach, Brookhaven Town, Community Map No. 365-334-B. The rate map shall be on file with both the office of the Town Clerk and the Department of Planning, Environment and Land Management, Brookhaven Town Hall, New York, in compliance with Public Officers Law, Article 6, the New York Freedom of Information Law.
- (2) Accessory buildings shall not exceed 14 feet in height as measured in accordance with the standards enumerated in the map citation of Subsection **C(1)** of this section.
- (3) The following exceptions shall be permitted, subject to the approval of the Zoning Board of Appeals pursuant to recommendations of the respective advisory committee(s) from the community area(s) affected:
- (a) A church or other place of worship.
 - (b) A water tank or standpipe.

D. Lot occupancy.

- (1) In the RD Residential District, the total building area of the principal building and any and/or all accessory structures shall not exceed or occupy more than 35% of the total lot area.
- (2) In the RD Residential District:
- (a) No building or structure shall be erected, altered or reconstructed on a lot having an area of less than 4,000 square feet, with a minimum frontage of 40 feet.
 - (b) Existing lots shall not be subdivided in area below 7,500 square feet, with a frontage of not less than 75 feet.

E. Front yard. In the RD Residential District, there shall be a front yard having a depth of not less than 20 feet. Where 40% or more of the frontage on that side of the walk and an intersecting walk is improved with buildings, a majority of which have observed an average front yard line having a variation in depth of not more than six feet, no building shall project beyond the average front yard so established. However, this regulation shall not be interpreted to require a front yard depth of more than 30 feet.

F. Side yards. In the RD Residential District, there shall be two side yards, one on each side of the building, the total width of both sides to be 30 feet, and no one side yard shall be less than 12 feet wide, provided that, in the case of a lot having a frontage of less than 75 feet at the building line, a single-family dwelling may be built thereon with the side yards totaling not less than 40% of the lot frontage, the lesser side not less than 16% of the lot frontage.

G. Rear yard. In the RD Residential District, there shall be a rear yard having a minimum depth of 20 feet.

H. Average setback. Where property in the vicinity is partly built-up with permanent buildings and structures and an average setback line has been established, no buildings or structures shall be erected or altered so as to project beyond the average

setback line so established.

I. Fences.

- (1) No fence or wall of any type or description shall be erected, in that portion of the Great South Beach, which has a height greater than six feet measured from the elevation of the average ground level of the lot or from the accessory structure upon which the fence is constructed, i.e., deck, patio, etc. At no point shall the height of the fence exceed 10 feet, inclusive of the skirting beneath the deck and/or accessory structure upon which the fence is constructed. In addition, a fence with a maximum height of four feet may extend beyond the front of the principal structure, so long as said fence is not located in the required front yard. No fence shall be built in such a way as to interfere with the fire, health and police regulations of the Town of Brookhaven or impede access of fire, health or police personnel.
- (2) Nonconforming fences may continue such nonconformity until they are destroyed, structurally altered, reconstructed, changed or moved.

J. Signs.

- (1) In the RD Residential District, no illuminated signs or displays shall be permitted, and no advertising or business sign shall be permitted, nor signs of an obscene nature appealing to the prurient interest or offensive to community standards.
 - (a) Signs shall be limited to one square foot and shall be limited in number to one per premises, to be located on the premises.
 - (b) Noncommercial signs to be used for public information, orientation or educational purposes may be larger by special permit from the Zoning Board of Appeals. Recommendation(s) of the respective advisory committee(s) for the community area(s) affected shall be received and considered by the Zoning Board of Appeals.
- (2) Nonconforming signs may continue such nonconformity until they are destroyed, structurally altered, reconstructed, changed or moved, but the period of such nonconformity may not exceed two years from the date of enactment of this article.

K. Permitted encroachments. In the RD Residential District, the following encroachments are hereby permitted:

- (1) Cornices, eaves, gutters and chimneys, projecting not more than 24 inches.
- (2) Bay windows and fireplaces, projecting not more than 24 inches.
- (3) Open unroofed entrance platforms or terraces not wider or deeper than six feet.
- (4) Flagpoles, not to exceed the height of the principal structure.
- (5) Chimneys.

L. Exterior lighting. In the RD Residential District, exterior lighting, including lighting for purposes of security, shall be directed so as not to create a nuisance to neighboring property.

M. Swimming pools. Swimming pools are permitted pursuant to the following regulations, provided that the dimensional requirements of this chapter are met:

- (1) No swimming pool shall be installed which at any point is more than six feet below the adjacent ground level.
- (2) No swimming pool may be closer than one foot to groundwater.
- (3) The applicant must demonstrate that all excavated materials are to be placed or removed in such a manner as not to degrade the natural environmental features or vegetation in the area.
- (4) Any such swimming pool shall be deemed a structure and require issuance of a building permit and certificate of occupancy.
- (5) No excavation shall be permitted in a primary dune.

N. Minimum habitable area. In the RD Residential District, no dwelling shall hereafter be erected or altered for a single-family dwelling unless provision shall be made therein for not less than 720 square feet for the minimum ground floor area, exclusive of accessory structures.

§ 85-383. Miscellaneous provisions.

A. Advisory committees.

- (1) Each community area situated within the bounds of the Great South Beach in the Town of Brookhaven shall establish an advisory committee. Said committee shall serve the purpose of:

- (a) Monitoring the development process of the community.
 - (b) Encouraging compliance with land use management regulations which seek to preserve the barrier beach.
 - (c) Advising and submitting written recommendations to the Zoning Board of Appeals of the Town of Brookhaven regarding development and construction for its respective community.
- (2) Each respective community, as represented by a majority of that community's property owners through its property owners' association, shall propose the names of not less than three persons nor more than five persons to serve on the advisory committee for that respective community, to be appointed by the Town Board of the Town of Brookhaven for a period not to exceed three years. The names, addresses and telephone numbers of the committee members must be on file with the Clerk of the Town of Brookhaven and the Zoning Board of Appeals.
- (3) Each advisory committee shall meet quarterly and at least once per month during the summer season as measured from Memorial Day through Labor Day.
- (4) The Zoning Board of Appeals shall notify each respective advisory committee as to all its applications concerning the community area(s) affected.
- (5) The respective advisory committee for the area affected shall report any violation of this article or any other provision of the Brookhaven Town Code to the appropriate Town department for review.
- B. Zoning Board of Appeals; guidelines for issuance of special permits. In determining whether a special permit shall be issued, the Zoning Board of Appeals shall adhere to the Code of the Town of Brookhaven, which establishes guidelines for the issuance of special permits.
- C. Application of the Code of the Town of Brookhaven. Unless in direct contravention with the provisions of this article, all other provisions of the Code of the Town of Brookhaven are applicable.
- D. Noncompliance with this article. Noncompliance with any of the provisions of this article shall be subject to the penalties provisions of the ordinances and regulations promulgated by the Town of Brookhaven.
- E. Effective date of this article. This article shall become effective 10 days following its publication pursuant to New York Town Law § 133.

*Town of Brookhaven, NY
Thursday, October 3, 2019*

Chapter 85. Zoning

Article XXII. Industrial Districts

§ 85-553. Industrial District standards.

Within the industrial districts, a building, structure, lot or lands shall only be utilized in conformance with the provisions of this chapter. In addition, such use shall also comply with all other applicable provisions of this chapter.

§ 85-554. through § 85-557. (Reserved)

§ 85-558. L Industrial 1 District (Light Industry).

§ 85-559. Purpose.

The related uses purpose of this district is to provide for a wide range of light industrial and which can meet a high level of performance standards.

§ 85-560. Permitted uses.

In an L Industrial 1 District, no building, structure or premises shall be used or occupied and no building or part thereof shall be so erected or altered, except for one or more of the following purposes:

- A. Agricultural or nursery use, including the retail sale of products raised on the premises.
- B. Assembly and social recreation hall.
- C. Bank.
- D. Commercial laundry establishment.
- E. Convent or monastery.
- F. Day-care facility.
- G. Health club.
- H. Lodge.
- I. Lumberyard.
- J. Manufacturing, only within a building.
- K. Motor vehicle rental.
- L. Nonmotorized recreational activities.
- M. Nursery/Garden center.
- N. Office.
- O. Places of worship, parish house or rectory.
- P. Printing plants.
- Q. Research and development facility.

- R. Stone and mason supply.
- S. Veterinarian, provided that all activities take place within the building.
- T. Warehouse.
- U. All uses identified as incentive uses within the Transitional Area Overlay District established in connection with the Montauk Highway Corridor Study Land Use Plan for Mastic and Shirley Phase II.

§ 85-561. Town Board special permits.

The following special permit uses, when authorized by the Town Board, shall be subject to the criteria as set forth in Article **VI**, § **85-67**, in addition to the criteria contained herein:

- A. Adult uses, including adult entertainment establishments, adult bookstores, adult motels, adult theaters, massage establishments, and peep shows.
- B. Airport.
- C. Anaerobic digester facilities.
- D. Electric generating facilities.

§ 85-562. Accessory uses.

- A. Customary accessory uses, structures and buildings shall be permitted when located on the same lot as the principal authorized use, provided that such uses are clearly incidental to the principal use and do not include any activity conducted as a business.
- B. Outside seating for restaurant, take-out restaurant and delicatessen.
- C. Solar energy production system as an accessory use shall be limited to one or more roof, wall, carport and/or ground-mounted solar collector devices and solar related equipment. For the purposes of this article, solar carports shall not be considered a structure as defined by the Town Code.
- D. Repairs, servicing and vehicle wash as an accessory use to a commercial bus storage facility.
- E. Fuel cell facility for on-site consumption.
[Added 1-17-2019 by L.L. No. 1-2019, effective 1-28-2019]

§ 85-563. Town Board special permits for accessory uses.

The following special permit accessory uses, when authorized by the Town Board, shall be subject to the criteria as set forth in Article **VI**, § **85-67**, in addition to the criteria contained herein:

- A. Private parking garage as an accessory use to a permitted principal use.

§ 85-564. Planning Board special permits.

The following special permit uses, when authorized by the Planning Board, shall be subject to the criteria as set forth in Article **VIII**, § **85-107**, in addition to the criteria contained herein:

- A. Automobile parking field.
- B. Bar, tavern or nightclub.
- C. Commercial bus storage facility.
- D. Heavy, construction vehicles and equipment dealership, subject to design standards contained herein.
- E. Indoor recreation.
- F. Kennels, provided that all activities are contained within the building.
- G. Mini-storage warehouse.
- H. Motor vehicle repair, with or without a depot as may be required by Chapter **66**, Towing Businesses.

- I. Non-degree-granting instruction/programs.
[Amended 2-14-2019 by L.L. No. 4-2019, effective 2-25-2019]
- J. Outdoor recreation.
- K. Outdoor storage.
- L. Public, private school or parochial school, with or without dormitory facilities.
- M. Retail sales, provided it is limited to only those goods that are generated by the principal use on the premises and does not occupy more than 5% of the total gross floor area of the building or more than 10,000 square feet, whichever is less.
- N. Trucking terminal.
- O. University or college.
- P. Uses within a designated Redevelopment Initiative: Main Street Business District.
- Q. Fuel cell facility connected to the public electric grid in order to sell electricity to a public utility entity.
[Added 1-17-2019 by L.L. No. 1-2019, effective 1-28-2019]

§ 85-565. Planning Board special permits for accessory uses.

The following special permit accessory uses, when authorized by the Planning Board, shall be subject to the criteria as set forth in Article **VIII**, § **85-107**, in addition to the criteria contained herein:

- A. Drive-through facility as an accessory use to a bank.
- B. Fueling station as an accessory use to a commercial bus storage, trucking terminal, or warehouse.
[Amended 1-17-2019 by L.L. No. 1-2019, effective 1-28-2019]
- C. Motor vehicle repair shop as an accessory use to a commercial bus storage, trucking terminal, or warehouse.
[Amended 1-17-2019 by L.L. No. 1-2019, effective 1-28-2019]
- D. Outdoor or overnight parking of registered vehicles as an accessory use to a permitted principal use.
- E. Outdoor storage as an accessory use to a permitted principal use.
- F. Restaurant, take-out restaurant and delicatessen as an accessory use to a permitted principal use.
- G. Tasting room as an accessory to a permitted principal farm brewery, cidery, distillery, or winery use.

§ 85-566. Prohibited uses.

All uses not expressly permitted are prohibited. Nothing herein contained shall be construed to permit the erection, addition, maintenance or use of any premises of either a business or industrial operation which shall provide outdoor storage, outside service, outside display, outside counter or window service or drive-in or drive-up counter or window service, except as authorized by this chapter.

§ 85-567. Dimensional criteria.

Except as otherwise provided in § **85-569**, Special permit criteria, the following dimensional criteria are applicable:

- A. Minimum lot area.
 - (1) Except as otherwise provided herein, the minimum required lot area shall be 40,000 square feet.
 - (2) The minimum required lot area for a bank with a drive-through facility shall be 65,000 square feet.
 - (3) The minimum required lot area for a parcel located within a designated hydrogeologic sensitive zone shall be 120,000 square feet.
 - (4) The minimum required lot area for a permitted principal use with an accessory restaurant use shall be three acres.
 - (5) The minimum required lot area for a commercial bus storage facility shall be three acres.
 - (6) The minimum requirement for lot area for an electric generating facility shall be 20 acres.
 - (7) The minimum requirement for lot area for a nonmotorized recreational activity shall be five acres.

- (8) The minimum requirement for lot area for an anaerobic digester facility shall be 60 acres.
- B. Minimum road frontage.
 - (1) Except as otherwise provided herein, the minimum required road frontage shall be 100 feet.
 - (2) The minimum required road frontage for a bank with a drive-through facility or for a permitted principal use with an accessory restaurant use shall be 150 feet.
 - (3) The minimum required road frontage for a parcel within a designated hydrogeologic sensitive zone, or for an electric generating facility shall be 200 feet.
[Amended 1-17-2019 by L.L. No. 1-2019, effective 1-28-2019]
 - (4) The minimum required road frontage for an anaerobic digester facility shall be 400 feet.
- C. Minimum front yard setback.
 - (1) Except as otherwise provided herein, the minimum required front yard setback shall be 50 feet.
 - (2) The minimum required front yard setback for parcels five acres or more in size shall be 100 feet.
- D. Minimum side yard setback.
[Amended 1-17-2019 by L.L. No. 1-2019, effective 1-28-2019]
 - (1) Except as otherwise provided herein, the minimum required side yard setback for a permitted use shall be 10 feet, with a total side yard setback of 30 feet.
 - (2) The minimum required side yard setback for a bank with a drive-through facility or for a permitted principal use with an accessory restaurant use shall be 25 feet.
 - (3) The minimum required side yard setback for parcels five acres or more in size shall be 50 feet.
 - (4) The minimum required side yard setback for an electric-generating facility shall be 50 feet.
 - (5) The minimum required side yard setback for an anaerobic digester facility shall be 75 feet.
 - (6) The minimum required side yard setback for a fuel cell facility connected to the public electric grid in order to sell electricity to a public utility entity shall be 50 feet.
- E. Minimum rear yard setback.
 - (1) Except as otherwise provided herein, the minimum required rear yard setback shall be 50 feet.
 - (2) The minimum requirement for a rear yard setback for an electric generating facility shall be 100 feet.
- F. Maximum permitted floor area ratio (FAR).
 - (1) Except as otherwise provided herein, the maximum permitted FAR shall be 35%.
 - (2) The maximum permitted FAR for a parcel within a designated hydrogeologic sensitive zone shall be 30%.
 - (3) The maximum permitted FAR for an electric generating facility shall be 25%.
- G. Maximum permitted height.
 - (1) Except as otherwise provided herein, the maximum permitted height for all structures shall be 50 feet or three stories.
- H. Minimum buffer.
 - (1) The minimum buffer for a nonmotorized recreational activity shall be 100 feet, consisting of natural and undisturbed vegetation, supplemented as needed to provide screening from adjacent parcels.
 - (2) A minimum seventy-five-foot buffer, consisting of natural and undisturbed vegetation, supplemented as needed, shall be provided between an anaerobic digester facility and all adjacent residential zones or use.

§ 85-568. Minimum site improvements.

Except as otherwise provided herein, all development shall meet or exceed the minimum standards contained within the Town Code of the Town of Brookhaven, including, but not limited to, the Subdivision and Land Development Regulations.

§ 85-569. Special permit criteria.

In addition to the criteria set forth within Article **VI**, § **85-67**, or Article **VIII**, § **85-107**, the following special permit criteria shall be required for the uses so indicated:

- A. Adult uses, including adult entertainment establishments, adult bookstores, adult motels, adult theaters, massage establishments, and peep shows.
 - (1) The above uses are prohibited within a five-hundred-foot radius of any area zoned for residential use.
 - (2) The above uses are prohibited within a one-mile radius of another such use.
 - (3) The above uses are prohibited within 1,000 feet of the lot line of any premises used for a school, church or other place of religious worship, park, playground, or playing field, library, hospital or similar public or semi-public place of general congregation, or non-degree-granting instruction/programs, including self-defense, dance, swimming, gymnastics, and other sports.
 - (4) No more than one adult use shall be located on any lot.
- B. Anaerobic digester facility.
 - (1) There shall be no anaerobic digester facility within an historic district or historic district transition area.
 - (2) There shall be no anaerobic digester facility within 150 feet of freshwater or tidal wetlands.
- C. Commercial bus storage facility.
 - (1) Loading bay doors shall be screened from visibility from adjoining residentially zoned or residentially developed properties and from public streets to the satisfaction of the Commissioner of Planning, Environment and Land Management.
 - (2) The minimum required vegetated perimeter buffer shall be 50 feet adjacent to any residential use or zone and along all street frontages.
 - (3) In addition, storage of vehicles shall be screened from the street by means of a berm, fence, and/or landscaping as deemed appropriate by the Planning Board.
 - (4) Idling of vehicles shall be limited to five minutes.
- D. Electric generating facilities.
 - (1) The maximum permitted stack height shall be 125 feet.
 - (2) The minimum required stack setback shall be 150% of the height of the stack from any lot line.
 - (3) The minimum required percentage of lot to remain natural and undisturbed shall be 30%.
 - (4) The minimum required vegetated perimeter buffer shall be 500 feet along all lot boundaries that abut residentially zoned property.
 - (5) Except as otherwise provided in Subsection **D(1)**, the maximum permitted structure height shall be 50 feet.
 - (6) Electric generating facilities shall demonstrate compliance with the exterior lighting standards in § **85-862** through **85-873**.
- E. Fueling station as an accessory use to a trucking terminal, commercial bus storage facility or warehouse.
 - (1) Fueling station shall be for private use only by vehicles owned and operated by the principal use.
 - (2) Fueling station shall be located on the same lot as the principal use and prohibited within 500 feet from any lot line bounding a residential zone or use, or an area of public assembly.
 - (3) All activities associated with the fueling, traffic circulation, queuing, and parking of vehicles shall take place on site.
- F. Heavy construction vehicles and equipment dealership.
 - (1) All storage and display shall be located within the rear yard and shall be set back a minimum distance of 100 feet from any roadway.
 - (2) All outdoor storage shall be screened from view with fencing and/or landscaping in accordance with a site plan, which shall be subject to the review and approval of the Planning Board.
- G. Mini-storage facility.
 - (1) Storage shall be limited to dead storage only. The storage of explosives, flammable, toxic or otherwise hazardous chemicals and/or other materials shall be prohibited.

- (2) Architectural elevations shall be submitted for review and approval to the Commissioner of Planning, Environment and Land Management. Exterior signage and building siding material shall be of flat finishes only; bright, vivid and/or reflective colors shall be prohibited. Walls exceeding one story in height, which are visible from off site, shall be architecturally enhanced with pilasters, corbelled cornices, or similar ornamentation to the satisfaction of the Commissioner of Planning, Environment and Land Management.
 - (3) Storage unit doors shall be screened from visibility from adjoining residentially zoned or residentially developed properties and from public streets to the satisfaction of the Commissioner of Planning, Environment and Land Management.
 - (4) A minimum natural or landscaped area of 50 feet shall be maintained adjacent to all road frontages.
 - (5) All paved areas, including parking and parking aisle areas, shall be screened from view with landscaping or natural areas and/or decorative fencing to the satisfaction of the Commissioner of Planning, Environment and Land Management.
 - (6) Decorative walls or fencing shall be provided along all setback lines; decorative opaque walls and/or fencing shall be provided along all site property lines which are contiguous with residentially developed and/or zoned properties; other types of fencing may be permitted elsewhere on site subject to Planning Board review and approval.
 - (7) Parking stalls and loading areas adjacent to storage buildings may encroach on interior roadway 30 feet or wider, exclusive of required parking stalls, for office(s) or living quarters.
- H. Motor vehicle repair.
- (1) All repair work shall take place within the building. All repair work, excluding emergency service, shall be conducted only between the hours of 7:00 a.m. and 9:00 p.m.
 - (2) An area of sufficient size, as determined by the Board, shall be required for the outdoor, overnight parking of registered vehicles with the issuance of a special permit, subject to criteria specified herein. Said area shall be in addition to any depot required by Chapter **66**, Towing Businesses.
 - (3) Overhead doors shall not face the street or any residentially zoned or used property.
- I. Non-degree-granting instruction/programs, indoor recreation and outdoor recreation.
[Amended 2-14-2019 by L.L. No. 4-2019, effective 2-25-2019]
- (1) The above uses are prohibited within 1,000 feet of the lot line of any adult use.
- J. Outdoor or overnight parking as an accessory use to a permitted principal use.
- (1) Outdoor or overnight parking of registered vehicles shall be set back a minimum distance of 50 feet from any roadway.
 - (2) All outdoor or overnight parking of registered vehicles shall be screened from view with fencing and landscaping in accordance with a site plan, which shall be subject to the review and approval of the Planning Board.
 - (3) There shall be no outdoor or overnight parking of registered vehicles within the primary or secondary front yard.
- K. Outdoor storage.
- (1) The minimum lot size shall be 80,000 square feet, except within a designated hydrogeologic sensitive zone, where it shall be 120,000 square feet.
 - (2) Outdoor storage shall be limited to a specific list of materials, items or equipment to be stored, as determined by the Planning Board.
 - (3) A minimum one-hundred-foot buffer shall be provided to all adjacent residentially zoned or use properties.
 - (4) A minimum twenty-five-foot buffer shall be provided to any adjoining industrially zoned or use properties.
 - (5) The combined total area of the principal buildings or structures, impervious areas, and the outdoor storage areas shall not exceed 65% of the lot area.
 - (6) Maximum permitted height of outdoor storage shall be 15 feet. Posts with permitted storage height marked thereon shall be installed within the outdoor storage areas.
 - (7) Outdoor storage of compost, manure, sand, concrete, aggregate, junk cars, auto parts, tires, chemicals, fertilizer and uses permitted exclusively in an L Industrial 2 Zone shall not be permitted.
 - (8) All outdoor storage shall comply with dimensional regulations of this article.
 - (9) There shall be no outdoor storage permitted within 150 feet of freshwater or tidal wetlands.

- (10) There shall be no outdoor storage permitted within a designated historic or historic transition district.
 - (11) All outdoor storage shall be screened from adjoining property lines and adjoining roadways with a double row of evergreen plantings seven feet high and five feet on center and a solid tongue-and-groove fence with no gaps between slats or higher quality barrier; specific species of plantings and fence materials shall be determined by the Planning Board.
 - (12) The potential for generation of fugitive dust shall be mitigated as determined by the Planning Board.
- L. Outdoor storage as an accessory use to a permitted principal use.
- (1) A minimum lot area of two acres shall be required for outdoor storage.
 - (2) All outdoor storage shall be located within the rear yard only. Outdoor storage within the primary or secondary front yard shall be prohibited. No outdoor storage shall be visible from any street frontage.
 - (3) All outdoor storage shall be screened from visibility from adjoining roadways with landscaping and/or decorative fencing in accordance with Town standards and require a site plan, which shall be subject to the review and approval of the Planning Board.
 - (4) All outdoor storage shall be set back a minimum distance of 50 feet from any roadway and 25 feet from any side or rear property line.
 - (5) Outdoor storage shall be limited to only those goods that are generated or manufactured by the principal use on the premises, and shall be located on the same lot as the principal use, and prohibited within 500 feet from any lot line bounding a residential use or zone.
 - (6) Outdoor storage shall have all activities associated with the outdoor storage area, such as loading, delivery, pick up, traffic circulation, queuing, and parking, take place on site.
 - (7) No outdoor storage shall be permitted above legal fence height.
- M. Restaurant, take-out restaurant and delicatessen as an accessory use to a permitted principal use.
- (1) The restaurant, take-out restaurant or delicatessen use may occupy a maximum of 5% of the total gross floor area of the building and shall not exceed a maximum of 3,000 square feet gross floor area.
 - (2) The restaurant, take-out restaurant or delicatessen use shall be located within the building of the permitted principal use.
 - (3) A maximum of one accessory restaurant, delicatessen or take-out restaurant use shall be permitted per site.
 - (4) Freestanding restaurants, or take-out restaurants or delicatessen uses shall be prohibited.
- N. Uses within a designated Redevelopment Initiative: Main Street Business District.
- (1) The application shall obtain a minimum redevelopment achievement score of 101 points to 120 points.
 - (2) The application shall provide a minimum redevelopment benefit potential score of 80 points.
 - (3) Dimensional and density criteria required and specified in the J Business 6 (Main Street Business) District for permitted uses and accessory uses shall be applicable.
 - (4) Special permit criteria required and specified in the J Business 6 (Main Street Business) District for special permitted uses shall be applicable.
- O. Fuel cell facility connected to the public electric grid in order to sell electricity to a public utility entity.
[Added 1-17-2019 by L.L. No. 1-2019, effective 1-28-2019]
- (1) The maximum permitted height for all structures and appurtenant equipment shall be 50 feet.
 - (2) A fuel cell facility shall provide a "proof of concept letter" from the local electric corporation acknowledging that the fuel cell facility will be interconnected to the utility grid to sell electricity to the electric corporation.
 - (3) All applications for a fuel cell facility shall be accompanied by a decommissioning plan to be implemented upon abandonment, or cessation of activity, or in conjunction with removal of the facility. Prior to issuance of a building permit, the owner or operator of the facility shall post a performance bond or other suitable guarantee in a face amount of not less than 150% of the estimated cost, as determined by the Town Engineer, to ensure removal of the facility. The form of the guarantee must be reviewed and approved by the Town Engineer and Town Attorney, and the guarantee must remain in effect until the system is removed. Review of the guarantee by the Town Engineer and Town Attorney shall be paid from an escrow established by the applicant. Prior to removal of a facility, a demolition permit for removal activities shall be obtained from the Town of Brookhaven.

§ 85-570. Hydrogeologic sensitive zones.

- A. Hydrogeologic sensitive zone. All property located within the following bounded and described area shall be considered located within a hydrogeologic sensitive zone: beginning at a point where the center line of Sunrise Highway, New York State Route 27, meets the town line of Southampton and Brookhaven; running thence in a westerly direction along the center line of Sunrise Highway to a point where the center line of Barnes Road and the center line of Sunrise Highway meet; running thence in a northerly direction along said center line of Barnes Road to the school district line between School District No. 21 and School District No. 32; running thence in a westerly direction along said line to a point where the projected center line of Cranford Boulevard meets; running thence in a northerly direction along the center line of Cranford Boulevard to a point where said line meets the center line of Moriches - Middle Island Road; running thence in a generally westerly direction along the center line of Moriches - Middle Island Road to a point where the projected center line of Moriches Road meets; running thence in a northerly direction along the center line of Moriches Road to a point where said line meets the center line of property of the Long Island Rail Road; running thence in a southwesterly and westerly direction along the center line of Long Island Rail Road property to a point where said line meets the center line of Sills Road (County Road 101); running thence in a generally southwesterly direction along the center line of Sills Road to a point where said line meets the center line of Southaven Avenue; running thence in a westerly direction along the center line of Southaven Avenue to a point where the projected line meets the center line of Old Medford Avenue; running thence in a northerly direction along the center line of Old Medford Avenue to a point where said line meets the projected center line of Cedar Avenue; running thence in a westerly direction along the center line of Cedar Avenue to a point where said line projected meets the center line of North Ocean Avenue (County Road 83); thence in a northerly direction along the center line of North Ocean Avenue to a point where said line meets the projected center line of Old Fish Road or Fisk Road; thence in a generally northwest direction along the center line of Old Fish Road to a point projected to the center line of Jamaica Avenue; thence in a westerly direction along the center line of Jamaica Avenue to a point projected to meet the center line of Blue Point Road; running thence in a northerly direction along the center line of Blue Point Road to a point where said line meets the center line of the Long Island Expressway (New York State Route 495); running thence in a westerly direction along the center line of the Long Island Expressway to a point where said line intersects the center line of Nicolls Road (County Road 97); running thence in a generally northerly direction along the center line of Nicolls Road to a point where said line meets the projected center line of Mark Tree Road; running thence in a northerly direction along the center line of Mark Tree Road to a point where said line meets the center line of Pond Path; running thence in a continued northerly direction along the center line of Pond Path to a point where said line meets the projected center line of Upper Sheep Pasture Road; running thence in an easterly direction along the center line of Upper Sheep Pasture Road to a point where said line meets the center line of lower Sheep Pasture Road; running thence in a continued easterly direction along the center line of Lower Sheep Pasture Road to a point where said line projected meets the center line of Old Town Road; running thence in a generally southeasterly direction along the center line of Old Town Road to a point where said line intersects the center line of Port Jefferson - Nesconset Highway (New York State Route 347); running thence in a northeasterly direction along the center line of Port Jefferson - Nesconset Highway to a point where said line meets the center line of North Country Road (New York State Route 25A); running thence in an easterly direction along the center line of North Country Road (New York State Route 25A) to a point where said line meets the Town line between the Town of Brookhaven and the Town of Riverhead, being the easterly boundary of the Town of Brookhaven; running thence along the easterly line of the Town of Brookhaven in a generally southerly then easterly then southerly direction to the point and place of beginning.
- B. Said bounds shall be delineated on the Zoning Map of the Town of Brookhaven and are intended to include the Zone III hydrogeologic area as described by the Nassau - Suffolk Areawide Waste Treatment Management 208 Plan and the hydrogeologic sensitive area known as the "South Setauket Woods."

§ 85-571. through § 85-576. (Reserved)

Town of Brookhaven, NY
Thursday, October 3, 2019

Chapter 85. Zoning

Article XXV. Overlay Districts

§ 85-621. Wetland Overlay District.

§ 85-622. Definitions.

As used in §§ **85-621** through **85-627**, the following terms shall have the meanings indicated:

BUFFER ZONE — That area between a wetlands boundary and the closest permissible location to such boundary for a regulated activity that is not to be disturbed and left in its natural state except for the supplemental planting of native vegetation and those activities approved by the issuance of a wetlands and waterways permit.

DEVELOPMENT

Any building activity, the making of any material change in the use or intensity of use of any structure or land, or the excavation or material alteration of grade or vegetation on a lot which alters the existing state of a parcel of land. Development that has been undertaken without the necessary Town approvals or permits shall not be considered development.

WETLANDS OVERLAY DISTRICT

All property identified as wetlands as defined in Chapter **81**, Wetlands and Waterways, of the Town Code and/or as may be designated by the New York State Department of Environmental Conservation (NYSDEC) as freshwater or tidal wetlands or adjacent buffer areas under Articles 24 and 25 of the New York Environmental Conservation Law or as may be mapped by the NYSDEC, including, but not limited to, the New York State Freshwater Wetlands Map, filed with the Suffolk County Clerk on or after May 26, 1993, and entitled "Freshwater Wetlands Maps" and any amendments thereto, and the property within and included in the inventory of tidal wetlands prepared by or for the State of New York and filed with the Suffolk County Clerk as of September 28, 1982, last revised November 16, 1982, and entitled "Tidal Wetlands Maps" and any amendments thereto.

§ 85-623. Legislative intent.

- A. The Town Board of the Town of Brookhaven hereby finds and determines that increasing demand for development on property containing freshwater and tidal wetlands and surface waters may adversely impact and impair such natural resources. It is the purpose of this overlay zoning district to implement and achieve the objectives of the Town Board by providing additional protection for property in areas identified as wetlands and surface waters and their adjacent buffer zone areas.
- B. Thus, it is the Town Board's intent and goal that this new zoning district will provide for the additional protection of freshwater and tidal wetlands and surface waters as follows:
 - (1) To further the protection and improvement of our fresh and salt water quality.
 - (2) To prevent the destruction of wetlands and adjacent buffer areas.
 - (3) To preserve and protect natural drainage ways and to reduce and prevent flooding and stormwater runoff associated with adjoining properties; open space and aesthetic appreciation, and erosion control.
 - (4) To reduce the amount of stormwater runoff and its associated contaminants into the Town's lakes, streams, harbors and bays.
 - (5) To regulate new construction in environmentally sensitive areas, including but not limited to the siting of structures a safe distance away from areas of active erosion and away from reasonably anticipated impacts of wetlands in order to prevent premature damage and/or destruction thereof, and prevent damage to natural protective features and other natural resources.

§ 85-624. Applicability.

The restrictions of the Wetlands Overlay District shall only apply to those lots that have within their property boundaries either freshwater or saltwater wetlands or are adjacent to or contain within their property boundaries a regulated water body.

§ 85-625. Required buffer area within Wetlands Overlay District.

Required buffer zones: Required buffer zones shall be in accordance to the requirements of Chapter **81**, Wetlands and Waterways, of the Town Code of the Town of Brookhaven.

§ 85-626. Land division and subdivision yield calculation.

- A. A minimum buffer zone of 100 feet extending landward from the wetland or surface water, whichever is greater, shall be required when determining yield and must be indicated on the yield map.
- B. For lots located entirely within the Wetland Overlay District, unless a greater lot area is required by the underlying zoning district, the minimum required lot area shall be 200,000 square feet, excluding lands underwater and surface water.
- C. For lots that are proposing a land division or subdivision and are located partially within the Wetland Overlay District, yield shall be based upon the following:
 - (1) The wetlands yield for that portion of the property designated as wetlands shall be based upon one dwelling unit per 200,000 square feet of lot area, unless the underlying zoning yield is greater. The yield for the one-hundred-foot buffer zone shall be one dwelling unit per 40,000 square feet of lot area unless the underlying zoning is greater. There shall be no yield associated with lands underwater or surface water.
 - (2) Yield for that portion of the property not designated as wetlands or buffer zone shall be based upon the underlying zoning district.
 - (3) The total lot yield shall be the sum of the wetlands yield and the underlying zoning yield.
 - (4) In the event that multiple lots are being combined for a new land division, subdivision, or reconfiguration of the lot lines and any of the lots are within or partially within the Wetlands Overlay District, the total lot yield shall be calculated as if the lots are one contiguous lot.
 - (5) There shall be no yield associated with lands under water.
- D. The calculation of yield shall only apply to those lots that contain wetlands or that are adjacent to surface waters.

§ 85-627. Prohibitions.

- A. No clearing, grading, dumping, filling or construction of a primary structure shall be permitted within that portion of the site designated as wetlands.
- B. Development within a buffer zone shall only be permitted in accordance with a wetlands and waterway permit issued pursuant to Chapter **81**, Wetlands and Waterways, of the Brookhaven Town Code.

§ 85-718. Central Pine Barrens District.

§ 85-719. Intent.

- A. Purpose.
 - (1) It is hereby found and determined by the Town Board of the Town of Brookhaven that §§ **85-718** through **85-726** are enacted pursuant to Article 57 of the State Environmental Conservation Law, the "Long Island Pine Barrens Protection Act" ("the Act"), which requires that each local government with land use jurisdiction over lands within the Central Pine Barrens area enact land use regulations which conform to the Central Pine Barrens Comprehensive Land Use Plan. As required by the Act, the Central Pine Barrens Comprehensive Land Use Plan provides for: the preservation and protection of the Long Island Peconic Bay System (the largest single source of groundwater in New York State); the preservation and protection of endangered and threatened plants and animals; and the protection of the unique natural resources and ecosystems of the Pine Barrens-Peconic Bay System.
 - (2) Sections **85-718** through **85-726** are promulgated in accordance with the mandates of Article 57 of the Environmental Conservation Law with the express intent of providing planning mechanisms which permit conformance with the Central Pine Barrens Comprehensive Land Use Plan; implementing the objectives of the Central Pine Barrens Comprehensive Land Use Plan through the redirection of development from the Core Preservation Area to eligible areas and by the establishment of reasonable and appropriate patterns of development in the Compatible Growth Area. Sections **85-718**

through **85-726** are further intended to meet the goals of the Central Pine Barrens Comprehensive Land Use Plan whereby appropriate patterns of compatible residential, commercial, agricultural and industrial development are encouraged in order to accommodate regional growth influences in an orderly way while protecting the Pine Barrens environment from individual and cumulative adverse impacts and to promote development which is compact, efficient and orderly, and reasonably calculated to protect the quality and quantity of surface water, groundwater and the short-term and long-term integrity of the Pine Barrens ecosystem(s).

- (3) By §§ **85-718** through **85-726**, it is this Town Board's express intent to develop and employ creative planning techniques to implement the objectives of the Pine Barrens Credit Program, by and through the use of Residential Overlay Districts, Planned Development Districts and incentive zoning in order to ensure the preservation of the Core Preservation Area while concomitantly avoiding significant adverse environmental or economic impacts to non-Core area(s) throughout the Town. Further, it is this Board's intent to provide for effective environmental review of development proposals as appropriate; to avoid redundancy and duplication in reporting and project review requirements; and to avoid unwarranted delay in the review of development proposals by streamlining review procedures and establishing standards for development consistent with the Central Pine Barrens Comprehensive Land Use Plan.
- (4) To the extent that §§ **85-718** through **85-726** herein are inconsistent with Article 16 of Town Law §§ 261-a, 261-b, 267, 267-b, 274-a, 276, 277(6) and 278, §§ **85-718** through **85-726** are hereby intended to amend and supersede said provisions in furtherance of the goals and objectives set forth herein and which are consistent with the Central Pine Barrens Comprehensive Land Use Plan duly adopted in accordance with the provisions of Article 57 of the Environmental Conservation Law.
- (5) In order to redirect development from lands located within the Core Preservation Area to receiving districts, §§ **85-718** through **85-726** provide for two basic approaches:
 - (a) The recognition and use of Pine Barrens credits for the transfer of development rights through the use of the residential zoning category created herein and known as the "Residential Overlay District (ROD)," which provides for the transfer of development rights from lands located in the Core Preservation Area to lands located outside the Core Area and in the A Residential 1 Zoning District and A Residential 2 Zoning District, with an increase in density; and
 - (b) The employment of innovative planning techniques, including, but not limited to, the use of Planned Development Districts (PDDs) and incentive zoning.
- (6) The Planned Development District (PDD), as set forth in this chapter, is a floating zoning district classification specifically designed as a mechanism or tool to allow for the unified and coordinated development of lands, utilizing the transfer of development rights from the Core Preservation Area to receiving districts, and which provides for zoning incentives in order to achieve special public benefits flexible design features.
- (7) The PDD zoning mechanism is intended and designed to facilitate the transfer of Pine Barren credits from the Core Preservation Area to sites in the receiving districts which are capable of accommodating increased intensity of development and increased density of development.

B. Goals and objectives.

- (1) The Central Pine Barrens Comprehensive Land Use Plan sets forth numerous goals for the Central Pine Barrens in accordance with the Long Island Pine Barrens Protection Act, including:
 - (a) Protect, preserve and enhance the functional integrity of the Pine Barrens ecosystem and the significant natural resources, including plant and animal populations and communities thereof;
 - (b) Protect the quality of surface water and groundwater;
 - (c) Discourage piecemeal and scattered development;
 - (d) Promote active and passive recreational and environmental education uses that are consistent with the land use plan; and
 - (e) Accommodate development, in a manner consistent with the long-term integrity of the Pine Barrens ecosystem and to ensure that the pattern of development is compact, efficient and orderly.
- (2) The Central Pine Barrens Comprehensive Land Use Plan sets forth goals for the Core Preservation Area, including:
 - (a) Preserving the Pine Barrens area in its natural state, thereby ensuring the continuation of Pine Barrens environments which contain the unique and significant ecologic, hydrogeological and other resources representative of such environments;
 - (b) Promoting compatible agricultural, horticultural and open space recreational uses within the framework of maintaining a Pine Barrens environment and minimizing the impact of such activities therein;
 - (c) Prohibiting or redirecting new construction or development;

- (d) Accommodating specific Pine Barrens management practices;
 - (e) Protecting and preserving the quality of surface waters and groundwaters; and
 - (f) Coordinating and providing for the acquisition of private land interests as appropriate and consistent with available funds.
- (3) The Central Pine Barrens Comprehensive Land Use Plan goals for the Compatible Growth Area are as follows:
- (a) Preserve and maintain the essential character of the existing Pine Barrens environment, including plant and animal species indigenous thereto and habitats thereof;
 - (b) Protect the quality of surface water and groundwater;
 - (c) Discourage piecemeal and scattered development;
 - (d) Encourage appropriate patterns of compatible residential, commercial, agricultural and industrial development in order to accommodate regional growth influences in an orderly way while protecting the Pine Barrens environment from the individual and cumulative adverse impacts thereof;
 - (e) Accommodate a portion of development redirected from the preservation area. Such development may be redirected across municipal boundaries; and
 - (f) Allow appropriate growth consistent with the natural resource goals pursuant to the Plan.
- (4) An essential component of the Central Pine Barrens Comprehensive Land Use Plan, in the fulfillment and satisfaction of these goals and objectives, is the acquisition and conservation of undeveloped lands within the Core Preservation Area which all contribute to the protection and preservation of the ecologic and hydrologic functions of the Central Pine Barrens Area. In order to satisfy these goals, various planning tools, mechanisms and standards are created and established by §§ **85-718** through **85-726** in order to promote development which is environmentally sensitive, compact, efficient and orderly, and reasonably calculated to protect the quality and quantity of surface water and groundwater and the short-term and long-term integrity of the Pine Barrens ecosystems.

§ 85-720. Nondevelopment; development.

A. Nondevelopment.

- (1) For the purposes of §§ **85-718** through **85-726**, any uses or activities which constitute nondevelopment are not subject to the provisions of §§ **85-718** through **85-726** or compliance with the standards and guidelines set forth herein. Without limitation, the following activities or uses constitute nondevelopment for the purposes of §§ **85-718** through **85-726**:
- (a) Public improvements undertaken for the health, safety or welfare of the public. Such public improvements shall be consistent with the goals and objectives of the Long Island Pine Barrens Protection Act (ECL Article 57), and shall include, but not be limited to, maintenance of an existing road or railroad track;
 - (b) Improvements and/or work by any utility not involving substantial engineering redesign for the purpose of inspection, maintenance or renewal on established utility rights-of-way or the like, and any work pertaining to water supply for the residents of the Town;
 - (c) Without limitation, the maintenance, renewal, replacement, reconstruction, improvement, or alteration of any existing structure or additions to an existing residence or residential property owned by an association formed for the common interest in real property;
 - (d) The use of any structure or land devoted to dwelling uses for any purposes customarily incidental and otherwise lawful;
 - (e) The use of any land for agriculture or horticulture so long as such use does not effectuate any material alteration of native vegetation;
 - (f) Improvements, maintenance or other work by a utility undertaken in the interest of public health, safety, or welfare so long as consistent with the goals and objectives of the Long Island Pine Barrens Protection Act (ECL Article 57);
 - (g) Existing or expanded recreational use consistent with the purpose of §§ **85-718** through **85-726**, including scouting activities, the maintenance or expansion of facilities associated with or necessary for such scouting activities, including, but not limited to, the addition, modification, expansion or replacement of structures necessary for such activities and such clearing as may be reasonably required for the maintenance or expansion of scouting activities;
 - (h) A change in use of land or structure from a use within a class specified in §§ **85-718** through **85-726** to another use in the same class;
 - (i) Residential development on any subdivision, residential cluster development, land division or site plan which has

received preliminary or final approval on or before June 1, 1993, provided the lots to be built upon conform to the lot area requirements of the current zoning, are subject to the three-year exemption contained in § 265-a of Town Law, or are subject to an exemption from an upzoning adopted by the Town Board;

- (j) In the Compatible Growth Area, construction of single-family homes and customary accessory uses thereto on any lot held on June 1, 1993, in ownership singly and separately from adjacent lots;
- (k) In the Compatible Growth Area, continuation of existing nonconforming uses, and activities permitted by special permit or special exception, including renewals of said special permits or special exceptions;
- (l) In the Compatible Growth Area, land divisions or subdivisions in the Compatible Growth Area consisting of five or fewer residential lots which conform to the lot area requirements of the existing zoning for the subject parcel; or
- (m) In the Compatible Growth Area: renovations, reconstruction, additions or extensions to existing commercial or industrial uses, provided the addition or extension conforms to the uses permitted in the zoning district in which said parcel is located and which does not increase existing square footage by more than 25%.

B. Development.

- (1) For the purposes of §§ **85-718** through **85-726**, "development" shall mean the performance of any building activity or mining operation, the making of any material change in the use or intensity of use of any structure or land and the creation or termination of rights of access or riparian rights; without limitation, the following activities or uses shall be construed as development:
 - (a) A change in type of use of a structure or land or, if the ordinance or rule divides uses into classes, a change from one class of use designated in an ordinance or rule to a use in another class so designated.
 - (b) A material increase in the intensity of use of land or environmental impacts as a result thereof.
 - (c) Commencement of mining, excavation or material alteration of grade or vegetation on a parcel of land, excluding environmental restoration activities.
 - (d) Material alteration of a shore, bank or floodplain of a river, stream, lake, pond, or artificial body of water.
 - (e) Re-establishment of a use which has been abandoned for one year.
 - (f) Departure from the normal use for which development permission has been granted, or material failure to comply with the conditions of an ordinance, rule or order granting the development permission under which the development was commenced or is continued.
 - (g) All other development customarily permitted under this chapter unless otherwise specified.
- (2) In accordance with Article 57 of the Environmental Conservation Law and under the Plan, review of development proposals by the Joint Planning and Policy Commission is limited to:
 - (a) All development proposed within the Core Preservation Area.
 - (b) Development within the Compatible Growth Area which constitutes development of regional significance, as defined herein.
 - (c) A development project within the Compatible Growth Area by which an individual Commissioner may petition for review and a majority vote asserts review jurisdiction over such development.
 - (d) Development within the Compatible Growth Area that does not conform to the standards as set forth herein.
 - (e) Development within the Compatible Growth Area which is also within a Critical Resource Area.

C. Development proposals of regional significance. Development proposals within the Compatible Growth Area which meet the threshold(s) of a development proposal of regional significance shall be subject to a full review by the Commission pursuant to Article 57 of the Environmental Conservation Law.

- (1) Development applications which meet the following criteria are deemed development proposals of regional significance:
 - (a) A commercial, industrial or office development project exceeding 300,000 square feet of gross floor area, or an addition to an existing commercial, industrial or office development where the addition is 100,000 square feet or more and that addition causes the total square footage to exceed 300,000 square feet.
 - (b) A multifamily residential development project consisting of 300 or more units.
 - (c) A single-family, detached residential development project consisting of 200 or more units.
 - (d) A development project resulting in a traffic impact which would reduce service by two levels below existing conditions or to a level of service D or below.

- (2) Exceptions to development proposals of regional significance are development applications which:
- (a) Are situated within a designated receiving district.
 - (b) Result from a transfer of development rights from a sending area (the Core Preservation Area).
 - (c) Contain a minimum of 15% of residential units or a minimum of 15% of commercial, industrial or office use square footage, as a direct result of the transfer of development rights.

§ 85-721. Core Preservation Area.

The Core Preservation Area is designated by the Act to be preserved employing a strategy of governmental land acquisition, the transfer of development rights using conservation easements, gifts, land swaps, and donations. The Plan prohibits development within the Core Preservation Area. Under the Act, the Commission may grant hardship exemptions, and may waive strict compliance with the Plan upon a finding that such a waiver is necessary to alleviate a hardship.

A. Permitted uses.

- (1) Allowable uses within the Core Preservation Area shall be limited to the following:
- (a) Activities or uses which have been exempted as nondevelopment pursuant to the provisions of Article 57 of the Environmental Conservation Law and by §§ **85-718** through **85-726**.
 - (b) Residual uses remaining after severance of development rights.
 - (c) Any existing, expanded or new agriculture or horticulture activity so long as such use and/or expansion of use does not result in any material alteration of native vegetation. The erection of agricultural buildings, including but not limited to barns, greenhouses and farm stands, required for the production of plants or animals, shall constitute an allowable use. If such activity involves material alteration of native vegetation, the use will require a hardship exemption from the Commission.
- (2) Hardship exemption. Applicants may seek hardship exemptions from the Commission as provided for in Article 57 of the Environmental Conservation Law for those uses or activities which are otherwise prohibited.

B. Prohibited uses.

- (1) The following uses are not permitted within the Core Preservation Area:
- (a) Development which has not received a hardship exemption permit from the Commission; and
 - (b) Residual uses which are incompatible with the provisions of Article 57 of the Environmental Conservation Law.

§ 85-722. Compatible Growth Area.

Permitted uses within the Compatible Growth Area shall be compatible with protecting the essential character and natural resources of the Pine Barrens and in conformance with the standards set forth in §§ **85-718** through **85-726**.

A. Permitted uses.

- (1) Uses within the Compatible Growth Area shall conform to the standards set forth in §§ **85-718** through **85-726**, limited to the following:
- (a) All uses permitted in and as regulated in the underlying zoning district classification and authorized by this chapter.

B. Hardship exemption. Applicants may seek hardship exemptions from the Commission as provided for in Article 57 of the Environmental Conservation Law for those uses or activities which are otherwise prohibited.

§ 85-723. Standards.

All proposed development located within the Compatible Growth Area of the Central Pine Barrens shall comply with the following standards (as also set forth in the Plan) unless a hardship exemption has been issued by the Commission. The Town of Brookhaven shall ensure compliance with these standards by requesting comments and/or analysis from the appropriate state, county and other agencies upon project application review pursuant to SEQRA. In the event that a proposed development project is inconsistent with the standards set forth in §§ **85-718** through **85-726**, or is rendered inconsistent due to modification or amendment, the Town shall notify the Commission and afford the applicant opportunity to either revise the development proposal to render it conforming to the applicable standards or obtain a hardship exemption from the Commission. Where standards contained in §§ **85-718** through **85-726** differ from state, county, or local law, the stricter standards apply. The following standards are applicable to all proposed development in the Central Pine Barrens Area:

A. Nitrate-nitrogen.

- (1) Suffolk County Sanitary Code Article 6 compliance. All development proposals subject to Article 6 of the Suffolk County Sanitary Code shall meet all applicable requirements of the Suffolk County Department of Health Services. Projects which require variances from the provisions of Article 6 shall meet all the requirements of the Suffolk County Department of Health Service's Board of Review in order to be deemed to have met the requirements of this standard.
 - (2) Sewage treatment plant discharge. Where deemed practical by the county or state, sewage treatment plant discharge shall be outside and downgradient of the Central Pine Barrens. Denitrification or other systems that are approved by the New York State Department of Environmental Conservation or the Suffolk County Department of Health Services may be used in lieu of sewage treatment plants.
 - (3) Suffolk County Sanitary Code Articles 7 and 12 compliance. All development projects must comply with the provisions of Articles 7 and 12 of the Suffolk County Sanitary Code, including any provisions for variances or waivers if needed, and all applicable state laws and regulations in order to ensure that all necessary water resource and watershed management infrastructure shall be in place prior to, or as part of, the commencement of construction.
- B. Wellhead protection. Significant discharges and public supply well locations. The location of nearby public supply wells shall be considered in all applications involving significant discharges to groundwater, as required under the New York State Environmental Conservation Law Article 17.
- C. Wetlands and surface waters.
- (1) Nondisturbance buffers. Development proposals for sites containing or abutting freshwater or tidal wetlands or surface waters must be separated by a nondisturbance buffer area which shall be no less than required by the New York State Tidal Wetlands or Freshwater Wetlands, and/or Wild, Scenic and Recreational Rivers Act and/or Chapter **81** of the Town of Brookhaven Code, Wetlands and Waterways. Distances shall be measured horizontally from the wetland edge as mapped by the New York State Department of Environmental Conservation and the Town of Brookhaven. Projects which require variances or exceptions from these laws, and associated regulations, shall meet all requirements imposed in a permit by the New York State Department of Environmental Conservation and the Town of Brookhaven in order to be deemed to have met the requirements of the standard.
 - (2) Buffer delineations, covenants and conservation easements. Buffer areas shall be delineated on the site plan or subdivision map, and covenants and/or conservation easements, pursuant to the New York State Environmental Conservation Law and Chapter **81** of the Town of Brookhaven Code, Wetlands and Waterways, shall be imposed to protect these areas as deemed necessary.
 - (3) Wild, Scenic and Recreational Rivers Act compliance.^[1] Development proposals shall conform to the provisions of the Wild, Scenic and Recreational Rivers Act, where applicable. Projects which require variances or exceptions under the New York State Wild, Scenic and Recreational Rivers Act shall meet all requirements imposed by the New York State Department of Environmental Conservation in order to be deemed to have met the requirements of this standard.
[1] Editor's Note: See Environmental Conservation Law § 15-2701 et seq.
- D. Stormwater runoff/stormwater recharge. Development projects must provide that all stormwater runoff originating from development on the property is recharged on site unless surplus capacity exists in an off-site drainage system.
- E. Natural vegetation and plant habitat.
- (1) Vegetation clearance limits. Clearing is defined, for the purposes of this standard, as the removal of any portion of the natural vegetation found on a site, exclusive of any vegetation associated with active agricultural or horticultural activity or formalized landscape and turf areas. Excessive clearing of natural vegetation can result in severe soil erosion, excessive stormwater runoff, and the destruction or reduction of Pine Barrens plant and wildlife habitat.
 - (a) The clearance of natural vegetation shall be strictly limited. Site plans, surveys and subdivision maps shall delineate the existing naturally vegetated areas and calculate those portions of the site that are already cleared due to previous activities.
 - (b) Areas of the site proposed to be cleared combined with previously cleared areas shall not exceed the percentages in Figure 5-1 herein.^[2] These percentages shall be taken over the total site, including, but not limited to, roads, building sites and drainage facilities. The clearance standard that would be applied to a project site if developed under the existing residential zoning category shall be applied if the proposal involves multifamily units, planned retirement units, attached housing, or clustering. Residential development within residentially zoned areas shall comply with the residential clearing limit categories contained in Figure 5-1. Commercial development in residentially zoned areas shall comply with the "Commercial, Industrial and Other or Mixed Use" clearing limit category. Site plans, surveys and subdivision maps shall delineate the clearing limit line and calculations for clearing to demonstrate compliance with this standard.
[2] Editor's Note: Figure 5-1 is included as an attachment to this chapter.
 - (c) To the extent that a portion of a site includes Core property, and for the purpose of calculating the clearance limits, the site shall be construed to be the combined Core and Compatible Growth Area portions. However, the Core portion may not be cleared except in accordance with Section 5.2 of the Plan.
 - (2) Unfragmented open space.

Subdivision and site plan design shall support the preservation of natural vegetation in large unbroken blocks that allow contiguous open spaces to be established when adjacent parcels are developed. Subdivision and site plan designs should also be configured in such a way as to prioritize the preservation of native Pine Barrens vegetation to the maximum extent practicable.

- (b) For the purpose of §§ **85-718** through **85-726**, native Pine Barrens vegetation shall include pitch pines and various species of oak trees, understory and ground cover plants such as blueberry, wintergreen, bearberry, and bracken fern, grasses and sedges such as little bluestem, Pennsylvania sedge and indian grass, as well as those ecological communities listed in Sections 5.6 and 5.7 in Chapter 5, Volume 2, of the Plan.
- (c) It is recognized that the preservation of nonnative but ecologically important habitats may be consistent with the intent and goals of the Plan when such action would result in the creation of large contiguous natural open space areas and the protection of rare, threatened or endangered species or their habitat.
- (3) Fertilizer-dependent vegetation limits. No more than 15% of an entire development project site shall be established in fertilizer-dependent vegetation, including formalized turf areas. Generally, nonnative species require fertilization; therefore, planting of such nonnative species shall be limited to the maximum extent practicable. The use of the nonnative plants in Figure 5-2^[3] is specifically not recommended.
 [3] *Editor's Note: Figure 5-2 is included as an attachment to this chapter.*
- (4) Native plantings. Development projects shall consider the native planting suggestions contained in Figure 5-2.
- F. Species and communities of special concern. Where a significant adverse impact upon a habitat essential to those species identified on the New York State maintained lists as rare, threatened, endangered or of special concern, or upon natural communities classified by the New York State Natural Heritage Program as G1, G2, G3 or S1, S2 or S3, or on any federally listed endangered or threatened species is proposed, the appropriate mitigation measures as determined by the appropriate state, county or Town agency shall be taken to protect these species.
- G. Coordinated design for open space management. All applications must specify the entity/agency to which dedicated open space will be transferred.
- H. Commercial and industrial development. All commercial and industrial development applications shall comply with the provisions of the Suffolk County Sanitary Code as applied by the Suffolk County Department of Health Services, and all other applicable federal, state or local laws. Projects which require variances from the provisions of the Suffolk County Sanitary Code shall meet all requirements of the Department of Health Service's Board of Review in order to be deemed to have met the requirements of this standard.

§ 85-724. Guidelines.

- A. The guidelines established herein are advisory in nature and shall be applied to development proposals within the Compatible Growth Area at the discretion of the Town body or agency having approval jurisdiction over the application for proposed development unless:
 - (1) The proposed project is subject to the jurisdiction based on its location within a Critical Resource Area;
 - (2) The proposed project constitutes a development of regional significance; or
 - (3) The Commission otherwise assumes jurisdiction under the Act (see Volume I, Chapter 4, of the Plan).
- B. Guidelines for development in the Compatible Growth Area. Where guidelines contained in §§ **85-718** through **85-726** differ from state, county, or local law, the Town may apply the stricter guideline. The following guidelines shall be applicable as deemed appropriate to development proposals in the Compatible Growth Area:
 - (1) Nitrate-nitrogen. A more protective goal of 2.5 ppm may be achieved on new projects through an average residential density of one unit per two acres (or its commercial or industrial equivalent), through clustering, or through other mechanisms to protect surface water quality for projects in the vicinity of ponds and wetlands.
 - (2) Wellhead protection. The Suffolk County Department of Health Services' guidelines for private wells can be used for wellhead protection.
 - (3) Wetlands and surface waters/additional nondisturbance buffers. Stricter nondisturbance buffer areas may be established for wetlands as deemed appropriate.
 - (4) Stormwater runoff.
 - (a) Natural recharge and basins. Natural recharge areas and/or drainage system designs that cause minimal disturbance of natural vegetation can be employed, where practical, in lieu of recharge basins or ponds that would require removal of significant areas of native vegetation.
 - (b) Ponds. Ponds should only be created if they are to accommodate stormwater runoff, not solely for aesthetic

purposes.

- (c) Natural topography in lieu of recharge basins. The use of natural swales and depressions can be permitted and encouraged instead of excavated recharge basins.
 - (d) Soil erosion and stormwater runoff control during construction. During construction, the standards and guidelines promulgated by the New York State Department of Environmental Conservation pursuant to state law, which are designed to prevent soil erosion and control stormwater runoff, may be adhered to.
- (5) Steep slopes.
- (a) Clearing envelopes. Clearing envelopes can be placed upon lots within a subdivision so as to maximize the placement of those envelopes on slopes less than 10%.
 - (b) Stabilization and erosion control. Construction of homes, roadways and private driveways on slopes greater than 10% may be approved if technical review shows that sufficient care has been taken in the design of stabilization measures, erosion control practices and structures so as to mitigate negative environmental impacts.
 - (c) Slope analysis. In areas with steep slopes, in the ranges of 11% to 15% and 15% and greater, slope analysis maps may be required. This can be satisfied with cross hatching or shading on the site plan/subdivision map for the appropriate areas.
 - (d) Erosion and sediment control plans. Erosion and sediment control plans may be required in areas of 15% or greater slopes.
 - (e) Placement of roadways. Roads and driveways shall be designed to minimize the traversing of slopes greater than 10% and to minimize cuts and fills.
 - (f) Retaining walls and control structures. Details of retaining walls and erosion-control structures should be provided for roads and driveways which traverse slopes greater than 10%.
- (6) Natural vegetation and plant habitat.
- (a) Clustering. The maximization of the use of the clustering technique is encouraged where its usage would enhance adjacent open space or provide contiguous open space connections with adjacent open space parcels.
 - (b) Protection of dedicated open space. Proposed open space can be protected with covenants, conservation easements or dedications that specify proper restrictions on its use and contingencies for its future management.
- (7) Agriculture best management practices. Any existing, expanded, or new activity involving agriculture or horticulture in the Compatible Growth Area should comply with best management practices and relevant requirements, including local law.
- (8) Cultural resource consideration.
- (a) Development proposals should account for, review, and provide protection measures for:
 - [1] Established recreational and educational trails and trail corridors, including but not limited to those trail corridors as inventoried in the Plan.
 - [2] Active recreation sites, including existing sites and those proposed as part of a development.
 - [3] Scenic corridors, roads, vistas and viewpoints located in Critical Resource Areas, and along the Long Island Expressway, Sunrise Highway, County Road 111 and William Floyd Parkway.
 - [4] Sites of historical or cultural significance, including historic districts, sites on the State or National Register of Historic Places, or recognized by local law or statute.
 - [5] Sensitive archaeological areas as identified by the New York State Historic Preservation Office or the New York State Museum.
 - (b) Inclusion of cultural resources in applications. Development proposals should note established recreation and educational trails and trail corridors; active recreation sites; scenic corridors, roads, vistas and viewpoints located in Critical Resource Areas and undisturbed portions of the roadsides of the Long Island Expressway, Sunrise Highway, County Route 111 and William Floyd Parkway; sites on the State or National Register of Historic Places, and historic structures and landmarks recognized by municipal law or statute, or listed on the State or National Register of Historic Places; and sensitive archaeological areas as identified by the New York State Historic Preservation Office or the New York State Museum within a five-hundred-foot radius of the outside perimeter of the project site, including any project parcels which are physically separate from the bulk of the proposed development areas. A development proposal may be disapproved or altered if the local municipality determines that the development proposal, in its current form, may have a significant negative impact on any of the above resources.

- (c) Protection of scenic and recreational resources. Protection measures for scenic and recreational resources should include, but not be limited to, retention of visually shielding natural buffers, replacement of degraded or removed natural visual buffers using native species, use of signs which are in keeping in both style and scale with the community character, and similar measures.
- (d) Roadside design and management. Undisturbed portions of the roadside should be maintained in a manner that protects the scenic features of these areas. Clearing (including that for aisles, driveways, access, and parking) is not precluded within these roadside areas, provided that appropriate buffers are maintained, and that man-made structures meet standards consistent with the character of the area.

§ 85-725. Pine Barrens Credit Program.

- A. Purposes and objectives. The purpose, goals and objectives of the Pine Barrens Credit Program created herein is the implementation of the Comprehensive Land Use Plan adopted pursuant to Article 57 of the Environmental Conservation Law by the Central Pine Barrens Joint Planning and Policy Commission: to maintain the value in lands designated in the Plan for preservation and protection through the use and allocation of Pine Barrens credits, and to promote environmentally sensitive development in an efficient and orderly fashion which shall protect the quality and quantity of surface waters, groundwater and the long- and short-term integrity of the Suffolk County Central Pine Barrens ecosystem(s).
- B. Commissioner's report.
 - (1) At least biannually, the Commissioner of the Department of Planning, Environment and Land Management, or his/her designee, shall report to the Town Board on the status of the Pine Barrens Credit Program created herein. Said report shall provide specific information and statistics with respect to approved development projects for which Pine Barrens credits have been redeemed, or redeemed and retired; and the number of credits which have been retired for each school district within the Town.
 - (2) Based on an analysis thereof, the Commissioner may recommend that use of Pine Barrens credits for single-family residential development be discontinued for any given school district within the Town; notwithstanding, the Commissioner may further recommend continued use of Pine Barrens development credits for nonresidential development within the Town.
 - (3) Based on the Commissioner's report and recommendations, if any, the Town Board may undertake such action as it deems necessary and appropriate in respect thereof.
- C. General provisions.
 - (1) Pine Barrens credits shall be derived solely from lands located in the Core Preservation Area within the Town for applicability to development within the Town.
 - (2) Upon the Joint Planning and Policy Commission's determination that all Pine Barrens credits attributable to lands located within the Core Preservation Area within the Town of Brookhaven have been redeemed or retired, the provisions of this section shall expire within 30 days thereafter, and shall be of no further force and effect; all pending applications incorporating unredeemed development credits shall be deemed withdrawn.
- D. Residential Overlay District.
 - (1) All parcels of land located outside the Core Preservation Area and within the A Residential 1 and A Residential 2 Zoning Districts are hereby deemed "receiving districts" subject to the eligibility criteria set forth herein. An increase in density shall be established by the Planning Board for any parcel (or assemblage of parcels) subject of an application therefor where such parcel is located within a receiving district so long as in conformance with the following criteria:
 - (a) The subject premises is four acres or more in size if located in the A Residential 1 Zoning District.
 - (b) The parcel is eight acres or larger if located in the A Residential 2 Zoning District.
 - (c) Preliminary approval has been granted by the Suffolk County Department of Health Services for any parcel or premises located within the A Residential 1 Zoning District and within Hydrogeologic Zone 6.
 - (2) Exceptions to eligibility as receiving districts. A parcel or premises shall be ineligible for treatment and/or classification as an ROD in the event that:
 - (a) The parcel is located within a designated Critical Resource Area as identified in the Comprehensive Land Use Plan;
 - (b) The area of the parcel to be developed is located within:
 - [1] Five hundred feet of any streams, bluffs, surface waters or wetlands regulated by the New York State Department of Environmental Conservation or the Town of Brookhaven; or
 - [2] The one-hundred-year floodplain; or

[3] The South Setauket Special Groundwater Protection Area (South Setauket SGPA); or

[4] The New York State wild, scenic and recreation river corridors; or

[5] Existing public lands.

(c) Forty percent or more of the parcel contains steep slopes of 15% or greater.

E. Planning Board review and approval.

(1) The Planning Board is hereby authorized to review and approve, approve with modifications or disapprove applications for residential development utilizing the Residential Overlay District provisions created herein. All requirements set forth in this chapter applicable to development in the A Residence 1 District or the A Residence 2 District, as the case may be, shall be applicable to development proposals utilizing the Residential Overlay District created herein, except that:

(a) The Planning Board may vary, modify or waive strict compliance with the dimensional requirements applicable to an application herein as set forth in this chapter; and

(b) The applicant shall be entitled to an increase in density calculated in accordance with the provisions of §§ **85-718** through **85-726** as calculated and determined by the Planning Board.

(c) The Planning Board may allow attached or semidetached units in the utilization of a Residential Overlay District based on the following criteria:

(2) Additional requirements. An application for development for a Residential Overlay District shall include:

(a) A full long environmental assessment form (LEAF);.

(b) A disclosure affidavit by the applicant or his attorney-in-fact.

(c) Calculation(s) demonstrating customary yield, Resident Overlay District (ROD) yield and the proposed number of Pine Barrens development credits available for the development proposal.

(3) An application for a development proposal for any land division incorporating treatment as a Residential Overlay District shall be subject to review and approval by the Planning Board notwithstanding any other provision in this chapter or the Subdivision Regulations.^[1]

[1] *Editor's Note: See Ch. SR, Subdivision Regulations.*

(4) Upon the Planning Board's grant of final conditional approval of an application for residential development as a Residential Overlay District, the applicant shall obtain from the Pine Barrens Credit Bank and Clearinghouse, a Pine Barrens credit certificate confirming the number of Pine Barren's credits incorporated in the approved application.

F. Density increase in Residential Overlay District. Residential development pursuant to the within Residential Overlay District on an eligible parcel shall be entitled to an increase in density based on the addition of Pine Barrens credits to the customary unit yield (customary yield) as permitted by this chapter. The following formula(s) shall be employed in calculating the number of Pine Barrens credits which may be added to the customary yield for a single-family dwelling project application for an eligible parcel:

[Amended 7-2-2017 by L.L. No. 19-2017, effective 8-2-2017]

(1) Customary yield. The product of the total acreage multiplied by 43,560 square feet is divided by the dimensional area requirement, the result of which is multiplied by a factor of 0.8, the result of which equals the customary yield. All calculations shall be rounded to the nearest whole number, example $1.5 = 2$. Thus:

(a) In the A Residential 1 District:

$$\frac{\text{Parcel area X 43,560 sq. ft.}}{40,000 \text{ sq. ft.}} \times 0.8 = \text{Customary Yield}$$

(b) In the A Residential 2 District:

$$\frac{\text{Parcel area X 43,560 sq. ft.}}{80,000 \text{ sq. ft.}} \times 0.8 = \text{Customary Yield}$$

(2) Residential Overlay District (ROD) yield. To determine the ROD yield, the product of the parcel area multiplied by 43,560 square feet, divided by the minimum dimensional area requirement, 40,000 square feet for an A Residence 1 zoned parcel and 80,000 square feet for an A Residence 2 zoned parcel, the result of which is multiplied by a factor of 1.2, shall constitute the ROD yield:

(a) In the A Residence 1 District:

$$\frac{\text{Parcel area X 43,560 sq. ft.}}{40,000 \text{ sq. ft.}} \quad \text{X 1.2 = ROD Yield}$$

(b) In the A Residence 2 District:

$$\frac{\text{Parcel area X 43,560 sq. ft.}}{80,000 \text{ sq. ft.}} \quad \text{X 1.2 = ROD Yield}$$

- (3) Pine Barrens credits. To determine the required number of Pine Barrens credits (PBC), subtract the customary yield from the ROD yield, the result of which equals the number of Pine Barrens credits (PBC) required for the proposed development application.

$$\begin{array}{rcl} & \text{ROD Yield} & \\ \text{(less)} & - & \text{Customary Yield} \\ & \text{PBDC available} & \end{array}$$

§ 85-726. Incentive zoning.

A. Purpose. The purpose of incentive zoning is to advance the goals and objectives of the Central Pine Barrens Comprehensive Land Use Plan.

B. Applicability.

- (1) For purposes of §§ **85-718** through **85-726**, the redemption of Pine Barrens credits may be permitted in connection with all change of zoning district classification and special use permit applications for all eligible lands located within the Town and outside the Core Preservation Area.
- (2) The redemption of Pine Barrens credits may be utilized to obtain an increase in density or intensity of development in connection with development proposals for parcels, lots and assemblages located outside of the Core Preservation Area subject to the review and approval by the Town Board or Planning Board as the case may be.
- (3) The redemption of Pine Barrens credits may also be permitted by the Town Board in connection with a development proposal made pursuant to Article **XXVI** of this chapter for a Planned Development District.
- (4) The utilization of incentive zoning employing the redemption of Pine Barrens credits shall be limited, under this article, to the following zoning districts:

MF Residence
 PRC Residence
 PRCHC Residence
 NH-H Residence
 J Business
 J Business 2
 J Business 4
 J Business 5
 J Business 6
 J Business 7
 J Business 8
 L Industrial 1
 L Industrial 2

- (5) All applications for development proposals and/or change of zoning district classification shall comply with the requirements of Article 8 of the Environmental Conservation Law.

C. Change of zoning district classification (change of zone).

- (1) The redemption of Pine Barrens credits for all lands located within the Central Pine Barrens Designated Compatible Growth Area may be permitted for any parcels, lots and assemblage which is located in an eligible zoning district as set forth in this section.
- (2) The Town Board may limit the Planning Board's authority to grant an increase in density or intensity, under existing zoning, upon its review of an otherwise eligible site plan. An increase in density or intensity granted upon a change of zone or special use permit approval shall conform to the Schedule of Intensity set forth in this section.

D. Redemption schedule.

- (1) Commercial and industrial. Change of zone and special use permit applications for parcels, premises, lots or assemblages, subject to commercial and/or industrial zoning district classification(s), may include the redemption of Pine Barrens credits.
- (2) Multifamily. For all proposed MF residence developments, an increase in density (or intensity) may be permitted by the redemption of Pine Barrens credits, added to the number of units permitted in the zoning district classification or as previously approved by the Town Board upon a change of zoning district classification.
- (3) Planned retirement community. For all proposed PRC residence developments, an increase in density (or intensity) may be permitted by the redemption of Pine Barrens credits, added to the number of units permitted in the zoning district classification or as previously approved by the Town Board upon a change of zoning district classification.
- (4) Nursing home and assisted living. For all proposed NH-H and PRCHC residence developments, an increase in density (or intensity) may be permitted by the redemption of Pine Barrens credits, added to the number of beds/units permitted in the zoning district classification or as previously approved by the Town Board upon a change of zoning district classification.

E. Site plan. All site plan applications for the zoning districts specified hereinabove in this section may include a proposal for the redemption of Pine Barrens credits, subject to the Planning Board's approval.

- (1) A site plan application shall be submitted pursuant to the site plan procedures set forth in this chapter.
- (2) The Planning Board, in determining the effects of such incentive, shall consider the potential impacts to the school districts, resources available in the project site area, including environmental quality, public facilities, transportation and infrastructure.
- (3) As an irrevocable condition of the Planning Board's final conditional approval, the applicant shall submit a Pine Barrens credit certificate confirming the number of Pine Barrens credits incorporated into its grant of approval.
- (4) The Planning Board is hereby authorized to modify or adjust the required dimensional setback requirements and parking requirements set forth in this chapter.

ZONING

85 Attachment 6

Figure 5-1: Clearance Standards

(This table shows total site clearance, including lots, roads, drainage and other improvements.)

| Zoning Lot Size¹ | Maximum Site Clearance² |
|---------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 10,000 square feet residential (1/4 acre) (C) | 90% |
| 15,000 square feet residential (1/3 acre) (B) | 70% |
| 20,000 square feet residential (1/2 acre) (B-1) | 60% |
| 30,000 square feet residential (2/3 acre) (A) | 58% |
| 40,000 square feet residential (1 acre) (A-1) | 53% |
| 60,000 square feet residential (1.5 acre) | 46% |
| 80,000 square feet residential (2 acres) (A-2) | 35% |
| 120,000 square feet residential (3 acres) | 30% |
| 160,000 through 200,000+ square feet residential (4 - 5+ acres) (A-5) (A-10) | 20% clearance limitations on lots in this category shall not include the clearance necessary for the construction of driveways and septic systems. In no case shall the total clearance in this category exceed 25%. |
| Commercial, industrial and other or mixed use | 65% |

Notes:

¹ These entries are the minimum lot sizes required by zoning, not the size of the subject parcels.

² In calculating the percentage of land cleared, the preserved areas in a development should preferably be native vegetation. These are maximum clearance standards, and more restrictive standards may be imposed during the review by the local municipality due to consideration of other standards, especially those addressing preservation of rare or endangered species, or unique flora or vegetation.

*Town of Brookhaven, NY
Thursday, October 3, 2019*

Chapter 85. Zoning

Article XXXIV. Land Development Standards

§ 85-843. Land development standards.

A. Minimum natural area/landscaping requirements.

- (1) Minimum natural area/landscaping percent. Except as otherwise provided herein, a minimum of 20% of a commercial site shall be maintained as landscaped or natural area in accordance with Town standards and guidelines.
- (2) Minimum natural area/landscaping in front yard. A minimum of 50% of all required landscaped or natural area shall be located within the front yard.
- (3) Street trees. Street trees with a minimum caliper of four inches shall be planted and/or maintained adjacent to all road frontages in accordance with Town standards in an amount equal to 30 feet on center.
- (4) Minimum natural area/landscaping along street frontage. A minimum of 15 feet of landscaped or natural area shall be maintained along all street frontages.
- (5) Main Street Business District standards.
 - (a) Street trees shall be required and located within the right-of-way and between sidewalks and curbs within a four-foot-wide landscape cutout.
 - (b) The required front yard setback area shall be maintained as a planted landscape area or surfaced to provide for outdoor seating or retail display area as authorized.
 - (c) A minimum of one street tree shall be required per lot, with a minimum of two trees required on a corner lot.
- (6) Supplemental standards. The following supplementary standards shall be required for the uses so indicated:
 - (a) A minimum landscaped or natural area of 30% shall be maintained in connection with a commercial center, regional theater or industrial or office use occupying a site of five acres or more.
 - (b) A minimum landscaped or natural area of 35% shall be maintained in connection with a fast-food restaurant.
 - (c) A minimum of 50 feet of landscaping or natural area shall be maintained along all road frontages in connection with a commercial center, regional theater or industrial or office use occupying a site of five acres or more.
- (7) Parking area screening. All parking areas shall be screened from view with a hedge, berm and/or decorative wall or fence in accordance with Town standards.
- (8) Parking area landscaping.
 - (a) Parking areas of 50 spaces or more shall contain 400 square feet of landscaping for each 25 spaces. Large parking areas shall be divided into smaller parking fields of 50 cars with landscape strips, peninsulas or grade separations to reduce the visual impact of large expanses of paving, to direct vehicular traffic through the parking lot and to provide a location for pedestrian walks.
 - (b) Landscape strips between parallel parking rows shall be a minimum of 10 feet in width. When incorporating pedestrian walkways, such strips shall be a minimum of 20 feet in width. Landscape aisles and strips shall include trees with a minimum caliper of four inches at a minimum of one tree for every 30 feet, in addition to other parking lot landscape requirements.
- (9) Irrigation required. All landscaped, buffer and natural areas shall be irrigated in accordance with Town standards.
 - (a) Parking lot trees located in landscape strips shall be located to avoid conflict with overhanging vehicles by aligning with the lines between spaces.
- (10) Irrigation required. All landscaped, buffer and natural areas shall be irrigated, irrigation shall utilize water-conserving methods, in accordance with this article.

- (11) Required landscaping shall utilize drought-tolerant native and adapted species and/or water-conserving plants and methods, to reduce irrigation demands, in accordance with Town standards.
- (12) The preservation of each existing large tree (greater than nine inches DBH) shall relieve the applicant from the installation of three parking lot or street trees in the vicinity of the existing tree.

B. Buffer requirements.

- (1) Minimum requirement. Except as otherwise provided herein, all commercial uses, places of worship and MF, PRC, and PRCHC uses shall maintain a minimum perimeter buffer area of 25 feet adjacent to any residential use or zone. Natural buffer areas, which do not maintain a density and quality of plantings equal to a single row of evergreen plantings seven feet high and five feet on center, shall be supplemented with additional plantings in order to meet minimum buffer requirements.
- (2) Supplemental standards. The following supplementary standards shall be required for the uses so indicated:
 - (a) A minimum perimeter buffer area of 25 feet adjacent to any residential use or zone, with a density and quality of plantings equal to a double row of evergreen plantings seven feet high and five feet on center shall be required in connection with an L Industrial 1 District use.
 - (b) A minimum perimeter buffer area of 25 feet adjacent to any residential use or zone, with a density and quality of plantings equal to a triple row of evergreen plantings seven feet high and five feet on center, shall be required in connection with a gasoline station, convenience market, motor vehicle repair shop, car wash, commercial boat storage yard, outdoor storage yard, ship yard, boat repair yard, marina, lumber yard, motor vehicle dealership, ferry terminal/facility or L Industrial 2 District use.
 - (c) A minimum perimeter buffer area of 75 feet adjacent to any residential use or zone, with a density and quality of plantings equal to five rows of evergreen plantings seven feet high and five feet on center, shall be required in connection with a commercial center, regional theater, industrial use occupying a site of five acres or more or outdoor recreational use.
- (3) Where the frontage on one side of a street is zoned for commercial use and the frontage on the opposite side of the street is residentially zoned or used, a buffer in accordance with Town standards must be maintained along said commercial street frontage.

C. Minimum site lighting and streetlighting requirements.

- (1) In the Main Street Business District, the following lighting provisions shall be required:
 - (a) Decorative off-street parking lot lights of not more than 18 feet in height, and 400 watts or less shall be uniformly applied, installed and maintained.
 - (b) Off-street parking lot light fixtures shall be nonadjustable, horizontally mounted fixtures with less than ninety-degree luminaire cutoff. Fixtures that project light or glare toward the street right-of-way or adjoining properties shall not be permitted.
 - (c) Pedestrian lighting shall be uniformly applied, installed and maintained along pedestrian walkways and alleyways.
 - (d) Building-mounted light fixtures shall be for safety or signage purposes only and must direct light downward. Wall-pack lights or other lighting that shines outward toward adjoining properties or the street right-of-way shall be prohibited. Shielding shall be provided to avoid light trespass and glare.
 - (e) Exterior neon lighting, illuminated banding, or other lighting that creates a glow shall be prohibited, unless approved by the Planning Board as part of an overall theme for the development area.
 - (f) Decorative streetlights of not more than 12 feet in height shall be uniformly applied, installed and maintained situated in sidewalk cutouts every 30 feet on center along the site's frontage. The same lighting fixture shall be applied to each Main Street Business District. Streetlight fixture styles shall be one of the following:
 - [1] Battery Park Fixture.
 - [2] Pennsylvania Globe Nantucket model.
 - [3] Other models as may be approved by the Planning Board and as acceptable to the Town of Brookhaven Division of Streetlighting.

D. Minimum sidewalk requirements.

- (1) In the Main Street Business District, the following sidewalk provisions shall be required:
 - (a) Except as otherwise provided herein, the minimum sidewalk width shall be 10 feet, along all road frontages.
 - [1] Sidewalks shall be concrete, unless otherwise approved by the Planning Board as part of an overall theme for

the development area.

- [2] Decorative paving materials (i.e., pavers, stamped/textured concrete, or color concrete) shall be used to accent other pedestrian spaces at building entrances, courts, plazas and along pedestrian walks.

(b) Except as otherwise provided herein, a minimum alleyway width shall be 15 feet.

- E. Minimum site improvements. Except as otherwise provided herein, all development shall meet or exceed the minimum standards contained within the Town Code of the Town of Brookhaven, including, but not limited to, the Subdivision Regulations.^[1]

[1] *Editor's Note: See Ch. SR, Subdivision Regulations.*

§ 85-844. Setback and buffer requirements.

All buildings or structures erected on any of the following roadways shall maintain a setback distance not less than the following:

| Roadway | Setback/Buffer |
|-----------------------------------------------------------------------|-----------------------------|
| Interstate 495 and Service Roads (Islip Town line to S.R. 112) | 60-foot setback |
| Interstate 495 and Service Roads (S.R. 112 to Riverhead Town line) | 100-foot setback and buffer |
| Sunrise Highway (S.R. 27) (Islip Town line to S.R. 112) | 60-foot setback |
| Sunrise Highway (S.R. 27) (S.R. 112 to Riverhead Town line) | 100-foot setback and buffer |

§ 85-845. Arterial highway buffer and setback requirements.

Purpose. Throughout the Town there are numerous arterial roadways, which are vital transportation corridors and merit protection from uncontrolled commercial and industrial development. On such vital roadways, a greater, more restrictive setback may be necessary and required than the setback requirements contained within the Table of Dimensional Requirements^[1] for the applicable zoning district in which the parcel is located. In addition, along such vital roadways, there is a need for the establishment, uniformity and maintenance of buffer areas. Therefore, it is this Town Board's intent to provide for such more restrictive buffers in order to protect the scenic and undisturbed nature of said vital roadways.

[1] *Editor's Note: The Tables of Dimensional Requirements are included as attachments to this chapter.*

§ 85-846. Preferred and prohibited tree species.

[Amended 5-23-2019 by L.L. No. 13-2019, effective 6-3-2019]

The following sets forth the list of preferred tree species as referred to in § 85-843 of this chapter.

- A. Preferred tree species list. The following preferred trees shall be used in compliance with Town of Brookhaven street tree standards and specifications (Other trees may be permitted, except such trees that are prohibited, subject to the approval of the Planning Board.):

| | |
|----------------------|------------------------------------|
| Acer buergeranum | Trident Maple |
| Acer Campestre | Hedge Maple |
| Acer Ginnala Amur | Maple |
| Acer rubrum var. | Red Maple |
| Acer saccharum var. | Sugar Maple |
| Acer pseudoplatanus | Sycamore Maple |
| Acer tataricum | Tatarian Maple |
| Acer truncatum | Shanting Maple |
| Amelanchier ssp. | Serviceberry cumulus Autumn Sunset |
| Carpinus betulus | European Hornbeam |
| Carpinus caroliniana | American Hornbeam |
| Carya illinoensis | Pecan |
| Celtis occidentalis | Hackberry |
| Cladrastis lutea | American Yellowwood |

| | |
|------------------------------------|-----------------------------------------------------------------------------------------------------------|
| Corylus columna | Turkish Filbert |
| Crataegus crus-galli inermis | Thornless Cockspur Hawthorn |
| Crataegus punctata inermis | Thornless Ohio Pioneer Hawthorn |
| Eucommia ulmoides | Hardy Rubber Tree |
| Ginkgo biloba | Ginkgo (male, seedless) |
| Gleditsia triacanthos inermis var. | Thornless Honeylocust (resistant cultivars only) |
| Gymnocladus dioicus | Kentucky Coffeetree |
| Koelreuteria paniculata | Golden raintree |
| Liquidambar styraciflua | Sweetgum |
| Liriodendron tulipifera | Tulip Tree |
| Maackia amurensis | Amur Maackia |
| Malus ssp. | Crabapple (disease-resistant cultivars only) |
| Nyssa sylvatica | Tupelo |
| Ostrya virginiana | American Hophornbeam |
| Plantanus x acerfolia | London Planetree |
| Prunus ssp. | Flowering Cherry (less than 35 feet tall), i.e., 'Accolade,' 'Kwanzan,' 'Schubert' |
| Prunus sargentii 'Columnaris' | Columnar Sargent Cherry |
| Pyrus calleryana | Callery Pear Aristocrat, 'Chanticleer,' 'Cleveland Select' (not the cultivar 'Bradford') |
| Quercus acutissimas | Sawtooth Oak |
| Quercus bicolor | Swamp White Oak |
| Quercus borealis | Northern Red Oak |
| Quercus imbricaria | Shingle Oak |
| Quercus macrocarpa | Bur Oak |
| Quercus muhlenbergii | Chinquapin Oak |
| Quercus phellos | Willow Oak |
| Quercus robur | English Oak |
| Sophora japonica | Japanese Pagoda tree |
| Syringa reticulata | Japanese Tree Lilac |
| Tilia Americana | American Linden |
| Tilia cordata var. | Little Leaf Linden |
| Tilia tomentosa | Silver Linden |
| Ulmus carpinus var. buisman | Buisman Elm |
| Ulmus parvifolia | Chinese Elm |
| Ulmus | Elm hybrids (Dutch-elm-resistant cultivars), i.e., 'Urban,' 'homestead,' 'Pioneer,' 'Sapporo Autumn Gold' |
| Zelkova serrata | Japanese Zelkova |

- B. Prohibited street trees. The following trees shall be prohibited: Ailanthus, White and Silver Birch, Box Elder, Catalpa, Cottonwood, Siberian Elm, Fraxinus Americana var. (White Ash), Fraxinus pennsylvanica lanceolata var (Green Ash), "Fraxinus quadrangulata (Blue Ash), Fruit" trees, Silver Maple, Mimosa, Pin Oak, Russian Olive, Poplar, weeping trees, willows, shrubs, all evergreens.

§ 85-847. Green landscaping and design standards.

- A. Building orientation shall reduce energy consumption as follows:

- (1) All buildings shall be oriented for rooftop solar energy installation to provide the best opportunities for photovoltaic energy production and passive solar.
 - (a) A minimum of 75% of all proposed buildings shall be designed so that the longer dimension of each building is within 15° of geographical south. A minimum of 50% of the roof area of all such buildings shall be facing within 15° of geographical south.
 - (b) Design and orient the project buildings to have 50% of the roof area to be southerly facing within 15° of south facing, oriented for solar applications; or

- (c) In the event other equivalent alternative design practices are proposed to meet the above energy-efficiency goals, the Planning Board shall determine if said alternative design practices meet the goals and may relieve requirements A(1)(a) and/or A(1)(b) above, subject to conditions as may be imposed by said Board.
- (2) Minimize shading of south-, west- and east-facing surfaces in the heating season and maximize exterior shading of south-, east-, and west-facing vertical surfaces in the cooling season.
- B. Soil management shall conserve natural resources by:
 - (1) Implementing an erosion control plan during construction; and
 - (2) Implementing permanent erosion and conservation methods.
 - (3) Implementing construction methods to reduce and mitigate soil compaction prior to landscape installation.
- C. Irrigation shall conserve natural resources through the use of water conservation methods, including:
 - (1) Drip irrigation on all buffer areas and shrub plantings; and
 - (2) Automatic timers, rain sensors and moisture meters.
- D. Drainage shall conserve natural resources by: The following supplementary systems shall be designed and constructed in accordance with NYS Stormwater Management Design Manual, Chapter 5.
 - (1) Installation of rain gardens, vegetated swales and bioretention areas. The area of these features shall be calculated as meeting the minimum natural area and/or landscaping requirements; and/or
 - (2) The installation of permeable pavements; and/or
 - (3) The use of rain catchment systems.
- E. Landscape and plant selection shall reduce water usage and maintenance by:
 - (1) Selecting plants which are drought-tolerant, native and adapted species, as included in Figure 5-2,^[1] and 50% of all species shall meet said criteria; and/or
 - [1] *Editor's Note: Figure 5-2 is included as an attachment to this chapter.*
 - (2) Preserving plant communities of native plants existing on site; and/or
 - (3) Installing or using vegetation to minimize building cooling requirements; and/or
 - (4) Installing or using vegetation to reduce building heating requirements; and/or
 - (5) The use of small-leafed trees and evergreen trees to reduce maintenance; and/or
 - (6) Reducing urban heat island effects through the planting of parking lot trees to shade paved areas.

§ 85-848. (Reserved)

§ 85-849. Required parking spaces.

[Amended 10-28-2014 by L.L. No. 23-2014, effective 11-4-2014]

- A. The number of parking spaces shall be provided as set forth in § 85-852, Table of Parking Requirements, on the same lot as the principal use, and satisfactorily maintained by the owner of the property for each building, structure or premises which shall be hereafter erected, enlarged or altered for use for any of the purposes as listed in § 85-852, Table of Parking Requirements.
- B. In the case of mixed uses, the parking spaces required shall be the sum of the requirements for the various individual uses computed separately, including special permit accessory uses. Parking facilities for one use shall not be considered as providing the required parking facilities for any other use; except that commercial center and multi-tenant industrial uses typically containing a mix of individual tenants that are collectively identified as a single permitted use (i.e., commercial center or multi-tenant industrial use) should not be computed as separate individual uses.
- C. Shared parking may be permitted as determined by the Planning Board, when variations occur in the accumulation of vehicles by hour, by day or by season by the individual land uses or the relationships among multiple land uses result in visiting multiple land uses on the same auto trip.
- D. A public parking garage serving more than one land use shall count towards satisfying the requirements of this chapter.

- E. A private parking garage or carport serving an individual single-family residence or an individual multifamily residence shall not count towards satisfying the requirements of this chapter, except for such individual use.
- F. A canopy or overhang used specifically for pedestrians or specifically for motor vehicles such as for the purpose of gasoline filling station, drive-through facility or similar purpose shall not be used to calculate the parking requirements as listed herein.
- G. Any use not otherwise expressly provided for shall be determined as deemed adequate by the Planning Board.

§ 85-850. Required loading spaces.

[Amended 10-28-2014 by L.L. No. 23-2014, effective 11-4-2014]

- A. Loading spaces shall be provided, on the same lot as the principal use, and satisfactorily maintained by the owner of the property for each building, structure or premises which shall be hereafter erected, enlarged or altered for use for any business or industrial purpose in accordance with the following schedule:

| Building Floor Area | Loading Spaces Required |
|----------------------------|--------------------------------|
| (square feet) | |
| Under 8,000 | 1 |
| 8,000 to 25,000 | 2 |
| 25,000 to 40,000 | 3 |
| 40,000 to 100,000 | 4 |
| 100,000 to 125,000 | 5 |
| Each additional 200,000 | 1 |

- B. No loading spaces shall be required for any building or structure used exclusively for the occupancy of office, bank, place of worship or other use as may be approved by the Planning Board, provided that an equal number of parking spaces shall be provided and maintained in lieu thereof.

§ 85-851. Alteration or enlargement of structure.

[Amended 10-28-2014 by L.L. No. 23-2014, effective 11-4-2014]

In the event that any building or structure shall be hereafter altered or enlarged, the entire building or structure shall be deemed new construction, and the number of parking and loading spaces to be provided and maintained for such building or structure as altered or enlarged shall be determined on such basis. When a building is enlarged, the parking is recalculated based on the provisions contained herein.

§ 85-852. Table of Parking Requirements.

[Amended 10-28-2014 by L.L. No. 23-2014, effective 11-4-2014; 2-14-2019 by L.L. No. 4-2019, effective 2-25-2019]

The Table of Parking Requirements is as follows:

| Principal Land Use | Parking Requirement | Additional Requirement |
|-------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------|-----------------------------------------------------|
| Agricultural, greenhouse | A minimum 5 stalls, or 1 per 60,000 sf of land or part thereof | See Note 1 |
| Airport | 1 per 200 sf of gfa for airport terminal 1 per private plane, 0.80 per passenger plane | Accessory uses: 1 per 400 sf of gfa |
| Adult uses | 1 per 150 sf of gfa | |
| Art galleries, artist studio, community center, exhibit hall, museum, nonprofit cultural center | 1 per 300 sf of gfa | See Note 2 |
| Assembly and social recreation hall | With fixed seats: 1 per 2 seats Without fixed seats: 1 per 100 sf of gfa | |
| Bank | 1 per 150 sf of gfa | See Note 2 |
| Bar, tavern, nightclub | 1 1/2 per 2 persons legally accommodated | See Note 2 |
| Bed-and-breakfast | 1 per guest room | 2 additional spaces for proprietor residential unit |
| Billiard hall | 1 per 150 sf of gfa | See Note 2 |

| Principal Land Use | Parking Requirement | Additional Requirement |
|-----------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------|
| Bowling alley | 4 per alley | |
| Casino, gaming center, off-track betting facility | 2 per 150 sf of gfa | See Note 2 |
| Commercial center, large commercial retail | 1 per 175 sf of gfa | See Note 1 |
| Convenience store | 1 per 100 sf of gfa | See Note 2 |
| Convent, monastery | 1 per 10 residents, or 1 per 1,000 sf of gfa, whichever is less | |
| Day-care, adult day-care facility | 1 per 400 sf of gfa | See Note 2 |
| Drive-through service queue | Bank: 6 per window Drive-in establishment: 6 per window, or 4 per window if more than 2 windows Major restaurant: 12 per window Motor vehicle wash: 20 for automatic, 5 for self-serve Pharmacy: 3 per window | |
| Dry cleaner | 1 per 150 sf of gfa | See Note 2 |
| Electric-generating facility | A minimum 10 stalls or as required by the Planning Board | |
| Farmers market | 1 per 300 sf of gfa | See Note 1 |
| Farm stand | 1 per 200 sf or part thereof | See Note 1 |
| Health club | 1 per 150 sf of gfa | See Note 2 |
| Home occupation | 1 per 200 sf of gfa used for the occupation | |
| Hotel, motel, boardinghouse | 1 per guest room or suite | |
| Hotel, convention/conference center | 1 per guestroom or suite, plus 1 space per each 4 seats in the largest assembly hall or meeting area | |
| Hospital | 2 per 3 patient beds | 1 per staff member/employee on maximum shift |
| Kennel | 1 per 300 sf of gfa | |
| Laundromat, mega laundromat | 1 per 150 sf of gfa | See Note 2 |
| Live performance community theater | 1 per 3 seats | See Note 2 |
| Lodge | With fixed seats: 1 per 2 seats Without fixed seats: 1 per 100 sf of gfa | |
| Lumberyard | 1 per 200 sf of gfa | See Note 1 |
| Main Street Business District | 1 per 150 sf of gfa Second/third story: residential: 1 per bedroom Office: 1 per 500 sf of gfa | See Notes 2 and 3 |
| Manufacturing warehouse, research and development | 1 per 400 sf of gfa Multi-tenant: 1 per 250 sf of gfa | See Note 1 |
| Marinas | 1 per 3 boat slips, boat rack or mooring station | |
| Mini-storage warehouse | 1 per 2,000 sf of gfa | See Note 1 |
| Mixed-use building | 1 per 150 sf of gfa Second story: 1 per residential bedroom or 1 per 500 sf of gfa for nonresidential | See Note 2 |
| Model dwelling | 4 per first model dwelling unit and | 2 additional spaces per each additional adjoining model dwelling unit |
| Motor vehicle dealership Heavy construction dealership | Showroom: 1 per 1,000 sf of gfa | 1 per employee Service area: 1 per 300 sf of gfa |
| Motor vehicle fueling station | A minimum of 2 stalls | |
| Motor vehicle rental | 1 per 400 sf of gfa | |
| Motor vehicle repair | 1 per 200 sf of gfa | Plus depot as directed by the Board |
| Motor vehicle wash | 1 per 400 sf of gfa | Finishing area: 10 for automatic, 2 for self-serve |
| Movie theater, community | 1 per 3 seats | See Note 2 |

| Principal Land Use | Parking Requirement | Additional Requirement |
|------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Movie theater, regional | 1 per 2 seats | |
| Non-degree-granting instruction programs | 1 per 150 sf of gfa | See Note 2 |
| Nursery/Garden center | A minimum 10 stalls, plus 1 per 10,000 sf of land or part thereof | 1 per 150 for building area over 5,000 See Note 1 |
| Office | 1 per 150 sf of gfa | See Note 2 |
| Outdoor display | None | See Note 1 |
| Outdoor seating | 1 per 4 seats for full waiter service seating 1 per 8 seats for no waiter service seating | See Note 1 |
| Outdoor storage | 1 per 20,000 sf of land or part thereof | See Note 1 |
| Place of worship | 1 per 3 persons in sanctuary areas | See Note 2 |
| Personal service shop | 1 per 150 sf of gfa | See Note 2 |
| Pharmacy | 1 per 150 sf of gfa | See Note 2 |
| Printing plant | 1 per 300 sf of gfa | |
| Public utility | 1 per 300 sf of gfa | |
| Recreation/Amusement | Indoor: 1 per 150 sf of gfa or, with fixed seats; 1 per 2 seats Outdoor: 1 per 5,000 sf of land or, with fixed seats; 1 per 2 seats | See Note 2 |
| Residential | Single- and two-family dwelling: 2 per dwelling unit Multifamily dwelling: 2 per dwelling unit Planned retirement community: 1.5 per dwelling unit Assisted-living facility, congregate housing: 1 per dwelling unit Nursing home: 1 per 2 patient beds, plus 1 per 150 sf of office gfa Fraternities, sororities, dormitories: 1 per 2 beds | 1 on-site off-street parking space per dwelling unit when an accessory apartment is permitted by § 85-258 Each parking space for all residential uses, other than single-family residential, must be accessible at all times; tandem parking arrangements are the equivalent of one parking space. |
| Restaurant; restaurant, major | Restaurant: 1 per 3 seats, or 1 per 150 sf of gfa, whichever is greater Major restaurant: 1 per 2 seats, or 1 per 100 sf of gfa, whichever is greater | See Note 2 |
| Restaurant, take-out, delicatessen | 1 per 150 sf of gfa | See Note 2 |
| Retail, shops and stores | 1 per 150 sf of gfa | See Note 2 |
| Schools | Public, private school or parochial school with or without dormitory facilities: 1.5 per classroom College/University, excluding dormitories: 1 per 150 sf of gfa | Plus safe and convenient loading and unloading of students |
| Shops for custom work | 1 per 150 sf of gfa | |
| Stone and mason supply | A minimum 10 stalls, plus 1 per 20,000 sf of land or part thereof | See Note 1 |
| Undertaking establishment | 1 per 150 sf of gfa or 20 per viewing room, whichever is greater | See Note 2 |
| Veterinarian | 1 per 200 sf of gfa | See Note 2 |

NOTES:

- (1) The areas of any accessory outdoor sales area, outdoor storage area, or outdoor seating shall be included in minimum parking and loading space calculations.
- (2) Improved and designated on-street parking along the development street frontage or municipal parking within 200 feet of the site may be included in meeting the parking requirement at the discretion of the Planning Board.
- (3) The Planning Board may consider a fee in lieu of required parking which shall be utilized for improvements and/or maintenance of municipal parking facilities.

§ 85-853. Plot plan required.

[Amended 10-28-2014 by L.L. No. 23-2014, effective 11-4-2014]

Every application for a permit to erect, enlarge or alter a building, structure or premises which requires a parking or loading area or on-street parking shall be accompanied by a plot plan drawn to scale, upon which the following will be shown:

- A. The required number of parking spaces and loading spaces with the passageways and driveways appurtenant thereto giving direct access to a street.
- B. The location and width of all curb cuts for driveways, travel ways, entrances and exits as approved by the Town Superintendent of Highways and, in a proper case, by the County Department of Public Works or by the State Department of Transportation.

§ 85-854. Construction and maintenance of facilities.

[Amended 10-28-2014 by L.L. No. 23-2014, effective 11-4-2014]

Off-street and on-street parking and loading areas in all districts shall be constructed and maintained in the following manner:

- A. Parking lot or field maintenance. Any paving, sealing, striping or signage changes shall require a building permit and must be maintained in accordance with the current ADA parking requirements of the NYS Building and Property Maintenance Code.
 - (1) Existing parking lots that do not meet current ADA parking requirements for the number and/or size of handicap-accessible parking stalls shall not be penalized for loss of parking stalls as a result of handicap-accessible parking being brought into compliance.
- B. An off-street parking stall shall be not less than nine feet wide and 19 feet long for a ninety-degree parking stall. The dimensions of the parking spaces shall be determined by the Planning Board based on the design and the type of improvements to be done to the parking lot or field.
- C. An off-street parking stall shall be not less than eight feet wide and 22 feet long for parallel parking stalls. Generally, angled parking at a forty-five-degree angle shall be not less than 12 feet wide, as measured along the curbline, and 18 feet long, as measured parallel to and from the curbline. Generally, angled parking at a sixty-degree angle shall be not less than 11 feet wide, as measured along the curbline, and 19 feet long, as measured parallel to and from the curbline. The dimensions of the parking spaces shall be determined by the Planning Board based on the design and the type of improvements to be done to the parking lot or field.
- D. A drive-through queue space shall be not less than nine feet wide and 22 feet long.
- E. All drive aisles and driveway widths within parking areas shall be determined by the Planning Board. Aisles adjoining or adjacent to a building shall be wide enough to accommodate fire lanes/zones as may be required by the New York State Uniform Fire Prevention and Building Code.

[Amended 2-28-2019 by L.L. No. 6-2019, effective 3-12-2019]
- F. All parking and loading spaces and the passageways and driveways appurtenant thereto shall be paved with an asphaltic or concrete surface, including other impervious materials as may be determined by the Planning Board based on the design and the type of improvements to be done to the parking lot or field.
- G. Each parking and loading space shall be clearly marked and delineated.
- H. The entire parking area shall be adequately illuminated at night during the business hours of the premises which it serves, in accordance with the lighting standard provisions of this chapter.
- I. All underground installations shall have suitable covers or bridges sufficient to support all traffic over the same.
- J. Concrete curbs and sidewalks shall be provided along all street frontages, except such requirement may be waived by the Superintendent of Highways.
- K. Paving, curbing, sidewalks, signs, traffic signs, catch basins and any other required work or installation shall fully comply with the Town of Brookhaven standard street and public improvement construction specifications.
- L. Landbanked parking.
 - (1) Parking adequacy. The Planning Board shall be solely responsible for determinations concerning the adequacy of parking and as a part of site plan review shall be authorized to require the temporary waiver or landbanking of parking in order to supplement the proposed landscape or natural areas or to accommodate cross access or similar planning objectives, provided that it is determined adequate parking exists on site to accommodate the proposed use.
 - (2) Commissioner review. The Commissioner of Planning, Environment and Land Management shall also be authorized to require the temporary waiver or landbanking of parking in an amount not to exceed 25% of the required parking on site.

§ 85-855. Prohibited uses.

[Amended 10-28-2014 by L.L. No. 23-2014, effective 11-4-2014]

- A. Front yards; parking and loading areas. No part of any required front yard, other than a driveway in a residential district, shall be used for the parking of motor vehicles or for loading and unloading operations. No part of any parking or loading area shall be used for sales, storage of trailers, carts, boats, car parts, repair work, dismantling or servicing of any kind.
- B. Parking of commercial vehicles in residential districts.
 - (1) Prohibitions. The parking of commercial vehicles with a gross vehicle weight rating of 10,000 pounds or more on residential streets and residential property is hereby prohibited.
 - (2) Exceptions. The following shall be excepted from the provisions of this subsection:
 - (a) Motor vehicles with a gross vehicle weight rating of not more than 10,000 pounds.
 - (b) Commercial vehicles in the process of making local deliveries.
 - (c) Commercial vehicles owned by public utilities and governmental and municipal agencies where necessary for the maintenance, repair and construction of public utility and governmental and municipal services and facilities.

§ 85-856. Availability of parking spaces.

[Amended 10-28-2014 by L.L. No. 23-2014, effective 11-4-2014]

Parking spaces shall not be considered provided pursuant to this article unless they are readily available without charge to the residents, employees and visitors of the building, structure or premises for which such parking spaces are required.

§ 85-857. Revocation of certificate of occupancy.

[Amended 10-28-2014 by L.L. No. 23-2014, effective 11-4-2014]

The Town Board, after determining that the parking or loading facilities required by this article and the current NYS Building and Property Maintenance Codes are not being maintained in full compliance with the provisions of this article, may forthwith revoke the certificate of occupancy issued for the building, structure or premises for which the parking or loading facilities are required.

§ 85-858. Exceptions.

[Amended 10-28-2014 by L.L. No. 23-2014, effective 11-4-2014]

The foregoing provisions of this article shall not apply to the following districts: RD Residence District, CD Commercial District and OFD Oceanfront Dune District.

§ 85-859. through § 85-861. (Reserved)

§ 85-862. Exterior lighting standards.

§ 85-863. Purpose.

- A. The general purpose of §§ **85-862** through **85-873** is to protect and promote the public health, safety and welfare, the quality of life, and the ability to view the night sky by establishing provisions and a process for review of exterior lighting.
- B. Sections **85-862** through **85-873** establish provisions for exterior lighting in order to accomplish the following:
 - (1) To provide safe roadways for motorists, cyclists and pedestrians;
 - (2) To protect against direct glare and excessive lighting;
 - (3) To ensure that sufficient lighting can be provided where needed to promote safety and security;
 - (4) To prevent light trespass in all areas of the Town;
 - (5) To protect and reclaim the ability to view the night sky;
 - (6) To allow flexibility in the style of lighting fixtures;
 - (7) To provide lighting guidelines;
 - (8) To discourage the wasting of energy used to produce excessive lighting;

- (9) To provide assistance to property owners and occupants in bringing nonconforming lighting into conformance with §§ **85-862** through **85-873**;
- (10) To minimize the impact of stray lighting on human health, habitat and environment.
- C. Definitions. As used in §§ **85-862** through **85-873**, unless otherwise expressly stated, the following terms shall have the meanings indicated:

AREA LIGHT

A luminaire designed for illumination of a broad area. Area lights include, but are not limited to, streetlights, parking lot lights and yard lights over 1,800 lumens (100 watts incandescent).

AVERAGE HORIZONTAL FOOTCANDLE

The average level of illuminance for a given situation measured at ground level with the light meter placed parallel to the ground.

ESSENTIAL LIGHTING

Lighting that is used for a specified period of time, which is necessary for a specific task or purpose while said task or purpose is actively being performed. This includes lighting that is necessary to promote public safety or facilitate public circulation.

EXCESSIVE LIGHTING

Illuminance levels beyond that which is required for safety, as is indicated on the Table of Limits of Illumination Levels (See Table 3, included as an attachment to this chapter.)

EXTERIOR LIGHTING

Temporary or permanent lighting equipment that is installed, located or used in such a manner with the intention to cause light rays to shine outdoors. Luminaires located indoors that are intended to light something outside are considered exterior lighting for the purposes of §§ **85-862** through **85-873**.

FIXTURE (ALSO CALLED "LUMINAIRE")

The bulb, the assembly that holds the bulb (or lamp) in a lighting system, and the mounting apparatus, including reflecting elements, shielding elements, cover glass or lenses, the ballast, and the housing.

FLOODLIGHT

A fixture rated to produce over 1,800 lumens (100 watts incandescent), regardless of the number of bulbs, and is designed to flood an area with light.

FOOTCANDLE (FC)

The American unit of illuminance (the amount of light falling on a surface). One footcandle is approximately equal to the illuminance produced by a light source of one candle, measured on a surface one foot away from the source. Horizontal footcandles measure the illumination striking a horizontal plane. Footcandle values can be measured directly with certain handheld incident light meters.

FULL CUTOFF (FCO)

A classification for a luminaire designed and installed where no light is emitted at or above a horizontal plane running through the lowest point on the luminaire. In addition, the luminous intensity (as measured in candelas) emitted at any angle from 80° up to 90° cannot exceed a numerical value equal to 10% of the lumen rating of the lamp, as reported in a photometric report from the manufacturer as produced by an independent lab. A cutoff, or semi-cutoff, design allows a restricted amount of light emitted above the horizontal and a non-cutoff provides no restriction against light emitted above the horizontal.

FULLY SHIELDED

A luminaire constructed, lamped, and installed in such a manner that all light emitted by it, either directly from the lamp or a diffusing element, or indirectly by reflection or refraction from any part of the luminaire, is projected below the horizontal. A full cutoff fixture is also fully shielded, but without any restrictions on light distribution below the horizontal plane, and it can be identified without a manufacturer's report.

GLARE

Stray, unshielded light striking the eye that may result in:

- (1) Nuisance or annoyance, such as light falling across property lines;
- (2) Discomfort, such as bright light causing squinting of the eyes;
- (3) Disability, such as bright light reducing the ability of the eyes to see into shadows and visual performance; or
- (4) Distracting light which diverts the eye from a visual task.

HID LIGHTING

A family of bulb types known as "high intensity discharge," including high-pressure sodium, mercury vapor, and metal

halide. These types require a warm-up time, usually require a ballast, and have a higher lumen output per watt than incandescent or halogen lamps.

HOLIDAY LIGHTING

Temporary lights used to celebrate holidays. Holiday lighting includes, but is not limited to, strings of small individual lights, illuminated menorahs, illuminated nativity scenes, illuminated candles, and various yard decorations seasonal in nature.

IESNA

Illuminating Engineering Society of North America (IES or IESNA), an organization that establishes updated standards and illumination guidelines for the lighting industry.

IESNA RECOMMENDED PRACTICES

The publications of the IESNA setting forth illuminance levels for different task areas, e.g., walkways, streets, sports lights, etc.

ILLUMINANCE

The density of light falling on any point of a surface, usually measured in footcandles in the United States. See "footcandle."

LAMP

The generic term for an artificial light source, to be distinguished from the whole assembly (see "fixture"); commonly referred to as the "light bulb."

LIGHT

The form of radiant energy acting on the retina of the eye to make sight possible.

LIGHTING ASSEMBLY

Any or all parts of a luminaire that function to produce light, including the bulb, assembly, ballast, mounting features and/or pole.

LIGHT POLLUTION

Any adverse effect of man-made light, including but not limited to glare, light trespass, skyglow, visual clutter, wasted energy due to excessive or unnecessary lighting, or any man-made light that unnecessarily diminishes the ability to view the night sky or is disruptive to flora and fauna.

LIGHT TRESPASS

Light projected onto the property of another or into the public right-of-way when it is not required or permitted to do so.

LUMEN

A unit used to measure the actual amount of light that is produced by a bulb. The lumen quantifies the amount of light energy produced by a lamp at the lamp, not by the energy input, which is indicated by the wattage. For example, a seventy-five-watt incandescent lamp can produce 1,000 lumens while a seventy-watt high-pressure sodium lamp produces 6,000 lumens. Lumen output is listed by the manufacturer on the light bulb packaging.

LUMINAIRE

The complete lighting assembly (including the lamp, housing, ballasts, photocells, reflectors, lenses and shields), including the support assembly (pole or mounting bracket); a light fixture. For purposes of determining total light output from a luminaire or light fixture, lighting assemblies which include multiple unshielded or partially shielded lamps on a single pole or standard shall be considered as a single unit.

LUMINANCE

The brightness of a source of light.

MOUNTING HEIGHT

The distance from natural grade to the lowest light-emitting part of the luminaire.

NONCONFORMING

Lighting which does not meet the requirements and specifications contained herein.

NONESSENTIAL LIGHTING

Lighting which is unnecessary and not generally useful (e.g., decorative and landscape lighting). This includes lighting intended for a specific task or purpose when said task or purpose is not being actively performed (e.g., parking lot illumination and wall-mounted perimeter lights after business hours).

PARTIALLY SHIELDED

A luminaire which is not fully shielded but incorporates a partial shield around the lamp.

PHOTOMETRICS

Technical test reports that indicate light distribution and performance from a luminaire. Photometric reports may include candlepower distribution data, cutoff classifications, footcandle charts, etc. These are generally available from the

luminaire manufacturers.

SKYGLOW

The overhead glow from light emitted sideways and upwards, including light reflected upward from the ground or other surfaces. Skyglow is caused by the reflection and scattering of various forms of light by dust, water, and other particles suspended in the atmosphere. Among other effects, skyglow reduces one's ability to view the night sky. Different sources of light, in equal quantities, can contribute differently to sky glow.

TEMPORARY LIGHTING

Lighting that is intended to be used for a specific event and removed within seven days thereafter.

UNIFORMITY RATIO (U RATIO)

A ratio that describes uniformity of illuminance across an area. The uniformity ratio may be a ratio of the maximum-to-minimum illuminance or the average-to-minimum illuminance. For example, if the Illuminating Engineering Society recommends an average-to-minimum ratio of 4:1 for a parking lot, the minimum illuminance should be no less than 1/4 of the average illuminance across the parking lot.

UNSHIELDED FIXTURE

A fixture which, as designed or installed, emits all or part of the light emissions above the lowest light-emitting part of the fixture.

REPAIR OF A LUMINAIRE OR SIGN

Any service normally provided by a licensed electrician upon a luminaire or sign. Repair shall be considered to include replacement or modification of any of the following: poles, mounting arms, housings, hardware, wiring, ballasts, lenses, reflectors, diffusers, baffles, shields, sensors, switches, relays, power supplies, and lamp replacement modules which contain any of the items listed above. Replacement of a user-serviceable lamp will not by itself be considered a repair.

§ 85-864. Applicability; nonconforming lighting; exceptions.

- A. All exterior lighting, installed, replaced, altered, changed, repaired or relocated after the effective date of §§ **85-862** through **85-873**, shall conform to the provisions established by §§ **85-862** through **85-873** except as provided hereto.
- B. Existing exterior lighting in conflict with §§ **85-862** through **85-873** shall be classified as "nonconforming." Except as provided elsewhere in §§ **85-862** through **85-873**, all exterior lighting existing or installed prior to the date of the adoption herein, which does not conform with the provisions of §§ **85-862** through **85-873**, shall be exempt, provided that the following requirements are met:
 - (1) Upon adoption of §§ **85-862** through **85-873**, with any installation, replacement, alteration, change, repair, or relocation of any nonconforming luminaire, such luminaire shall be brought in compliance with the terms of §§ **85-862** through **85-873**.
 - (2) To the extent that preexisting residential exterior floodlights can accommodate lamps of a total of less than 1,800 lumens (100 watts incandescent), said exterior lighting shall be equipped with a lamp or lamps of a total of less than 1,800 lumens (100 watts incandescent) per fixture and, to the extent possible, be angled downward, such that the center beam is not directed above a forty-five-degree angle measured from the vertical line drawn from the center of the lamp to the ground, and so as not to cause glare, light trespass, or beam spread beyond the intended target or across property lines. Operable photocells, motion sensors, timers that allow a light to go on at dusk and off by 11:00 p.m., as well as retrofit shields, are encouraged to alleviate nuisance and disability glare.
 - (3) Lighting that is determined by municipal law enforcement to contribute to a condition of disabling or distracting glare into a public roadway may be ordered to be changed or removed at any time.
 - (4) Nonessential lighting can be ordered extinguished, including mobile or ground-mounted searchlights, laser light shows, decorative flashing, blinking, or tracing lights, exclusive of exempt holiday lighting.
- C. Exceptions.
 - (1) Unshielded residential luminaires. Unshielded residential luminaires equal to one sixty-watt incandescent lamp per fixture, regardless of number of lamps, are allowed, provided light trespass limitations are met.
 - (2) Vehicular lights and all temporary emergency lighting needed by the fire, ambulance, police departments or other emergency services are exempt.
 - (3) Holiday exterior lighting: holiday exterior lighting lit between October 15 and January 15 of the following year.
 - (4) Residential sensor-activated luminaires, provided:
 - (a) The luminaire is operational and located in such a manner, or shielded, to prevent glare and light trespass;
 - (b) The luminaire is set to only go on when activated and to go off within five minutes after activation has ceased; and

- (c) The sensor shall not be triggered by activity off the property.
- (d) The luminaire output, regardless of the number of lamps, does not exceed 1,800 lumens (100 watts incandescent).
- (5) Illumination of signs permitted pursuant to the Town of Brookhaven Chapter **57A**, Signs, and any amendments made hereto.
- (6) In situations of lighted flags which are not illuminated with "downward" lighting, upward lighting may be used in the form of a single ground-mounted narrow cone spotlight which confines the illumination to the flag, provided the lumen output is no more than 1,300 lumens, regardless of the number of lamps. The Town encourages the tradition of lowering flags at sunset to avoid the need for lighting.
- (7) Lighting of radio, communications and navigation towers is allowed, provided the owner or occupant demonstrates that the Federal Aviation Administration (FAA) regulations can only be met through the use of lighting that does not comply with §§ **85-862** through **85-873**, and that the provisions of §§ **85-862** through **85-873** are otherwise met to the fullest extent possible. Tower lighting shall not be permitted unless required by the FAA; in which case required lighting shall be of the lowest allowed intensity and red, unless specifically forbidden under FAA requirements. Towers which are constructed no higher than 199 feet are preferable to avoid the need for FAA lighting.
- (8) Runway lighting. Lighting on any approved landing strip or runway, provided that the owner or occupant demonstrates that FAA regulations can only be met through the use of lighting that does not comply with §§ **85-862** through **85-873**.

§ 85-865. Placement and height of fixtures for residential and nonresidential exterior lighting.

- A. No residential or nonresidential luminaires shall be taller than 20 feet from the natural grade to the lowest light-emitting part of the fixture. Parking area lights are encouraged to be greater in number, lower in height and lower in light level, as opposed to fewer in number, higher in height and higher in light level.
- B. Luminaires for municipal playing fields and new municipal streetlights shall be exempt from the height restriction, provided all other provisions of §§ **85-862** through **85-873** are met.
- C. Privately owned or leased light fixtures located on public utility poles or located in the public right-of-way are prohibited.
- D. All exterior lighting rated to be lamped at 1,800 lumens (100 watts incandescent) and greater shall use full cutoff luminaires, as determined by photometry test or certified by the manufacturer, and installed as designed with the light source directed downward. All exterior lighting 1,800 lumens (100 watts incandescent) and less shall use fully shielded fixtures and shall be installed as designed.

§ 85-866. Illumination levels and prohibited effects for residential and nonresidential exterior lighting.

- A. All residential and nonresidential exterior lighting shall not cause light trespass and shall protect adjacent properties from glare and excessive lighting.
- B. All lighting in the Town of Brookhaven shall not exceed recommended light levels as listed in Table of Illumination Limits, Table 3.^[1]
 - [1] *Editor's Note: Table 3 is included as an attachment to this chapter (see Attachment 8).*
- C. All streetlight luminaires shall be full cutoff, except that a historic-style decorative luminaire may emit up to 2% of its total lumens above the horizontal plane; and:
 - (1) For roadway lighting, a determination is made that the purpose of the lighting installation or replacement cannot be achieved by installation of reflectorized roadway markers, lines, warnings, informational signs, or other passive means; and
 - (2) Adequate consideration has been given to conserving energy and minimizing glare, sky glow, and light trespass.

§ 85-867. Illuminance and type of lamp for all nonresidential exterior lighting.

- A. Permissible luminaire location and effects.
 - (1) No luminaire shall be located or concentrated so as to produce glare or direct illumination across the boundary property line, nor shall any such light be of such intensity as to create a nuisance or detract from the use and enjoyment of adjacent property. See Table 1 and Table 2 for setback, height, and maximum light output recommendations for guidance.^[1]

Editor's Note: Tables 1 and 2 are included as attachments to this chapter (see Attachment 8).

- (2) The maximum illuminance at or beyond the property line that adjoins a residential parcel or public right-of-way may not exceed 0.05 footcandle horizontal on the ground or 0.05 footcandle vertical measured at a five-foot height above the ground, unless another applicable law supersedes. Maximum horizontal or vertical illuminance allowed between adjacent commercial properties is 0.1 footcandle.
- B. Permissible levels of illuminance.
- (1) The average illuminance levels listed in the Illumination Levels for Various Common Tasks, as provided in Table 3,^[2] shall not be exceeded for nonresidential exterior lighting unless otherwise specified or approved by the reviewing board, department, division or agency of the Town of Brookhaven.
[2] Editor's Note: Table 3 is included as an attachment to this chapter (see Attachment 8).
 - (2) The Town of Brookhaven recognizes that not every situation will require lighting, including situations which may utilize the installation of reflectorized markers, lines, signs or other passive means, and excessive or unnecessary light shall be avoided.
 - (3) Illuminance level measurements for parking lots, sidewalks, and other walkways shall include light contributions from nearby side-mounted building lights, freestanding sidewalk lights affected by side-mounted building lights, and streetlights.
 - (4) In no instance may any lighted surface, as installed, except for municipal athletic fields, exceed the maximum values listed in Table 3 for the appropriate task, as measured horizontally or vertically by a light meter.
- C. High-pressure sodium, compact fluorescent, or low-pressure sodium shall be used for all light sources rated over 1,800 lumens (100 watts incandescent). Metal halide (MH) rated over 3,000K and mercury vapor (MV) light sources are not permitted.

§ 85-868. General standards for nonresidential exterior lighting.

- A. All exterior lighting shall be designed, located, and lamped in order to prevent:
- (1) Overlighting;
 - (2) Energy waste;
 - (3) Glare;
 - (4) Light trespass; and
 - (5) Unnecessary skyglow.
- B. All conforming and nonconforming exterior lighting shall be turned off within 1/2 hour after the close of business and no later than 11:00 p.m. for those businesses that are closed to the public on or before 9:00 p.m. Lights that are controlled by photocells and timers are encouraged, as is the use of sensor-activated lights to replace existing lighting which may be needed for safety or emergency purposes.
- C. Under-canopy lights, such as service station lighting, shall be full cutoff and fully recessed to prevent glare and light trespass. Illuminance levels at gas stations shall not exceed those established in Table 3.^[1]
[1] Editor's Note: Table 3 is included as an attachment to this chapter (see Attachment 8).
- D. Area exterior lights. All area exterior lights shall be full cutoff luminaires.
- E. After the adoption of §§ **85-862** through **85-873**, no person, firm, owner, tenant, person in possession, partnership, corporation or other business entity shall install, replace, relamp, or repair any luminaire that lights a public right-of-way within the Town of Brookhaven, under the Town's jurisdiction, without first receiving prior written approval for such installation from the applicable board, department, division or agency of the Town of Brookhaven.
- F. Automatic teller machine (ATM) and other bank lighting shall be full cutoff and shall not cause glare or light trespass. Light levels shall not exceed those established by the New York State ATM Lighting Law as enacted in 2006.^[2]
[2] Editor's Note: See the ATM Safety Act, Banking Law § 75-a et seq.
- G. Unshielded wall packs and floodlights are prohibited.

§ 85-869. Procedures for review of nonresidential exterior lighting.

- A. Any application submitted to any board, department, division or agency of the Town of Brookhaven shall include exterior lighting plans, luminaire and controls specifications and additional documentation if any exterior lighting is to be used,

regardless of whether the exterior lighting is preexisting or proposed, showing the following, in order to verify that exterior lighting conforms to the provisions of §§ 85-862 through 85-873:

- (1) Location of each current and proposed outdoor exterior lighting fixture indicated on a site plan.
 - (2) Type of luminaire equipment, including cutoff characteristics, indicating manufacturer and model number.
 - (3) Lamp source type, lumen output, and wattage.
 - (4) Mounting height indicated, with distance noted to nearest property line, for each proposed and existing luminaire.
 - (5) Shielding and all mounting details, including pole foundation description.
 - (6) Initial illuminance levels as expressed in footcandle measurements on a grid of the site showing footcandle readings in every five-foot square. The grid shall include light contributions from all sources (i.e., pole-mounted lights, wall-mounted lights, and signs, including streetlights).
 - (7) Statement of the proposed hours when each luminaire will be operated.
 - (8) Total exterior lighting lamp lumens for proposed property.
 - (9) Lighting manufacturer specifications ("cut sheets") with photographs of the fixtures, indicating the cutoff characteristics of the luminaire.
 - (10) Detailed IES formatted photometric data for each fixture at mounting height and lumens proposed. (Note: This is computer-generated data which is supplied by all manufacturers, describing the light output of a fixture, upon which lighting plans are based. This will allow the Planning Department to fully assess the suitability of a fixture in a lighting plan, should it wish to double check the submission.)
 - (11) Types of timing devices used to control on/off.
 - (12) If necessary, documentation by a licensed lighting engineer showing that the provisions can only be met with a design that does not comply with §§ 85-862 through 85-873.
 - (13) Appropriate exterior lighting levels are dependent upon the general nature of the surroundings, and the reviewing board, department, division or agency of the Town of Brookhaven may require more or less than those listed in Table 3,^[1] which are based on the IESNA Recommended Practices Guidelines, RP 33 Lighting for Exterior Environments and RP 20 Lighting for Parking Lots.
^[1] *Editor's Note: Table 3 is included as an attachment to this chapter (see Attachment 8).*
- B. No exterior lighting shall be installed, replaced, altered, changed, repaired, relocated, enlarged, moved, improved, or converted unless it conforms to a lighting plan approved by the applicable reviewing board, department, division or agency of the Town of Brookhaven.
- C. The following guidelines will be made available to applicants to facilitate compliance:
- (1) Illustrations of full cutoff and fully shielded fixtures.
 - (2) Diagrams of generally acceptable and generally unacceptable light fixtures.
 - (3) Diagrams of recommended fixture placement in relation to the property line to control light trespass.
 - (4) Table for mounting height and maximum light output recommendations.
 - (5) Table of limits of illumination targets for various common tasks, including parking lots, gas stations, walkways, and signs.

§ 85-870. Guidelines for Exterior Lighting.

The Guidelines for Exterior Lighting included as an attachment to this chapter,^[1] and any amendments thereto, are hereby incorporated and made part of §§ 85-862 through 85-873.

^[1] *Editor's Note: See Attachment 8.*

§ 85-871. Illegal exterior lighting.

- A. The Chief Building Inspector shall cause a notice of such violation to be served on the owner or person in possession of the building, structure or lot where said exterior lighting is located or the lessee or tenant of the part of or of the entire building, structure or lot where said exterior lighting is located, requiring such owner, person in possession, lessee or tenant to remove such illegal exterior lighting within 30 days. Such notice may be served personally or by certified mail, return receipt

requested, and shall notify the owner, lessee or tenant that the failure to remove said exterior lighting may result in the issuance of an appearance ticket and/or an action in Supreme Court seeking the removal of said exterior lighting.

- B. Any person, firm, owner, tenant, person in possession, partnership, corporation or other business entity who or which fails to comply with a written order of the Chief Building Inspector of the Town of Brookhaven within 30 days from the date of notice or fails to comply with any lawful order, notice, directive, permit or certificate of the Chief Building Inspector made hereunder shall be deemed in violation of §§ **85-862** through **85-873**. Failure to comply may result in actions and proceedings, either legal or equitable, to enjoin, restrain or abate any violation of §§ **85-862** through **85-873**.
- C. All exterior lighting under the jurisdiction of the Town of Brookhaven that does not conform to these regulations shall be brought into compliance within 10 years of the effective date of the adoption of these regulations or when the light fixtures are removed or replaced, whichever occurs first.

§ 85-872. Prohibited acts.

It shall be unlawful for any person, firm, owner, tenant, person in possession, partnership, corporation or other business entity to install, alter, repair, move, equip, use or maintain any exterior lighting in violation of any of the provisions of §§ **85-862** through **85-873**, or to fail in any manner to comply with a notice, directive or order of the Chief Building Inspector of the Town of Brookhaven.

§ 85-873. Severability.

If any clause, sentence, paragraph or section of §§ **85-862** through **85-873** shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not impair or invalidate the remainder hereof, but such adjudication shall be confined in its operation to the clause, sentence, paragraph or section directly involved in the controversy in which judgment shall have been rendered.

§ 85-874. through § 85-878. (Reserved)

§ 85-879. Yard encroachments.

Every part of a required yard shall be open and unobstructed by any building or structure from its lowest point upwards, except as follows:

- A. Accessory buildings and structures are permitted in the rear yards and non-required side yards in those districts in which they are specifically permitted.
- B. Awnings, sills, cornices, buttresses and eaves may project not more than two feet over or into any required yard.
- C. Walks not wider than four feet and not above grade greater than eight inches at any point constructed of any material, strips and steps for negotiating ground slopes, retaining walls, hedges and natural growth, fences, paved terraces and paved areas which are not roofed over and are unenclosed except for an open guardrail not over three feet in height, all accessory to and customarily incidental to the principal use, are permitted in yards; provided, however, that a strip four feet in width adjoining the lot shall be unobstructed by any structure or feature that is higher than two feet above the ground level, except a fence, hedge or natural growth or retaining wall.
- D. Unenclosed one-story roof-over porches.
[Added 3-27-2019 by L.L. No. 8-2019, effective 4-1-2019; amended 10-3-2019 by L.L. No. 22-2019, effective 10-16-2019]
 - (1) Unenclosed one-story roof-over porches to building entrances in the front of the building, not greater than the width of the principal building, excluding attached garages, may extend not more than six feet into the required front yard. Notwithstanding the dimensions herein, in no instance may said porch encroach closer than 24 feet from the front lot line. For purposes of this section, a handicap accessibility ramp shall be a permitted encroachment into any yard.
 - (2) Unenclosed one-story roof-over porches to building entrances on the side, rear or secondary fronts, not greater than eight feet in width, may extend not more than four feet into any required side, rear or secondary front yard. For purposes of this section, a handicap accessibility ramp shall be a permitted encroachment into any yard.
- E. Openwork fire balconies, fire escapes and exterior entrances into basements may extend not more than five feet into a required yard.
- F. Chimneys and flues may extend not more than two feet, for a length not exceeding 10 feet, into a required yard.
- G. Unenclosed ground-level or first-story decks may extend into the required side yard, required rear yard or non-required front yard, but may not exceed the setback requirements for accessory structures. No part of any deck greater than four feet in height above the surrounding ground level may be located closer than 15 feet to a side or rear property line.

- H. Unroofed steps to building entrances, not wider than eight feet and with each step not deeper than 12 inches.
- I. Playground equipment, swing sets, generators and pool equipment located in the secondary front yard shall be set back twice the distance required under applicable zoning district setback requirements.
[Added 10-3-2019 by L.L. No. 22-2019, effective 10-16-2019]

§ 85-880. Corner and through lots.

- A. Every corner lot and every through lot shall have a front yard on each street. The depth of each front yard shall be determined by the regulations applicable to the district in which said lot is located.
- B. For principal structures located on corner lots, that portion of said corner lot which has frontage upon the street which the main entrance of the building faces, as shown by plans or physical layout, shall be deemed the primary front; the rear lot line shall be opposite the primary front lot line; and that portion of a corner lot which has frontage upon the street which the main entrance of the building does not face, as shown by plans or physical layout, shall be deemed a secondary front; lot lines opposite a secondary front lot line shall be deemed a side yard and shall have a minimum width equal to the minimum side yard requirements of the zoning district in which located.
- C. For principal structures located on corner lots, the rear yard shall consist of an open unoccupied space situated between the rear lot line (the "rear lot line" consists of the lot line directly opposite the street upon which the side of the house having the main entrance faces) and the rear line of the structure (the "rear line of the structure" consists of the side of the structure directly opposite the side of the structure in which the main entrance is located), but such rear yard shall not extend beyond the side lines of the structure on any side that faces a street.

§ 85-881. Waterfront lots.

No building permit shall be issued for the construction or alteration of any structure located on a freshwater or tidal wetland, as defined by the Wetlands Law of the Town of Brookhaven,^[1] until the applicant has complied with all the provisions of said Wetlands Law and has obtained a permit pursuant to said Wetlands Law when necessary.

[1] *Editor's Note: See Ch. 81, Wetlands and Waterways.*

§ 85-882. Visibility at intersections.

On any corner lot, no wall, fence, barrier, structure, vehicle, pile, mound, hedge, tree, shrub, bush or other growth which may cause danger to traffic by obscuring or obstructing visibility at intersections shall exceed 2 1/2 feet in height, measured from the existing elevation of the center line of any intersecting street, at any point within a radius of 30 feet of the apex of the corner formed by any intersecting streets.

§ 85-883. Nonconforming uses.

- A. The lawful use of any building, structure or lot(s) existing at the effective date of the zoning ordinances of the Town of Brookhaven may be continued although such use does not conform to the provisions of this chapter, provided that the following conditions are met:
 - (1) Establishment. The establishment of a nonconforming use shall require the review and approval of the Board of Zoning Appeals.
 - (2) Extension. A nonconforming use shall not be extended, but the extension of a lawful use to any portion of a nonconforming building or structure which existed prior to the effective date of the zoning ordinances of the Town of Brookhaven shall not be deemed the extension of such nonconforming use.
 - (3) Changes. No nonconforming building, structure or use shall be changed to another nonconforming use.
 - (4) Displacement. No nonconforming use shall be extended to displace a conforming use, nor shall any nonconforming use be moved in whole or in part to any other portion of the lot or parcel of land occupied by such nonconforming use at the effective date of the zoning ordinances of the Town of Brookhaven.
 - (5) Restoration.
 - (a) Buildings or structures, exclusive of those used as a one- or two-family dwelling, damaged by fire, explosion, acts of God or other causes, may be repaired or rebuilt to the extent of no more than 50% of the reconstruction cost of the total structure, exclusive of the foundation. Any changes to the facade or other features of the building or site shall be subject to review pursuant to § 85-113 of this chapter.
 - (b) Buildings or structures used as a one- or two-family dwelling, damaged by fire, explosion, acts of God or other causes, may be repaired or rebuilt.

- (6) Discontinuance. The substantial discontinuance of any nonconforming use for a period of one year or more terminates such nonconforming use of a structure or premises and thereafter such structure or premises shall not be used, except in conformity with the provisions of the Town Code.
- (7) Construction approved prior to change of zone or prior to any amendment or adoption of local law. Nothing herein contained shall require any change in plans, construction or designated use of a building or structure for which a building or use permit has been issued and a certificate of occupancy issued within one year from the date of the issuance of the permit.
- (8) Subdivision. The subdivision of any parcel(s) on which a legal nonconforming use(s) exists terminates such legal nonconforming use of a structure or premises and, thereafter, said structure or premises shall not be used except in conformity with the provisions of this section.
- (9) Exemptions. Property which is the subject of the change in use district classifications from B Residence District, B Residence 1 District and A Residence District to A Residence 1 District enacted by the Town Board during 1988 may continue to be developed in accordance with the zoning classification in effect immediately prior to the change in use district classification, provided that the following conditions are met:
 - (a) The property was subject to a preliminary subdivision application, final subdivision application, land division application, resubdivision application, residential site plan application or 281 application filed with and pending before the Planning Board on or before February 10, 1987.
 - (b) The property was the subject of any of the above applications filed after February 10, 1987, but prior to December 27, 1988, for which the following criteria are met:
 - [1] The average lot size is 40,000 square feet or greater, exclusive of road areas or recharge basin areas.
 - [2] The average lot size is less than 40,000 square feet, the application receives approval by the Suffolk County Department of Health Services for the means and manner of sanitary waste disposal and/or the applicant is upgrading or sharing in the upgrading of an existing sewage treatment plant, creating a modular subregional sewage treatment plant or is contributing to the management of a sewage treatment plant that has been upgraded where moneys are lacking for management and operation.
 - [3] Any map located within Suffolk County Sanitary Code Article VI designated Groundwater Management Zone VIII which receives Suffolk County Department of Health Services approval for the means and manner of sanitary waste disposal.
 - [4] Any map which does not comply with the preceding may be amended by the applicant at the preliminary or final hearing to comply with an average lot density of 40,000 square feet, exclusive of road areas or recharge basin areas.
 - (c) Applications covered by Subsection A(9)(a) and (b) above shall be entitled to a two-year period in which to obtain final Planning Board approval and to be filed in the office of the County Clerk. Said two-year period is hereby extended for a period of time to expire on December 31, 1992. Notwithstanding the foregoing, any application subject to the automatic stay of Town Law § 282 as a result of SEQRA-based litigation challenges initiated by the Long Island Pine Barrens Society shall be entitled to an additional extension equal to the period of time during which the office of the Town Attorney had determined that the automatic stay applied to the application. Thereafter, said applications shall be entitled to building permits for the time limits contained in § 265-a of New York State Town Law.
 - (d) Any map approved pursuant to the above provisions shall contain a notation that relief from the new zoning categories has been granted pursuant to the provisions of this subsection.
- (10) Exemptions from two-acre zonings. Property which is the subject of the change in use district classifications from A-1 Residence District to A-2 Residence District enacted by the Town Board on June 20, 1989 (Parcels D-4A, DD-5 and DD-7), October 17, 1989 (Parcel DD-2), and January 6, 1990 (Parcel DD-2A) may continue to be developed in accordance with the A-1 zoning classification in effect immediately prior to the change in use district classification, provided the project application was filed prior to the public hearing date of its respective upzoning and received preliminary approval or 281 approval prior to the effective date of said upzoning. In addition, the Map of Middle Field Woods in Center Moriches may continue to be developed as filed. Said applications shall be entitled to a two-year period in which to obtain final Planning Board approval and to be filed in the office of the County Clerk. Notwithstanding the foregoing, any application subject to the automatic stay of Town Law § 282 as a result of SEQRA-based litigation challenges initiated by the Long Island Pine Barrens Society shall be entitled to an additional extension equal to the period of time during which the office of the Town Attorney had determined that the automatic stay applied to the application. Thereafter, said application shall be entitled to building permits for the time limits contained in § 265-a of New York State Town Law. Any map approved pursuant to the above provisions shall contain a notation that relief from the new zoning categories has been granted pursuant to the provisions of this subsection.

B. Nonconforming buildings and structures.

- (1) An existing nonconforming building or structure used as a one- or two-family dwelling with a certificate of occupancy or a certificate of existing use or its equivalent, located in a Residence District, whether located on a conforming lot or a

nonconforming lot, may be structurally altered, restored, repaired or reconstructed, in whole or in part, except that the degree of nonconformity shall not be increased nor shall there be any increase in the floor area of the building or structure except as permitted elsewhere in this code.

- (2) Existing nonconforming buildings or structures, exclusive of those used as a one- or two-family dwelling with a certificate of occupancy or a certificate of existing use or its equivalent, located in a Residence District, damaged by fire, explosion, acts of God or other causes, may be repaired or rebuilt to the extent of no more than 50% of the reconstruction cost of the total structure, exclusive of the foundation. Any changes to the facade or other features of the building or site shall be subject to review pursuant to § 85-113 of this chapter.
 - (3) Additions to existing buildings and structures with certificates of occupancy or a certificate of existing use or its equivalent in conformance with the zoning requirements at the time of construction shall be permitted, provided that said additions do not encroach deeper into any nonconforming front yard, side yard or rear yard than the distance into said front yard, side yard or rear yard that the existing foundation encroaches, exclusive of stoops, porches or patios.
- C. Whenever the boundaries of a district shall be changed so as to transfer an area from one district to another district of a different classification, the foregoing provisions of Subsection **A** shall not apply to any nonconforming uses existing therein.
- D. Nonconforming singly and separately owned lots.
- (1) Proof of single and separate ownership shall be submitted in the form of:
 - (a) A title search prepared by a title company licensed to do business in the State of New York covering the subject premises and all contiguous property.
 - (b) A survey prepared by a licensed surveyor describing the subject premises.
 - (2) Separate ownership. A single-family dwelling may be erected on any lot 60 feet or more in width, within a zoning district where otherwise permitted, which was separately owned at the time of the passage of the ordinance or on any such lot separately owned at the time of any amendment thereto heretofore adopted, and which has not come into common ownership with adjoining property, and which conforms to the minimum dimensional requirements set forth hereinbelow at Subsection **D(3)(a)** and the area density requirements.
 - (3) Bulk requirements.
 - (a) Notwithstanding the foregoing, structures or additions thereto may be erected on single and separate parcels, provided that the following dimensional and setback requirements are met:

| Lot Width (feet) | Maximum House Size (square feet) | Total Side Yards (feet) | Minimum Side Yards (feet) | Maximum Building Height (feet) | Maximum Attached Garage Area (square feet) |
|-----------------------|--------------------------------------------------------------------------|-------------------------------|---------------------------------|--------------------------------------|-----------------------------------------------------|
| 60 but less than 70 | First floor: 1,000 Second floor: 600 | 25 | 12 | 26 | 240 |
| 70 but less than 80 | First floor: 1,200 Second floor: 800 | 30 | 14 | 28 | |
| 80 but less than 90 | First floor: 1,500 Second floor: 850 | 35 | 16 | 28 | |
| 90 but less than 100 | First floor: 1,600 Second floor: 850 | 40 | 18 | 28 | |
| 100 but less than 150 | Side yard, lot coverages and building height of the B Residence District | | | | |
| 150 but less than 200 | Side yard, lot coverage and building height of the A Residence District | | | | |
| 200 or greater | Side yard, lot coverage and building height of the A Residence District | | | | |

NOTE: If lot depth is greater than or equal to 120 feet, the maximum first-floor area may be increased by 100 square feet for each additional 10 feet of lot depth.

- (b) A single-family dwelling may be erected on lots at least 60 feet in width, but less than 70 feet in width, subject to the following requirements:
 - [1] A minimum lot size of 6,000 square feet.
 - [2] Compliance with the dimensional requirements set forth hereinabove at Subsection **D(3)(a)**, except that relief may be granted by the Zoning Board of Appeals at the Board's sole discretion from no more than one of said requirements where to do so would be consistent with the requirements set forth in this chapter and Town Law

Article 16.^[1]

Note: If lot depth is greater than or equal to 120 feet, the maximum first-floor area may be increased by 100 square feet for each additional 10 feet of lot depth.

[1] *Editor's Note: See § 85-56C.*

- (c) The calculation of area for interior lots known as "flag lots" (lots with road frontage of 20 feet or less) shall exclude the area encompassed by or attributable to the portion of said lot which is 20 feet or less in width.
- (d) On corner lots, for purposes of calculation of all other dimensional requirements, the shorter(est) road frontage shall be the designated lot frontage.
- (4) Single and separately owned parcels may be merged with adjacent single and separate parcels to create larger parcels which more closely conform to the zoning requirements. In accordance with this policy, single and separate parcels located between adjacent single and separate parcels may be split and merged with the adjacent single and separate parcels. Also in order to encourage the merger of adjacent parcels to create larger parcels, the owner of a parcel of land which is in single and separate ownership may merge an adjacent parcel that is not in single and separate ownership with the subject parcel, provided the parcel not in single and separate ownership was a separate tax parcel on the June 1, 1978, Suffolk County Tax Map.
- (5) The Chief Building Inspector shall forward applications for building permits to the Division of Environmental Protection in order to review the potential environmental impacts of site development on the water supply and sanitary disposal aspects of a project with regard to groundwater contamination.
- (6) Minimum front yard/rear yard setbacks shall be as follows:
 - (a) Lots less than or equal to 125 feet in depth shall have a minimum front yard setback of 30 feet. The rear yard setback shall not be less than 35 feet. The Chief Building Inspector may permit front yard setbacks in conformity with the average setbacks in the immediate locale. In no event may the front setback be less than 25 feet.
 - (b) On lots greater than 125 feet in depth but less than 150 feet, the front yard and rear yard shall not be less than 40 feet in depth.
 - (c) On lots equal to or greater than 150 feet in depth but less than 175 feet, the front yard shall not be less than 50 feet in depth and rear yard not less than 60 feet in depth.
 - (d) On lots equal to or greater than 175 feet in depth, the minimum front yard and rear yard setbacks shall conform to the zoning district in which the lot is located.
- (7) The Zoning Board of Appeals, when reviewing applications for variances on lots that are not in single and separate ownership, may restrict development to the standards contained herein.

§ 85-884. Uses prohibited in all districts; advertising nonpermitted uses.

No building, structure or premises shall be used in any district for any trade, business, industry, use or industrial process that is injurious, hazardous, noxious or offensive to the surrounding area by reason of the emission of odor, dust, light, smoke, soot, gas fumes, vibration, noise or similar substances or conditions, or that is detrimental to the public health, morals, safety or general welfare. No person shall solicit, offer or advertise the use, sale or rental of any building, lot or premises or portion thereof for the purposes of any use not permitted by this chapter.

§ 85-885. Reduction in lot area.

- A. No lot shall be so reduced in area that any required open space will be smaller than that prescribed in the regulations for the district in which said lot is located.
- B. Effect of street widening on building plots. Notwithstanding any other provision of this chapter, any building plot in any district shall be credited for the reduction of overall lot area requirements and front yard requirements with the footage dedicated to or acquired by the Town of Brookhaven for the widening of streets.

§ 85-886. Uses prohibited in front yards.

No goods, wares, merchandise, produce or other materials, except farm, garden or nursery products produced on the premises, shall be displayed, sold or stored in the required front yard of any district.

§ 85-887. Sales trailers and sales offices.

[Amended 5-25-2017 by L.L. No. 14-2017, effective 6-7-2017]

- A. Intent. The Town Board of the Town of Brookhaven hereby finds and determines that in the case of large-scale residential project(s), the use of a sales office or mobile sales trailer may be appropriate, on a short-term basis, subject to reasonable standards contemplated to protect the neighboring residents and the community at large.
- B. Sales trailers for development projects of residential dwellings, whether detached, attached or semidetached, shall be permitted in all residential zoning districts, where a final subdivision map has been filed with the County Clerk or where a final site plan has been fully executed, and a building permit(s) has been issued in accordance therewith, subject to the following:
 - (1) The duly filed plat or section(s) thereof or executed final site plan provides for at least 25 dwelling(s) units.
 - (2) That appropriate sanitary, water supply and electrical service shall be installed, as evidenced by approval and permit of the Suffolk County Department of Health Services, the Chief Building Inspector, and an authorized electrical inspection company, respectively.
 - (3) The structure shall be located on the site subject of the filed plat or final site plan.
 - (4) The trailers as permitted herein shall be limited to nonresidential use only for the purpose of the marketing of or first-time sale of newly constructed, or yet-to-be-constructed, residential dwellings (whether detached, attached or semi-detached) within the residential development. The resale of any residential dwelling is not permitted.
- C. Sales trailers for residential projects as provided herein shall be subject to site plan review and approval of the Planning Board; upon the Board's final approval, a permit therefor shall be issued by the Chief Building Inspector for a period not exceeding two years, unless otherwise extended by the Board. Notwithstanding the foregoing, in no case may a sales trailer remain on site after the last unit is sold or the last certificate of occupancy is issued, whichever comes first.
- D. Sales offices.
 - (1) Sales offices within model homes under the jurisdiction of the Planning Board shall be limited to nonresidential use only for the purpose of the marketing of or first-time sale of newly constructed, or yet-to-be-constructed, residential dwellings (whether detached, attached or semi-detached) within the residential development. The resale of any residential dwelling is not permitted.
 - (2) Sales offices within model homes under the jurisdiction of the Planning Board shall be subject to site plan review and approval of the Planning Board; upon the Board's final approval, a permit therefor shall be issued by the Chief Building Inspector for a period not exceeding two years, unless otherwise extended by the Board. Notwithstanding the foregoing, in no case may said sales office remain within a model home after the last unit is sold or the last certificate of occupancy is issued, whichever comes first.

§ 85-888. Temporary use mobile structures.

- A. Legislative intent. The Town Board of the Town of Brookhaven hereby finds and determines that under certain specific circumstances, where a single-family dwelling has been rendered uninhabitable by the occurrence of a catastrophic event such as a fire, flood, or otherwise, or due to extensive construction that makes the existing residence uninhabitable, the installment and temporary use of a house trailer or mobile home shall be permitted as a practical economic means of providing for the temporary housing needs of the individual(s) and/or family so displaced, so long as for a reasonable period during which the affected dwelling place shall be repaired and/or reconstructed. Further, it is this Board's specific intent in enacting this section to permit such shelter for temporary occupancy exclusively, and without exception, subject to certain safeguards which will ensure the health, safety, and welfare of such displaced occupants and neighboring residents as well.
- B. House trailers and/or mobile homes shall be permitted in all residential zoning districts for the temporary use and occupancy of an individual(s) displaced by the occurrence of catastrophic damage to their single-family dwelling which renders said dwelling temporarily uninhabitable, subject to the following requirements:
 - (1) The house trailer or mobile home shall be located on the same parcel upon which the damaged dwelling is located or on a contiguous parcel thereto.
 - (2) That appropriate sanitary, water supply and electrical service shall be installed as evidenced by approval and permit of the Suffolk County Department of Health Services, the Chief Building Inspector, and an authorized electrical inspection company, respectively.
- C. No house trailer, mobile home or other temporary quarters as authorized herein shall be located upon and/or installed upon a residentially zoned lot or parcel unless a permit therefor shall be issued by the Chief Building Inspector, who shall take into consideration the following factors prior to his or her approval of the installation:
 - (1) The availability and accessibility of necessary utilities.
 - (2) The front, side, and backyard setbacks to be provided from the temporary housing quarters.

- (3) The extent of intrusion upon neighboring residentially developed properties.
 - (4) Such other factors as s/he shall deem relevant to the health, safety, and welfare of the displaced occupants and resident(s) of the neighborhood.
- D. Said permit shall be issued for a period not to exceed one year and shall be subject to no more than two ninety-day extensions thereof.
- E. The Chief Building Inspector is hereby authorized to revoke any permit issued herein, in the exercise of reasonable discretion, upon due investigation, where she/he determines that the temporary house trailer or mobile home is being used in an unsafe manner or in violation of provisions of this section herein. Written notice of said contemplated revocation shall be made by personal service or by certified or registered return receipt mail, at least five business days prior to such said revocation.
- F. In the event that a house trailer or mobile home permitted in accordance with the provisions of this section shall not be removed at the end of the permit period and any extension thereof, there shall be a per-diem civil penalty of at least \$50 or a maximum of \$150 for each day that it remains beyond the expiration of the permit.
- G. If the house trailer or mobile home remains for more than 14 days beyond the expiration of the temporary permit, the Commissioner of Planning, Environment and Land Management, or his representative, shall, after notifying the owner of said house trailer or mobile home by registered or certified mail, return receipt requested, cause the house trailer or mobile home to be removed. The expense of removal and any resulting storage charges shall be paid by the owner of the house trailer or mobile home, and if said cost is not paid within 10 days, the Commissioner of Planning, Environment and Land Management may advertise for the public sale of the house trailer or mobile home in the official newspaper of the Town and sell the house trailer or mobile home to the highest bidder at a public sale. The monies realized from the sale shall be applied first to any outstanding civil penalties, next to reimburse the Town for all expense incurred for moving and storage of the house trailer or mobile; and last, excess monies shall be remitted to the registered or certified owner thereof.

§ 85-889. Construction site trailers or mobile structures.

- A. Intent. The Town Board of the Town of Brookhaven hereby finds and determines that the use of temporary mobile structures or trailers may be appropriate for large-scale development projects, when located on the approved development site, for use exclusively as a field office(s), subject to reasonable regulation calculated to ensure the health, safety and welfare of neighboring residents and the public at large.
- B. Mobile structures or trailers shall be permitted in all zoning districts for temporary use as an on-site field office(s), subject to the following requirements:
- (1) Said mobile structure or trailer shall be located on the same site which is the subject of the approved final development plan;
 - (2) A valid building or foundation permit has been issued;
 - (3) Appropriate sanitary, water supply and electrical service shall be installed as evidenced by approval and/or permit of the Suffolk County Department of Health Services, the Chief Building Inspector, and an authorized electrical inspection company, respectively.
- C. Construction site trailers shall be subject to site plan review and approval of the Planning Board, which shall make its determination based on the following considerations:
- (1) The availability and accessibility of necessary utilities.
 - (2) The extent of intrusion upon neighboring properties.
 - (3) Such other factors as the Board shall deem relevant.
- D. Upon the Planning Board's final site plan approval, a permit therefor shall be issued by the Chief Building Inspector for a period not exceeding two years, unless otherwise extended by the Board.

§ 85-890. Junk- and wrecking yards.

Every junk- and automobile wrecking yard shall be completely enclosed by a good-quality, solid, sightly fence not less than eight feet in height about the finished grade of the lot and of the grade of adjoining lots, with posts imbedded in concrete to a depth of not less than five feet below finished grade at intervals of not more than six feet. Every such fence shall be maintained in a safe and sightly condition, and no sign of any kind shall be placed on said fence. All materials shall be piled, collected or STORED WITHIN the enclosed yard in such a manner that they shall not be visible above the fence from the street or from the adjoining lots.

§ 85-891. Swimming pools.

No swimming pool shall be constructed, installed, used or maintained in any district except in accordance with the following provisions:

A. Definitions.

- (1) The word "shall" is always mandatory and not merely directory.
- (2) For the purposes of this section, the following terms, phrases, words and their derivations shall have the meanings given herein:

ABOVEGROUND SWIMMING POOL

Any swimming pool located in or upon the ground which at no point is more than 18 inches below grade. An aboveground swimming pool is not a structure for purposes of this chapter.

IN-GROUND SWIMMING POOL

Any swimming pool located in or upon the ground which extends more than 18 inches below grade. An in-ground swimming pool is a structure for purposes of this chapter.

PRIVATE SWIMMING POOL

Any swimming pool constructed, installed or maintained as an accessory use on the same lot with a one- or two-family dwelling, intended solely for the private use of any occupant of such dwelling and such occupant's family and guests.

PUBLIC SWIMMING POOL

Any swimming pool which is not a private swimming pool as defined above.

SWIMMING POOL

Any body of water in an artificial or semiartificial receptacle or other container, whether located indoors or outdoors, used or designed, arranged or intended to be used for public, semipublic or private swimming by adults or children, or both adults and children, whether or not any charge or fee is imposed upon such adults or children, and shall include all buildings, structures, appurtenances, equipment, appliances and other facilities appurtenant to and intended for the operation and maintenance of a swimming pool.

- B. Any outdoor swimming pool having a depth of 18 inches or more and an area of 100 square feet or more shall be enclosed by a durable wall, barrier or fence, in accordance with the New York Uniform Fire Prevention and Building Code requirements, unless such outdoor swimming pool is:
 - (1) Emptied when not in use or unattended; or
 - (2) Covered with a suitable, strong, protective covering fastened or locked in place when not in use or unattended. A cover shall be considered to be of sufficient strength and securely fastened or locked in place if, when fastened or locked in place, it will support a minimum dead weight of 200 pounds.
- C. Every outdoor swimming pool having a depth of more than 18 inches or an area of more than 100 square feet, now existing or hereafter constructed, installed, established or maintained, shall be completely and continuously surrounded by a permanent durable wall, fence or barrier in accordance with the New York State Uniform Fire Prevention and Building Code requirements.
 - (1) All walls, fences or barriers shall be constructed in accordance with requirements of the State Building Construction Code and in conformity with all sections of the Code of the Town of Brookhaven.
 - (2) No wall, fence or barrier of any kind shall be constructed or maintained which shall contain projections at any point on its outer surface which present a substantial opportunity or risk of unauthorized access to the swimming pool. Stockade-type fences may be erected with either side facing out.
 - (3) A dwelling house or accessory building may be used as part of such wall, fence or barrier.
 - (4) All gates used in conjunction with such wall, fence or barrier shall conform to the above requirements as to height and dimensions of openings, mesh, holes or gaps, and all gates and doors shall be equipped with self-closing and self-latching devices for keeping the gate or door securely closed at all times. Gates and doors shall be locked when the pool is not in use or is unguarded or unattended; provided, however, that the door of any dwelling which forms a part of the wall, fence or barrier need not be so equipped or locked.
 - (5) In the event that the swimming pool is of the aboveground type and is so constructed that it contains a wall, fence or barrier of not less than two feet in height measured from the top lip, ledge or deck of such swimming pool, which wall, fence or barrier completely surrounds such swimming pool and is otherwise constructed in conformity with the provisions of this subsection, and the top lip, ledge or deck of such swimming pool is not less than four feet above grade, a separate wall, fence or barrier as described hereinabove shall not be required, provided that the following provisions are met:
 - (a) Any ladder or other means of access to such swimming pool shall be completely enclosed by a durable wall, fence or barrier, and such wall, fence or barrier and any gate therein contained shall meet all other requirements set forth

in this Subsection **C**.

- (b) The wall, fence or barrier set forth in Subsection **C(5)(a)** above shall be so affixed to the swimming pool or so constructed that the only access to said swimming pool is through its gate.
 - (c) There shall be no accessory equipment, devices, structures or debris so located as to present a substantial danger or risk of unauthorized access to said swimming pool.
- D. No outdoor swimming pool shall be situated in the required front yard. No outdoor swimming pool shall be located less than 15 feet from any side or rear lot line. With respect to aboveground swimming pools, said distance shall be measured from the outer edge of any deck or platform attached to the wall of the pool.
 - E. Every aboveground swimming pool which employs the use of any electrical device in connection therewith shall be equipped with a ground fault interrupter approved by Underwriters' Laboratories, Inc. All electrical devices used in connection with such swimming pools must be approved by Underwriters' Laboratories, Inc.
 - F. Any private swimming pool with a water depth of more than 18 inches shall be used and maintained in accordance with the provisions of the New York State Sanitary Code and the rules and regulations of the Suffolk County Health Department.
 - G. Public swimming pools.
 - (1) No work shall be commenced on the construction or installation of any public swimming pool, including excavating or removing of sand, gravel, topsoil or other materials, until the plans and specifications therefor have been approved by the Suffolk County Health Department, the Chief Building Inspector and the Town Engineer. The plans and specifications shall contain a certificate by a professional engineer licensed by the State of New York that the drainage of such swimming pool is adequate and will not interfere with the public or private water supply system, with existing sanitary facilities or with the public highways.
 - (2) Every public swimming pool shall be used and maintained in accordance with the provisions of the New York State Sanitary Code and the rules and regulations of the Suffolk County Health Department.
 - H. During the course of construction of an in-ground swimming pool, a temporary fence shall be erected as required by the Building Division.
 - I. No water shall be put or caused to be put in any swimming pool unless a wall, fence or barrier as required by this section shall have first been erected.
 - J. In the event that an owner shall abandon any swimming pool, he shall forthwith fill all voids and depressions and restore the premises to the same grade and condition as before the swimming pool was constructed and shall accordingly notify the Chief Building Inspector when said restoration has been completed. The Chief Building Inspector may proceed under Chapter **73**, Unsafe Buildings and Excavated Lands, of the Code of the Town of Brookhaven should the owner fail to make the necessary restoration.
 - K. Construction may not commence on any in-ground swimming pool until a building permit has been obtained from the Building Division. An in-ground swimming pool shall not be used until a certificate of compliance has been obtained from the Building Division.
 - L. The Board of Appeals may make modifications in individual cases, upon a showing of good cause, with respect to the requirements herein set forth, provided that the protection as sought hereunder is not reduced thereby.
 - M. No swimming pool shall be erected or located within 25 feet of those points on the ground which are directly beneath any overhead electrical transmission lines.

§ 85-892. Animals.

- A. No building, structure or premises shall be erected, altered or used in any residence district for the housing and harboring of swine, goats, foxes or mink, except when authorized by special permit from the Board of Appeals.
- B. No accessory building or structure or part thereof used for the housing of fowl or domestic animals, other than dogs or cats, shall be less than 50 feet from any lot line in any district, except as hereinafter provided.
- C. Horses or equine livestock.
 - (1) The housing or harboring of horses or equine livestock shall be permitted in any residential district on the following conditions:
 - (a) Such housing or harboring shall be accessory to the principal use of the property as a residence.
 - (b) Such activity shall be conducted for the use of residents only.
 - (c) The boarding or rental of horses or other equine livestock shall not be permitted.

- (d) No horse or other type of equine livestock shall be housed or harbored on any plot less than 40,000 square feet in size, and no more than two horses or other type of equine livestock shall be permitted per 40,000 square feet or major fraction thereof, in no event to exceed eight horses.
 - (2) No barn, stable or other roofed structure or accessory building for the sheltering of horses shall be located within 50 feet of any side yard line or rear yard line, nor shall any such structure be located within the front yard which lies between the principal residential structure and the street.
 - (3) All corrals, runs or other open areas shall be enclosed by a fence of at least five feet in height with openings no more than six inches in width. Such fence shall be located more than five feet from any side yard line or rear yard line and shall not be located within any front yard which lies between the principal residential structure and the street.
 - (4) There shall be at least 110 square feet of barn or stable area for each horse or other type of equine livestock.
 - (5) Manure shall be kept in weatherproof containers at least 50 feet away from all adjoining property lines, except when composted in bins not exceeding four feet by four feet by five feet in size, which are located at least 20 feet from any property or lot line; a maximum of six composting bins shall be permitted per parcel of property.
 - (6) All premises where horses or other equine livestock are housed or harbored shall conform to all standards and requirements of the Suffolk County Department of Health and the Suffolk County Sanitary Code.
- D. Pigeons.
- (1) The housing or harboring of pigeons shall be permitted in any residential district on the following conditions:
 - (a) All pigeons must be kept securely confined in lofts or houses except during exercise periods or when returning home from a training toss or race, in which event they must be secured as soon as is reasonably possible. Said exercise periods may not exceed a total time of two hours in the forenoon of any weekday and not more than two hours in the afternoon of any weekday. On weekends and legal holidays, said exercise periods may not exceed one hour in the forenoon of any such day and one hour in the afternoon of any such day.
 - (b) The lofts or houses in which such pigeons are kept must be cleaned regularly and at least once each day or at least always maintained in a sanitary manner and free of offensive odors.
 - (c) Pigeon refuse and pigeon feed must be stored in metal containers, with metal covers, or in rodent-proof containers, securely closed.
 - (d) There shall be at least one square foot of floor space in any loft or house in which pigeons are kept for each such pigeon kept therein.
 - (e) Said lofts or houses shall be erected and maintained in an aesthetically pleasing manner and shall be suitably screened from view by a fence or by shrubs, unless said loft or house is located in such a manner as not to be visible from the surrounding streets.
 - (f) The maximum number of pigeons housed or harbored shall not exceed 50 for plots of 1/3 acre or less, 100 for plots exceeding 1/3 acre but less than one acre in area, and a maximum of 200 pigeons for plots of one acre or more.
 - (g) Said loft or house shall not be located within 100 feet of any surrounding residential structure. In no event shall said loft or house be located less than 15 feet from any lot line.
 - (2) Permit.
 - (a) Any person housing or harboring pigeons must obtain a permit from the Town Clerk. No permit shall be issued to any person convicted of a violation of this section. With all applications for permits, the applicant must supply the following:
 - [1] A statement that the applicant has not been convicted of a violation of this section.
 - [2] A survey or diagram showing the proposed location of said loft or house and its distance from said surrounding residences and property lines.
 - (b) Said permit must be renewed annually.
[Amended 1-24-2017 by L.L. No. 4-2017, effective 2-6-2017]
 - (3) If any person is convicted of a violation of this section, said permit shall be revoked.
 - (4) Any person housing or harboring pigeons on the effective date of this section must obtain a permit pursuant to this section. If the location of said loft or house fails to meet the requirements of this section, it may be maintained as a nonconforming use. However, all other requirements of this section must be met. In the event that a nonconforming loft is enlarged or rebuilt after being substantially destroyed, said renovated or enlarged loft must meet all requirements of this section.

§ 85-893. Essential services.

Essential services, as defined in this chapter, are permitted in all districts.

§ 85-894. Governmental uses.

Any building, structure or premises erected, altered or used for a municipal or governmental purpose shall be permitted in any district when authorized by resolution of the Town Board, subject to such conditions and safeguards as the Town Board may deem appropriate, provided that the municipality or governmental authority using such building, structure or premises shall be the fee owner of such premises. This section shall not apply if a person other than a municipality or governmental authority using such building, structure or premises is the fee owner of such property. The Town Board, when giving consideration to approval of any governmental use or purpose, may waive the requirements for a site plan as contained in this Chapter **85**.

§ 85-895. through § 85-910. (Reserved)

ZONING

85 Attachment 7

Figure 5-2: Planting Recommendations

(Native plants are more drought tolerant than nonnative species, are adapted to our local environment, maintain natural ecological diversity, perpetuate fast disappearing native genotypes, and comprise a form of habitat restoration.)

| Scientific name (in alphabetical order) | Common name |
|----------------------------------------------------|--------------------|
| Recommended native plants | |
| Andropogon gerardi | Big bluestem |
| Andropogon scoparius | Little bluestem |
| Betula lenta | White Birch |
| Betula populifolia | Grey birch |
| Celtis occidentalis | Hackberry |
| Dennstaedtia punctilobula | Hay scented fern |
| Epigaea repens | Trailing arbutus |
| Hamamelis virginia | Witch hazel |
| Ilex glabra | Inkberry |
| Ilex opaca | American holly |
| Myrica pensylvanica | Northern bayberry |
| Parthenocissus quinquefolia | Virginia creeper |
| Pinus rigida | Pitch pine |
| Populus tremuloides | Quaking aspen |
| Prunus maritima | Beach plum |
| Prunus serotina | Black cherry |
| Pteridium aquilinum | Bracken fern |
| Quercus alba | White oak |
| Quercus coccinea | Scarlet oak |
| Quercus rubra | Red oak |
| Rosa virginiana | Virginia rose |
| Rubus allegheniensis | North blackberry |
| Salix discolor | Pussy willow |
| Sassafras albidum | Sassafras |
| Solidago species | Goldenrod |
| Spiraea latifolia | Spiraea |
| Vaccinium angustifolium | Lowbush blueberry |
| Vaccinium corymbosum | Highbush blueberry |

BROOKHAVEN CODE

**Scientific name
(In alphabetical order)**

Common name

Invasive, nonnative plants specifically not recommended

| | |
|-----------------------------|--------------------------|
| Acer platinoides | Norway maple |
| Acer pseudoplatanus | Sycamore maple |
| Ampelopsis brevipedunculata | Porcelain berry vine |
| Berberis thunbergii | Japanese barberry |
| Celastrus orbiculatus | Asiatic bittersweet |
| Coronilla varia | Crown vetch |
| Eleagnus umbellata | Autumn olive |
| Lespedeza cuneata | Himalayan bushclover |
| Ligustrum sinense | Chinese privet |
| Lonicera japonica | Japanese honeysuckle |
| Lonicera maackii | Amur honeysuckle |
| Lonicera tartarica | Tartarian honeysuckle |
| Lythrum salicaria | Purple loosestrife |
| Miscanthus sinensis | Eulalia |
| Pinus nigra | Black pine |
| Polygonum cuspidatum | Mexican bamboo |
| Pueraria lobata | Kudzu |
| Robina pseudocacacia | Black locust |
| Rosa multiflora | Multiflora rose |
| Rosa rugosa | Rogusa (salt spray) rose |
| Rudbeckia hirta | Black eyed susan |

ZONING

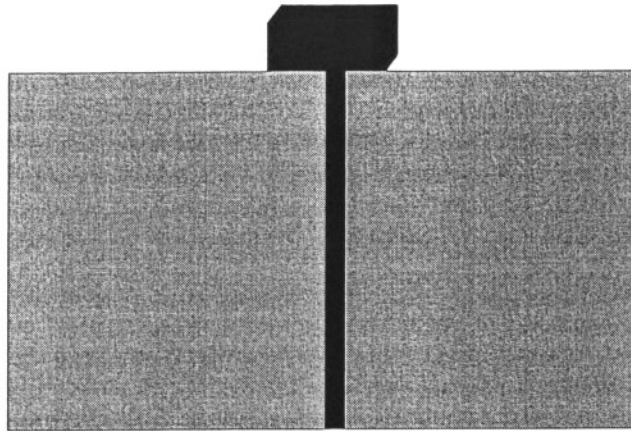
85 Attachment 8

Guidelines for Exterior Lighting

Figure 1

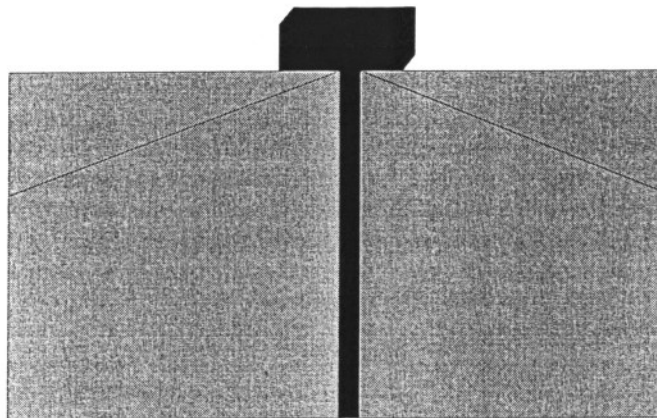
Fully Shielded Fixture:

no light emitted below the lowest light emitting part of the fixture
and no restriction as to amount at various angles below the horizontal.



Full Cutoff Fixture:

additionally restricts the amount of light emitted in the "glare zone"
(90-80 degrees below horizontal) to 10% of the total light output:



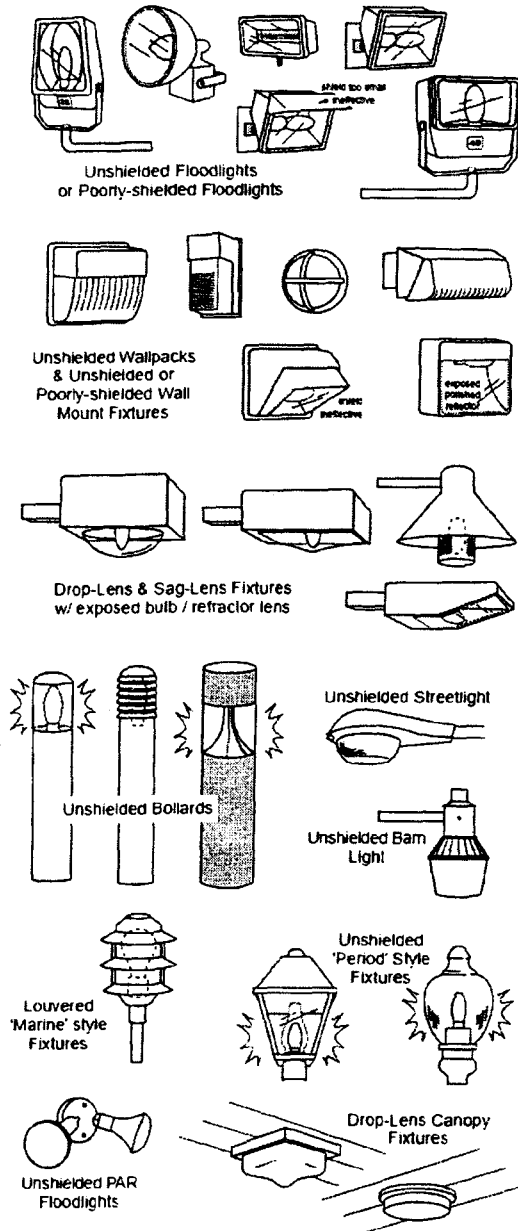
BROOKHAVEN CODE

Figure 2

Examples of Acceptable/Unacceptable Lighting Fixtures

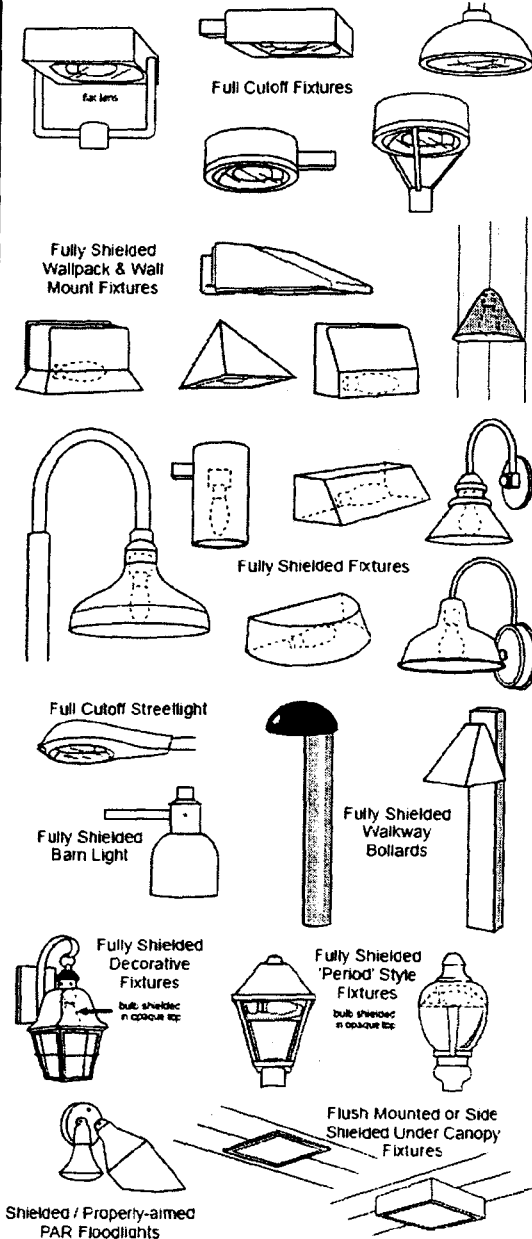
Unacceptable / Discouraged

Fixtures that produce glare and light trespass



Acceptable

Fixtures that shield the light source to minimize glare and light trespass and to facilitate better vision at night

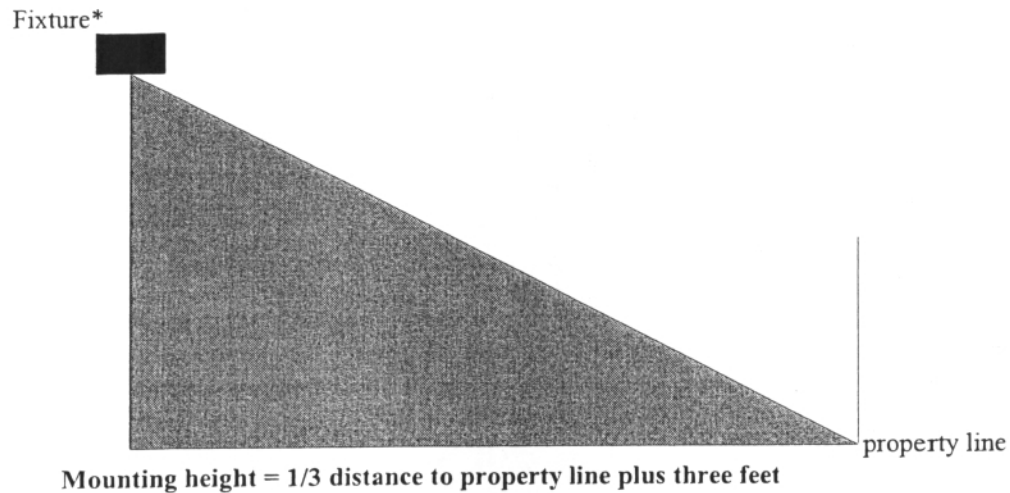


ZONING

Figure 3

Calculating Fixture Height in relation to distance to property line.

Without available photometric data to execute a lighting plan, Fixture Placement set-backs can help to reduce incidence of light trespass and glare across property lines.



A fully shielded or full cutoff fixture will generally contain light to a site to reduce light trespass if this formula is followed:

Divide the distance (D) to the property line by three and add three feet to equal the maximum Mounting Height (MH).

Formula: MH no greater than $\frac{1}{3}$ Distance to Property line plus 3 feet
(The Kennebunkport Formula)

For example:

| Maximum Mounting Height | Distance to Property line |
|-------------------------|---------------------------|
| 15 | 36 |
| 12 | 27 |
| 9 | 18 |
| 6 | 9 |

* Assumes common full cutoff fixture. Asymmetrical "sharp cutoff" full cutoff fixtures that have steeper cutoff angles or shielding at the "house side" may be placed closer to property boundaries provided their cutoff angles do not result in light trespass and footcandle measurements can be provided on a lighting plan.

BROOKHAVEN CODE

Table 1

Limits of Illumination Target Areas for Parking Lots

| IESNA Document | Illuminance Levels | | | | | | Uniformity | | |
|------------------------------------------|---------------------------|-------------|-------------|---------------|---------------|----------------|-------------------|----------------|----------------|
| | EMIN | EMAX | EAVE | EV-MIN | EV-AVE | ESC-MIN | MAX/MIN | AVE/MIN | MAX/AVE |
| Lighting for Parking Facilities RP-20-98 | | | | | | | | | |
| Medium | 0.6 | | 2.4 | | | | 20:1 | 4:1 | |
| Low | 0.2 | | 0.8 | | | | 20:1 | 4:1 | |
| High | 0.9 | | 3.6 | | | | 20:1 | 4:1 | |

Light levels indicated are for active use of the facility during open business hours:

High:

Large shopping centers over 300,000 square feet of retail space.

Medium:

Community shopping centers between 5,000 square feet and 299,000 square feet of retail space

Low:

Neighborhood shopping retail of less than 5,000 square feet.

After hours, light levels may be cut by 50% or more.

ZONING

Table 2

**Limits of Illumination for Target Areas:
Car Dealerships, Sidewalks, Walkways, and Gas Stations**

| IESNA Document | Illuminance Levels | | | | | | Uniformity | | |
|----------------------------------------------------|--------------------|---------|---------|--------|--------|---------|------------|---------|---------|
| | EMIN | EMAX | EAVE | EV-MIN | EV-AVE | ESC-MIN | MAX/MIN | AVE/MIN | MAX/AVE |
| Lighting for Exterior Environments RP-33-99 | | | | | | | | | |
| Sidewalks (Roadside) and Type A Bikeways | | | | | | | | | |
| Commercial areas | | | 1 | | 2 | | 10:1 | | |
| Intermediate areas | | | 0.5 | | 1 | | 10:1 | | |
| Residential areas | | | 0.2 | | 0.5 | | 10:1 | | |
| Walkways Distant from Roadways and Type B Bikeways | | | | | | | | | |
| Commercial areas | | | 0.5 | | 0.5 | | 10:1 | | |
| Intermediate areas | | | 0.5 | | 1 | | 10:1 | | |
| Residential areas | | | 2 | | 0.5 | | 10:1 | | |
| Car Dealerships | | | | | | | | | |
| Secondary Business Districts | | | | | | | | | |
| Adjacent to roadway | | 5 - 10 | | | | | 5:1 | | |
| Other rows | | 2.5 - 5 | | | | | 10:1 | | |
| Entrances | | 2.5 - 5 | | | | | 5:1 | | |
| Driveways | | 1 - 2 | | | | | 10:1 | | |
| Service Stations or Gas Pump Area | | | | | | | | | |
| Approach | | | 1.5 - 2 | | | | | | |
| Driveways | | | 1.5 - 2 | | | | | | |
| Pump island | | | 5 | | | | | | |
| Service areas | | | 2 - 3 | | | | | | |

BROOKHAVEN CODE

Table 3

Limits of Illumination for Roadways

| IESNA Document | | Illuminance Levels | | | | | Uniformity | | | |
|--------------------------------------------------|-------------------------------------------|--------------------|------|--------------------|--------|--------|------------|---------|---------|---------|
| | | EMIN | EMAX | EAVE | EV-MIN | EV-AVE | ESC-MIN | MAX/MIN | AVE/MIN | MAX/AVE |
| Roadway Lighting ANSI-RP-8-00 | | | | | | | | | | |
| Walkways/ Bikeways; Mixed use | High Pedestrian Conflict | | | 2 | 1.0 | | | | 4.0 | |
| Walkways/ Bikeways; Pedestrian use only | High Pedestrian Conflict | | | 1 | 0.5 | | | | 4.0 | |
| Walkways/ Bikeways; Pedestrian use only | Medium Pedestrian Conflict | | | 0.5 | 0.2 | | | | 4.0 | |
| Collector (R2&R3) | High-Medium-Low Pedestrian Conflict | | | 1.2 - 0.9 - 0.6 | | | | | 4.0 | |
| Local | High-Medium-Low Pedestrian Conflict | | | 0.9 - 0.7 - 0.4 | | | | | 4.0 | |

Town of Brookhaven, NY
Thursday, October 3, 2019

Chapter 86. Stormwater Management and Erosion Control

[HISTORY: Adopted by the Town Board of the Town of Brookhaven 1-22-2008 by L.L. No. 1-2008, effective 1-30-2008; amended in its entirety 11-13-2014 by L.L. No. 29-2014, effective 11-25-2014. Subsequent amendments noted where applicable.]

GENERAL REFERENCES

Flood damage prevention — See Ch. **33**.
Grading — See Ch. **35**.
Coastal erosion hazard areas — See Ch. **76**.
Water resources — See Ch. **78**.
Wetlands and waterways — See Ch. **81**.
Zoning — See Ch. **85**.
Municipal separate storm sewer system — See Ch. **86A**.
Subdivision regulations — See Ch. SR.

§ 86-1. Legislative intent.

- A. Findings. The State of New York, pursuant to the Clean Water Act (33 U.S.C. § 1251 et seq.), is authorized to adopt and implement a State Pollutant Discharge Elimination System (SPDES) permit program regulating the discharge of pollutants from new or existing outlets or point sources into the waters of the State. The New York State Legislature enacted Article 17, Title 8, of the Environmental Conservation Law requiring a State Pollution Discharge Elimination System (SPDES) permit prior to the discharge of any pollutants. Under the Federal National Pollutant Discharge Elimination System (NPDES) regulations, as administrated by New York State, municipalities are required to obtain a permit for the discharge of stormwater. The Town of Brookhaven in 2002 obtained a SPDES permit in connection with discharge of stormwater as required pursuant to Environmental Conservation Law. The SPDES permit requires that the Town enact a local law that complies with federal and New York State guidelines for stormwater control, which addresses the following findings of fact as determined by the State and accepted by the Town of Brookhaven:
- (1) Land development activities and associated increases in site impervious cover often alter the hydrologic response of local watersheds and increase stormwater runoff rates and volumes, flooding, stream bank erosion, or sediment transport and deposition.
 - (2) Stormwater runoff contributes to increased quantities of waterborne pollutants, including siltation of aquatic habitat for fish and other desirable species.
 - (3) Clearing and grading during construction tends to increase soil erosion and add to the loss of native vegetation necessary for terrestrial and aquatic habitat.
 - (4) Improper design and construction of stormwater management practices can increase the velocity of stormwater runoff, thereby increasing stream bank erosion and sedimentation.
 - (5) Impervious surfaces allow less water to percolate into the soil, thereby decreasing groundwater recharge and stream baseflow.
 - (6) Substantial economic losses can result from these adverse impacts on the waters of the municipality.
 - (7) Stormwater runoff, soil erosion and nonpoint source pollution can be controlled and minimized through the regulation of stormwater runoff from land development activities.
 - (8) The regulation of stormwater runoff discharges from land development activities in order to control and minimize increases in stormwater runoff rates and volumes, soil erosion, stream bank erosion, and nonpoint source pollution associated with stormwater runoff is in the public interest and will minimize threats to public health and safety.
 - (9) Regulation of land development activities by means of performance standards governing stormwater management and site design will produce development compatible with the natural functions of a particular site or an entire watershed and thereby mitigate the adverse effects of erosion and sedimentation from development.
- B. Purpose. The purpose of this chapter is to establish minimum stormwater management requirements and controls to protect and safeguard the general health, safety, and welfare of the residents of and the general public within the Town of Brookhaven by achieving the following objectives:
- (1) Meet the requirements of minimum measures four and five of the NYSDEC State Pollutant Discharge Elimination System (SPDES) General Permit for Stormwater Discharges from Municipal Separate Stormwater Sewer Systems

(MS4s), Permit No. GP-0-10-002 or as amended or revised;

- (2) Require land development activities to conform to the substantive requirements of the NYSDEC SPDES General Permit for Construction Activities GP-0-10-001 or as amended or revised;
- (3) Minimize increases in stormwater runoff from land development activities in order to reduce flooding, siltation, increases in stream temperature, and stream bank erosion;
- (4) Minimize increases in pollution caused by stormwater runoff from land development activities, which would otherwise degrade local water quality;
- (5) Minimize the total annual volume of stormwater runoff, which flows from any specific site during and following development to the maximum extent practicable; and
- (6) Reduce stormwater runoff rates and volumes, soil erosion and nonpoint source pollution, wherever possible, through stormwater management practices and to ensure that these management practices are properly maintained and eliminate threats to public safety.

§ 86-2. Definitions.

The terms used under this chapter shall have the meanings as set forth in this section.

AGRICULTURAL ACTIVITY

Activity defined as "open farming" or "other agriculture" in Chapter **85** of the Town Code.

A. OPEN FARMING

Includes the cultivation of the soil for food products and other useful or valuable growths of the field.

B. OTHER AGRICULTURE

Agricultural uses not included in the foregoing definition of "open farming," but including greenhouses, dairies and the raising of livestock, roosters and other poultry, except when such poultry consists solely of a total of six or fewer ducks or geese or female chickens or any combination thereof per residential premises, regardless of size.

APPLICANT

A property owner who has filed an application for a land development activity.

BUILDING

Any structure meeting the definition of "building" as defined in Chapter **85** of the Town Code. A structure having a roof supported by columns or walls, and when separated by a party wall without openings, it shall be deemed a separate building.

CLEARING

The removal of any existing natural vegetation located on a lot, parcel or site, exclusive of vegetation associated with active agricultural or horticultural activity or formalized landscaped and/or turf areas.

DEDICATION

The deliberate appropriation of property by its owner for general public use.

DEPARTMENT

The New York State Department of Environmental Conservation.

DESIGN MANUAL

The New York State Stormwater Management Design Manual, most recent version, including applicable updates, that serves as the official guide for stormwater management principles, methods and practices.

DEVELOPER

A person who undertakes land development activities.

EROSION CONTROL MANUAL

The most recent version of the "New York Standards and Specifications for Erosion and Sediment Control" manual, commonly known as the "Blue Book."

GRADING

Excavation or fill of material, including the resulting conditions thereof.

GREEN INFRASTRUCTURE

Those approaches that essentially infiltrate, evapotranspire or reuse stormwater, with significant utilization of soils and vegetation rather than traditional hardscape collection, conveyance and storage structures.

IMPERVIOUS COVER

Those surfaces, improvements and structures that cannot effectively infiltrate rainfall, snow melt and water (e.g., building rooftops, pavement, sidewalks, driveways, etc.).

INDUSTRIAL STORMWATER PERMIT

A State Pollutant Discharge Elimination System permit issued to a commercial industry or group of industries, which regulates the pollutant levels, associated with industrial stormwater discharges or specifies on-site pollution control strategies.

INFILTRATION

The process of percolating stormwater into the subsoil.

LAND DEVELOPMENT ACTIVITY

Construction activity including clearing, grading, excavating, soil disturbance or placement of fill that results in land disturbance of equal to or greater than one acre, or activities disturbing less than one acre of total land area that is part of a common plan of development, notwithstanding that multiple and distinct activities may occur at different times and/or different schedules.

LANDOWNER

The legal or beneficial owner of land, including those holding the right to purchase or lease the land, or any other person holding proprietary rights in the land.

LIGHT, IMAGING, DETECTION AND RANGING (LIDAR) SYSTEM

A three-dimensional laser scan that provides high-definition surveying for architectural, as-built, and engineering surveys.

MAINTENANCE AGREEMENT

A legally recorded document that provides for long-term maintenance of stormwater management practices.

MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4)

A conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains) that is owned or operated by the Town and designed or used for collecting or conveying stormwater; the MS4, as defined, is not a combined sewer or part of a publicly owned treatment works (POTW) as defined at 40 CFR 122.2.

NONPOINT SOURCE POLLUTION

Pollution, from any sources other than from any discernible, confined, and discrete conveyances, and shall include, but not be limited to, pollutants from agricultural, silvicultural, mining, construction, subsurface disposal and urban runoff sources.

PERSON

One or more of the following: any individual, owner, lease holder, entity, corporation, agent, company, parent company, subsidiary, limited-liability company, substantially owned affiliated-entity, successor, partnership, joint venture, association, legal representative, agent or any other form of doing business.

PHASING

Clearing a parcel of land in distinct pieces or parts, with the stabilization of each piece completed before the clearing of the next.

POLLUTANT OF CONCERN

Sediment or a water quality measurement that addresses sediment (such as total suspended solids, turbidity or siltation) and any other pollutant, including, but not limited to, nitrogen, phosphorus and pathogens, that have been identified as a cause of impairment to any water body that will receive a discharge from the land development activity.

RECHARGE

The replenishment of underground water reserves.

SEDIMENT CONTROL

Measures that prevent eroded sediment from leaving the site.

SENSITIVE AREAS

Cold-water fisheries, shellfish beds, swimming beaches, groundwater recharge areas, water supply reservoirs, habitats for threatened, endangered or special concern species, tidal wetlands and freshwater wetlands.

SPDES GENERAL PERMIT FOR CONSTRUCTION ACTIVITIES GP-0-10-001

A permit under the New York State Pollutant Discharge Elimination System (SPDES) issued to developers of construction activities to regulate disturbance of one or more acres of land.

SPDES GENERAL PERMIT FOR STORMWATER DISCHARGES FROM MUNICIPAL SEPARATE STORMWATER SEWER SYSTEMS GP-0-10-002

A permit under the New York State Pollutant Discharge Elimination System (SPDES) issued to municipalities to regulate discharges from municipal separate storm sewers for compliance with EPA-established water quality standards and/or to specify stormwater control standards.

STABILIZATION

The use of practices that prevent exposed soil from eroding.

STOP-WORK ORDER

An order issued that requires that all construction activity on a site be stopped.

STORMWATER

Rainwater, surface runoff, snowmelt and drainage.

STORMWATER HOT SPOT

A land use or activity that generates higher concentrations of hydrocarbons, trace metals or toxicants that are found in typical stormwater runoff, based on monitoring studies.

STORMWATER MANAGEMENT

The use of structural or nonstructural practices that are designed to reduce stormwater runoff and mitigate its adverse impacts on property, natural resources and the environment.

STORMWATER MANAGEMENT FACILITY

One or a series of stormwater management practices installed, stabilized and operating for the purpose of controlling stormwater runoff.

STORMWATER MANAGEMENT OFFICER

An employee or officer designated by the municipality to accept and review stormwater pollution prevention plans, forward the plans to the applicable municipal board and inspect stormwater management practices.

STORMWATER MANAGEMENT PRACTICES (SMPs)

Measures, either structural or nonstructural, that are determined to be the most effective, practical means of preventing or reducing point source or nonpoint source pollution inputs to stormwater runoff and water bodies, while minimizing potential flood damage.

STORMWATER POLLUTION PREVENTION PLAN (SWPPP)

A plan for controlling stormwater runoff and pollutants from a site during and after construction activities.

STORMWATER RUNOFF

Flow on the surface of the ground, resulting from precipitation.

SURFACE WATERS OF THE STATE OF NEW YORK

Lakes, bays, sounds, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Atlantic Ocean within the territorial seas of the State of New York and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, public or private (except those private waters that do not combine or effect a junction with natural surface or underground waters), which are wholly or partially within or bordering the state or within its jurisdiction. Storm sewers and waste treatment systems, including treatment ponds or lagoons, which also meet the criteria of this definition are not waters of the state. This exclusion applies only to man-made bodies of water, which neither were originally created in waters of the state (such as a disposal area in wetlands) nor resulted from impoundment of waters of the state.

303(d) LIST OF IMPAIRED WATERS

NYSDEC-published list, and any amendments thereto, of all surface waters in the State for which beneficial uses of the water (i.e., drinking, recreation, aquatic habitat, and industrial) are impaired by pollutants, as required by Section 303(d) of the Federal Clean Water Act. 303(d) listed waters include estuaries, lakes, and streams that fall short of State surface water quality standards and are not expected to improve within the next two years.

TOTAL MAXIMUM DAILY LOAD (TMDL)

The maximum amount of a pollutant allowed to be released into a water body so as not to impair uses of the water, allocated among the sources of that pollutant.

WATERCOURSE

A permanent or intermittent stream or other body of water, either natural or man-made, which gathers or carries surface water.

WATERWAY

Any natural or artificial fresh or marine body of water commonly known as a stream, river, creek, lake, pond, estuary, bay, harbor, ocean, and the like. A waterway includes those areas defined as lands underwater.

WETLANDS

Areas that meet the definition of "tidal wetland" or "freshwater wetland" as defined in Chapter 81 of the Town Code.

§ 86-3. Applicability and review for compliance.

The requirements under this chapter shall be applicable to all land development activities as follows:

- A. Disturbance of one acre or more; or
- B. Disturbance of less than one acre that is part of a larger common plan of development, notwithstanding multiple and distinct activities may occur at different times and/or different schedules.

§ 86-4. Stormwater Management Officer.

- A. The Stormwater Manager shall serve as the Stormwater Management Officer, as defined under this chapter.
- B. The Stormwater Management Officer shall be authorized to accept, administer and establish procedures for the review and approval of all stormwater pollution prevention plans (SWPPPs) in accordance with the requirements under this chapter.
- C. The Stormwater Management Officer or his/her authorized designee may:
 - (1) Review and approve the SWPPP;
 - (2) Review and grant/deny SWPPP conditional releases;
 - (3) Retain the services of a Town Board appointed registered professional engineer to review the plans, specifications and related SWPPP and SWPPP conditional release documents, and accept the recommendations of the engineer for approval;
 - (4) Accept the certification of a licensed professional that the stormwater pollution prevention plan (SWPPP) conforms to the requirements of this chapter; or
 - (5) Accept the certification of a licensed professional that the SWPPP conditional release complies with the theory that the proposed disturbance will not discharge to waters of the state or an MS4 system that discharges to waters of the state.

§ 86-5. Exemptions.

The following activities may be exempt from review under this chapter:

- A. Agricultural activity as defined in this chapter.
- B. Routine maintenance activities that disturb less than two acres and are performed to maintain the original line and grade, hydraulic capacity or original purpose of a facility.
- C. Repairs to any stormwater management practice or facility deemed necessary by the Stormwater Management Officer.
- D. Any part of a subdivision if a plat for the subdivision has been approved by the Planning Board of the Town of Brookhaven on or before the effective date of this chapter.
- E. Land development activities for which a building permit has been approved on or before the effective date of this chapter.
- F. Cemetery graves.
- G. Installation of fence, sign, telephone, and electric poles and other kinds of posts or poles.
- H. Emergency measure immediately necessary to protect life, property or natural resources. The Stormwater Management Officer shall be notified in writing within 48 hours of the commencement of the emergency. The Stormwater Management Officer shall review and determine the sufficiency of the emergency measure and advise the landowner and/or developer if additional protective measures are required.
- I. Activities of an individual engaging in home gardening by growing flowers, vegetable and other plants primarily for use by that person and his or her family.
- J. Landscaping and horticultural activities in connection with an existing structure.
- K. Resurfacing or repair of an existing paved surface, which does not decrease the permeability of the paved surface, nor expand the area of pavement.

§ 86-6. Stormwater pollution prevention plans.

- A. Stormwater pollution prevention plan requirements.
 - (1) Consistent with the New York Standards and Specifications for Erosion and Sediment Control (i.e., Erosion Control Manual), not more than five acres shall be disturbed at any one time unless pursuant to an approved SWPPP that includes post-construction stormwater management practices.

(2) No application for approval of a land development activity shall receive final approval until the Stormwater Management Officer has received, reviewed and approved a stormwater pollution prevention plan (SWPPP) prepared in accordance with the specifications in this chapter.

(3) Each application for approval of a land development activity shall be accompanied by a filing fee.

B. Contents of stormwater pollution prevention plans.

(1) All SWPPPs shall provide, at the minimum, the following information:

- (a) Background information about the scope of the project, including location, type and size of project;
- (b) The name(s), address(es), telephone and fax number(s) of the applicant, developer, and/or property owner, and the principal contact person of the retained consulting firm responsible for monitoring daily compliance in accordance with the provisions of this chapter;
- (c) Site map/construction drawing(s) for the project, including a general location map at a scale not less than one inch equals 2,000 feet. The site map shall be at a scale no smaller than one inch equals 50 feet. At a minimum, the site map should show the total site area; all improvements; areas of disturbance; areas that will not be disturbed; existing vegetation; on-site and adjacent off-site surface water(s); wetlands and drainage patterns that could be affected by the construction activity; existing and final slopes; locations of off-site material, waste, borrow or equipment storage areas; and location(s) of the stormwater discharge(s);
- (d) Description of the soil(s) present at the site;
- (e) Construction phasing plans describing the intended sequence of construction activities, including clearing and grubbing, excavation and grading, utility and infrastructure installation and any other activity at the site that results in soil disturbance. Preparation and installation of erosion control measures must be the first item listed in the sequence of construction activities.
- (f) Description of the pollution prevention measures that will be used to control litter, construction chemicals and construction debris from becoming a pollutant source in stormwater runoff;
- (g) Description of construction and waste materials expected to be stored on-site with updates as appropriate, and a description of controls to reduce pollutants from these materials, including storage practices to minimize exposure of the materials to stormwater, and spill prevention and response;
- (h) Temporary and permanent structural and vegetative measures to be used for soil stabilization, runoff control and sediment control for each stage of the project from initial land clearing and grubbing to project close-out;
- (i) A site map/construction drawing(s) specifying the location(s), size(s) and length(s) of each erosion and sediment control practice;
- (j) Dimensions, material specifications and installation details for all erosion and sediment control practices, including the siting and sizing of any temporary sediment basins;
- (k) Temporary practices that will be converted to permanent control measures;
- (l) Implementation schedule for staging temporary erosion and sediment control practices, including the timing of initial placement and duration that each practice should remain in place;
- (m) Maintenance schedule to ensure continuous and effective operation of the erosion and sediment control practice;
- (n) Name(s) of the receiving water(s);
- (o) Delineation of SWPPP implementation responsibilities for each part of the site;
- (p) Description of structural practices designed to divert flows from exposed soils, store flows, or otherwise limit runoff and the discharge of pollutants from exposed areas of the site to the degree attainable;
- (q) Any existing data that describes the stormwater runoff at the site.

(2) All SWPPPs shall document the "Five Step Process" as required by the Design Manual. The five-step process includes:

- (a) Site planning;
- (b) Water quality volume determination;
- (c) The application of green infrastructure practices and standard stormwater management practices with runoff reduction volume capacity;
- (d) The application of standard stormwater management practices to address the remaining water quality volume, if

applicable; and

- (e) The application of volume and peak rate control.
- (3) Land development activities as defined in this chapter, and within one of the classifications, Condition A, B, C or D as set forth below, shall also include water quantity and water quality controls (post-construction stormwater runoff controls) as set forth below as applicable:
- (a) Condition A: stormwater runoff from land development activities discharging a pollutant of concern to either an impaired water identified on the Department's 303(d) list of impaired waters or a total maximum daily load (TMDL) designated watershed for which pollutants in stormwater have been identified as a source of the impairment.
 - (b) Condition B: stormwater runoff from land development activities disturbing five or more acres.
 - (c) Condition C: stormwater runoff from land development activities disturbing between one acre and five acres of land during the course of the project, exclusive of the construction of single-family residences and agricultural activities on properties with existing agricultural use.
 - (d) Condition D: stormwater runoff from land development activities located immediately adjacent to surface waters.
- (4) SWPPP requirements for Conditions A, B, C and D:
- (a) All information in § **86-6** of this chapter;
 - (b) Description of each post-construction stormwater management practice;
 - (c) Site map/construction drawing(s) showing the specific location(s) and size(s) of each post-construction stormwater management practice;
 - (d) Hydrologic and hydraulic analysis for all structural components of the stormwater management system for the applicable design storms;
 - (e) Comparison of post-development stormwater runoff conditions with predevelopment conditions;
 - (f) Dimensions, material specifications and installation details for each post-construction stormwater management practice;
 - (g) Maintenance schedule to ensure continuous and effective operation of each post-construction stormwater management practice;
 - (h) Maintenance easements to ensure access to all stormwater management practices at the site for the purpose of inspection and repair. Easements shall be recorded on the plan and shall remain in effect with transfer of title to the property; and
 - (i) Inspection and maintenance agreement binding on all subsequent landowners served by the on-site stormwater management measures in accordance with this chapter.
- C. Plan certification. For land development activities within the classification of Condition A, B, C and/or D, the SWPPP shall be prepared by a New York State registered landscape architect (RLA), a certified professional in sediment and erosion control (CPESC) or a professional engineer (PE) licensed in the State of New York, and must be signed by the professional preparing the SWPPP, which professional shall certify that the design of all stormwater management practices complies with the requirements set forth in this chapter. All SWPPS must include the following preparer certification statement:
- "I certify that this document and all attachments were prepared under my direction and supervision in accordance with SPDES General Permit GP-0-10-001. Qualified personnel performed due diligence in gathering and evaluating the information contained in this SWPPP. Based on my design and inquiry of the owners and/or sponsors of the project, the information contained in this SWPPP is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."
- D. Other environmental permits. The applicant shall be required to obtain all applicable local, state, and federal environmental permits prior to approval of the SWPPP.
- E. Contractor certification.
- (1) Each contractor and subcontractor identified in the SWPPP involved in soil disturbance and/or stormwater management practice installation shall provide the following certification statement before undertaking any land development activity:
- "I certify under penalty of law that I understand and agree to comply with the terms and conditions of the Stormwater Pollution Prevention Plan. I further acknowledge that the failure to comply with the terms and conditions of the SWPPP is a violation of Chapter **86**, which may result in enforcement proceedings and/or the assessment of penalties. I also understand that it is unlawful for any person to cause or contribute to a violation of water quality standards.

- (2) The certification must include the name and title of the person providing the signature, address and telephone number of the contracting firm; the address (or other identifying description) of the site; and the certification date.
- (3) The certification statement(s) shall become part of the SWPPP for the land development activity.
- F. A copy of the SWPPP shall be retained at the site of the land development activity during construction from the date of initiation of construction activities to the date of final stabilization.
- G. NYSDEC notice of intent (NOI) and the MS4 SWPPP acceptance form must be submitted to NYSDEC prior to construction. No construction activity may begin until proof of submission to NYSDEC has been received by the Stormwater Management Officer.
- H. Request for a SWPPP conditional release.
 - (1) Request for a conditional release from SWPPP must be made in writing to the Stormwater Management Officer.
 - (2) Written request for a SWPPP conditional release must be prepared and certified by a landscape architect, certified professional in sediment and erosion control, or a professional engineer licensed in the State of New York.
 - (3) Written request for a SWPPP conditional release must provide the following information:
 - (a) Background information about the scope of the project, including location, type and size of project;
 - (b) The name(s), address(es), telephone, email address, and fax number(s) of the applicant, developer, and/or property owner, and the principal contact person of the retained consulting firm responsible for monitoring daily compliance in accordance with the provisions of this chapter;
 - (c) Site map/construction drawing(s) for the project, including a general location map at a scale not less than one inch equals 2,000 feet. The site map shall be at a scale no smaller than one inch equals 50 feet. At a minimum, the site map should show the total site area; all improvements; areas of disturbance; areas that will not be disturbed; existing vegetation; on-site and adjacent off-site surface water(s); wetlands and drainage patterns that could be affected by the construction activity; existing and final slopes; locations of off-site material, waste, borrow or equipment storage areas; and location(s) of the stormwater discharge(s); and
 - (d) Description of the soil(s) present at the site identified by the most current version of the Suffolk County Soil Survey map and/or test boring.
 - (4) Documentation in support of a conditional release must provide evidence to support the theory that runoff from the project site cannot, by any means, discharge to waters of the state as defined in this chapter, or an MS4 system that discharges to waters of the state, and shall include:
 - (a) Project design plans;
 - (b) Aerial photos of the project area;
 - (c) Dated site photos, taken within one month of the conditional release request;
 - (d) Relief maps made from 2007 (or newer) LIDAR digital terrain modeling, or the like;
 - (e) Existing road plans and profiles, if available; and
 - (f) The results of infiltration testing completed in accordance with Design Manual guidelines.

§ 86-7. Performance and design criteria for stormwater management and erosion and sediment control.

All land development activities shall be subject to the following performance and design criteria:

- A. Technical standards. For the purpose of this chapter, the following documents shall serve as the specifications and standards for stormwater management. Stormwater management practices that are designed and constructed in accordance with the documents set forth herein shall be presumed to meet the standards imposed by this chapter:
 - (1) The New York State Stormwater Management Design Manual (New York State Department of Environmental Conservation, or any amendments thereto, hereafter referred to as the "Design Manual").
 - (2) New York Standards and Specifications for Erosion and Sediment Control (Empire State Chapter of the Soil and Water Conservation Society, 2004 (or most current version), or any amendments thereto, hereafter referred to as the "Erosion Control Manual.")
- B. Equivalence to technical standards. Where stormwater management practices are not in accordance with the technical specifications or standards, the applicant or developer must demonstrate to the satisfaction of the Stormwater Management

Officer that the SWPPP, as prepared by a New York State registered landscape architect (RLA), a certified professional in sediment and erosion control (CPESC) or a professional engineer (PE) licensed in the State of New York, is equivalent to the technical specifications or standards.

- C. Water quality standards. Any land development activity shall not cause an increase in turbidity that will result in substantial visible contrast to natural conditions in surface waters of the State of New York.

§ 86-8. Maintenance, inspection and repair of stormwater facilities.

A. Maintenance and inspection during construction.

- (1) The applicant or developer of the land development activity or his or her representative shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the applicant or developer to achieve compliance with the conditions of this chapter. Sediment shall be removed from sediment traps or sediment ponds whenever their design capacity has been reduced by 50%.
- (2) For land development activities as defined under this chapter and meeting Condition A or C above, the applicant shall have a qualified professional conduct site inspections and document the effectiveness of all erosion and sediment control practices at least once every seven calendar days, or the applicable period as may be required by the NYSDEC, of any storm event producing 0.5 inch of precipitation or more. Inspection reports shall be maintained in a site logbook and be available for inspection upon request.
- (3) For land development activities as defined under this chapter and meeting Condition B or D above, the applicant shall have a qualified professional conduct at least two site inspections and document the effectiveness of all erosion and sediment control practices every seven calendar days, or the applicable period as may be required by the NYSDEC, of any storm event producing 0.5 inch of precipitation or more. The two inspections shall be separated by a minimum of two full calendar days. Inspection reports shall be maintained in a site logbook and be available for inspection upon request.
- (4) The applicant or developer or his or her representative shall be on site at all times when construction or grading activity takes place and shall inspect and document the effectiveness of all erosion and sediment control practices.

B. Maintenance access agreement. The property owner and the applicant or developer must execute a maintenance access agreement that shall provide for access to the facility at reasonable times for periodic inspection by the Town of Brookhaven to ensure that the stormwater management facility, as required pursuant to an approved SWPPP, is maintained in proper working condition to meet the design standards and any other provisions established by this chapter. The maintenance access agreement shall be in a form as approved by the Town Attorney, and recorded by the grantor in the Office of the Suffolk County Clerk, and said maintenance access agreement shall be binding on all subsequent landowners served by the stormwater management facility.

C. Maintenance after construction. The stormwater management facility owner or operator shall ensure the facility is operated and maintained in accordance with this chapter. Proper operation and maintenance shall also include, at a minimum, the following:

- (1) A preventive/corrective maintenance program for all critical facilities and systems of treatment and control (or related appurtenances) which are installed or used by the owner or operator to achieve the goals of this chapter.
- (2) Written procedures for operation and maintenance and training new maintenance personnel.
- (3) Discharges from the facility shall not exceed design criteria or cause or contribute to water quality standard violations in accordance with § 86-9D, or any amendments thereto.

D. Maintenance agreements. Prior to any land development activity receiving final approval, the property owner shall be required to execute a Declaration of Covenant for maintenance of the stormwater control facility, in such form as shall be approved by the Town Attorney, which shall be binding on all subsequent landowners, and shall cause said declaration to be filed and recorded in the Office of the Suffolk County Clerk. The maintenance agreement shall be consistent with the terms and conditions of this chapter.

§ 86-9. Construction inspection.

A. Erosion and sediment control inspection.

- (1) The Stormwater Management Officer may require such inspections as deemed necessary to determine compliance with the requirements of this chapter and may either approve that portion of the work as completed or notify the applicant where the work fails to comply with the requirements of this chapter and/or the stormwater pollution prevention plan (SWPPP) as approved. The applicant shall notify the Stormwater Management Officer at least 48 hours prior to the occurrence of any of the following:
 - (a) Installation of sediment and erosion control measures.

- (b) Completion of site clearing.
 - (c) Completion of rough grading.
 - (d) Inspections of an underground drainage or stormwater conveyance prior to backfilling.
 - (e) Completion of final grading.
 - (f) Close of the construction season.
 - (g) Completion of final landscaping.
 - (h) Successful establishment of landscaping in public areas.
 - (i) A final inspection of all sediment and stormwater management structures and facilities when work on these facilities has been completed.
- (2) If any violations are found, the applicant and developer shall be notified in writing of the nature of the violation and the required corrective actions. No further work shall be permitted, except for site stabilization, until the violations are corrected and the Stormwater Management Officer has approved all work previously completed.
- B. Stormwater management practice inspections. The Stormwater Management Officer is responsible for conducting inspections of stormwater management practices (Sumps). The Stormwater Management Officer may designate a certified licensed professional to act as an inspector. The designated inspector shall be required to submit a written inspection report to the Stormwater Management Officer.
- C. Termination of SWPPP coverage.
- (1) An owner or operator that is eligible to terminate SWPPP coverage must submit a completed notice of termination (NOT) to the Stormwater Management Officer.
- (2) An owner or operator may terminate coverage when one or more of the following conditions have been met:
- (a) Total project completion.
 - [1] All construction activity identified in the SWPPP has been completed; and
 - [2] All areas of disturbance have achieved final stabilization; and
 - [3] All temporary, structural erosion and sediment control measures have been removed; and
 - [4] All post-construction stormwater management practices have been constructed in conformance with the SWPPP and are operational.
 - (b) Planned shutdown with partial project completion.
 - [1] All soil disturbance activities have ceased; and
 - [2] All areas disturbed as of the project shutdown date have achieved final stabilization; and
 - [3] All temporary, structural erosion and sediment control measures have been removed; and
 - [4] All post-construction stormwater management practices required for the completed portion of the project have been constructed in conformance with the SWPPP and are operational.
- (3) A new owner or operator has obtained coverage.
- (4) Request for NOT sign off. A certificate of occupancy (CO) or a temporary CO may not be issued until all of the following conditions have been met:
- (a) Three copies of the final "as built" plans have been submitted to the Stormwater Management Officer for review and approval;
 - (b) The Stormwater Management Officer, or a designated certified licensed professional, has conducted a final site inspection and confirmed in writing that the site has achieved final stabilization and all permanent post-construction stormwater management practices are in place and functioning; and
 - (c) Permanent stormwater management system covenants have been reviewed, approved and filed with the Suffolk County Clerk's office. Proof of filing, including an original copy with the County Clerk's seal, must be submitted to the Stormwater Management Officer with the Schedule A description of the property.
- D. Inspection of stormwater facilities after project completion.

Upon the completion of the stormwater facility, the Stormwater Management Officer may conduct an inspection to ensure compliance with the provisions of this chapter and the approved SWPPP, including, but not limited to: routine inspections; random inspections; inspections based upon complaints or other notice of possible violations; inspection of drainage basins or areas identified as higher than typical sources of sediment or other contaminants or pollutants; inspections of businesses or industries of a type associated with higher than usual discharges of contaminants or pollutants or with discharges of a type which are more likely than the typical discharge to cause violations of state or federal water or sediment quality standards or the SPDES stormwater permit; and joint inspections with other agencies inspecting under environmental or safety laws. Inspections may include, but are not limited to: reviewing maintenance and repair records; sampling discharges, surface water, groundwater, and material or water in drainage control facilities; and evaluating the condition of drainage control facilities and other stormwater management practices.

- (2) The inspections specified by this section may be performed by any of the following, at the Stormwater Management Officer's discretion on a case-by-case basis:
 - (a) Designated Town of Brookhaven personnel;
 - (b) Authorized engineering firms or consultant firms;
 - (c) Engineering firms or consultant firms employed by a developer.

E. Submission of reports.

- (1) The Stormwater Management Officer may require monitoring and reporting from entities subject to this chapter as are necessary to determine compliance with this chapter.
- (2) All applicants are required to submit "as built" plans for any stormwater management practices located on-site after final construction is completed. The plans must show the final construction layout for all stormwater management facilities. The plans must also clearly display any alterations made to the original approved construction details, sections, and/or plan layout. A professional engineer must certify the as-built plans.

F. Right of entry for inspection. Upon the installation of a stormwater management facility on private property or upon any new connection between private property and the public stormwater system, the property owner shall grant and execute an access agreement permitting access to the property for the purpose of inspection by the Town and other governmental review agencies, or authorized engineering firms or consultant firms.

§ 86-10. Performance guarantee.

- A. Construction completion guarantee. In order to ensure the full and faithful completion of all land development activities related to compliance with all conditions set forth by the Stormwater Management Officer in his/her approval of the stormwater pollution prevention plan, the SMO may require the applicant or developer to provide, prior to construction, the required security, in the form of a performance bond, cash escrow, or irrevocable letter of credit from an appropriate financial or surety institution which guarantees satisfactory completion of the project and names the Town of Brookhaven as the beneficiary. The security shall be in an amount to be determined by the Town of Brookhaven based on submission of final design plans, with reference to actual construction and landscaping costs. The performance guarantee shall remain in force until the surety is released from liability by the Town of Brookhaven, provided that such period shall not be less than one year from the date of final acceptance or such other certification that the facility(ies) has been constructed in accordance with the approved plans and specifications and that a one-year inspection has been conducted and the facilities have been found to be acceptable to the Town of Brookhaven.
- B. Maintenance guarantee. Stormwater management and erosion and sediment control facilities operated and maintained by any person that owns or manages a commercial or industrial facility, prior to construction may be required to provide the Town of Brookhaven with an irrevocable letter of credit from an approved financial institution or surety, or other approved security, to ensure proper operation and maintenance of all stormwater management and erosion control facilities both during and after construction, and until the facilities are removed from operation. If any person fails to properly operate and maintain stormwater management and erosion and sediment control facilities, the Town of Brookhaven may default the security in order to cover the costs of proper operation and maintenance, including engineering and inspection costs.
- C. Recordkeeping. Any person operating or maintaining a stormwater management facility shall maintain records demonstrating compliance with this chapter.

§ 86-11. Remedies; penalties.

- A. Notice of violation. In the event that a land development activity or stormwater management facility is not in compliance with the requirements of this chapter, the Stormwater Management Officer may issue a written notice of violation, to be served personally or by certified mail, to the property owner as shown on the last preceding assessment roll of the Town of Brookhaven and the owner of record as shown in the records in the Office of the Suffolk County Clerk. The notice of violation shall contain the following:
 - (1) The name and address of the property owner and developer or applicant;

- (2) The property's tax identification (i.e., district, section, lot, block), the address or a description of the building, structure or land upon which the violation is occurring;
 - (3) A statement specifying the nature of the violation;
 - (4) A description of the corrective, remedial measures necessary to bring the land development activity and/or stormwater management facility into compliance with this chapter and a time schedule for the completion of such remedial action;
 - (5) A statement of the penalty or penalties that shall or may be assessed against the person to whom the notice of violation is directed;
 - (6) A statement that in the event that the required corrective measures are not completed within the time specified in the notice, the Town may seek a court order to enter the property, and complete the required corrective measures and assess such costs and expenses against the property;
 - (7) A statement that the determination of violation may be appealed to the SMO by filing a written notice of appeal within five business days of service of a notice of violation.
- B. Appeal of notice of violation. Any person receiving a notice of violation may appeal the determination of the SMO in writing within five business days of its issuance. The appeal notice shall be directed to the SMO. A hearing officer, as designated by the Director of Environmental Protection and the Town Attorney, shall hear the appeal within 30 days after the filing of the appeal and, within five business days of making his/her decision, issue a decision by certified mail or personal service to the violator and property owner. If the original notice of violation is sustained, the SMO shall issue an order, to be served by certified mail or personal service, which shall state the corrective measures to be taken and required date of completion of the corrective measures. The filing of the appeal shall not stay or prevent the Town from taking all necessary emergency corrective measures.
- C. Stop-work orders. In addition to any other available remedy at law, the SMO may issue a stop-work order for violations of this chapter. Persons receiving a stop-work order shall be required to halt all land development activities, except for remediation activities that address the violations stated in the stop-work order. The stop-work order shall be in effect until the SMO confirms that the land development activity is in compliance with the provisions of this chapter and the violation has been satisfactorily addressed. Failure to adhere to a stop-work order shall result in the Town taking all necessary action, including seeking civil, criminal, or monetary penalties as authorized under this chapter.
- D. Withholding of certificate of occupancy. The issuance of a certificate of occupancy may be withheld until compliance with this chapter has been demonstrated to the reasonable satisfaction of the Stormwater Management Officer.
- E. Injunctive relief. In addition to any other available remedy at law or as provided under this chapter, the Town may institute a suit in equity, injunction relief, to restrain, correct or abate such violations of this chapter.
- F. Any provision contained in the Town Code to the contrary notwithstanding, the Town Attorney, or his/her designee, in consultation with the Stormwater Management Officer, in addition to or in lieu of seeking criminal penalties or seeking to restrain or enjoin activity in violation of this chapter, may enter into a civil compromise whereby the person who committed such violation agrees to pay to the Town a civil penalty in an agreed amount. The payment of a civil penalty must be made in conjunction with an agreement on consent whereby the violator agrees to take steps to comply with the requirements under this chapter.
- G. Upon determination that a violation has occurred or is reasonably likely to occur if immediate action is not taken, the Town of Brookhaven may seek a court order permitting the Town of Brookhaven to take any and all corrective measures reasonably necessary to abate the violation and/or prevent the violation from occurring and/or restore the premises, and the cost thereof shall be assessed against the property and lands to be collected in the same manner as real property taxes.
- H. Application for search warrant. The Commissioner of Planning, Environment and Land Management or the Stormwater Management Officer or his designated representative is authorized to make application to the District Court or Supreme Court of Suffolk County, or any court of competent jurisdiction, for the issuance of a search warrant in order to conduct an inspection of any premises covered by this chapter where the owner refuses or fails to allow an inspection of the stormwater management facility and practices and where there is reasonable cause to believe that a violation of this chapter has occurred. The applications for a search warrant shall in all respects comply with the applicable laws of the State of New York.
- I. Penalties for offenses. Any person who shall violate any provision of this chapter shall be guilty of a violation punishable by a fine not exceeding \$3,000 or imprisonment for a period not to exceed six months, or both, for conviction of a first offense; for conviction of a second offense, both of which were committed within a period of two years, punishable by a fine not less than \$3,000 nor more than \$8,000 or imprisonment for a period not to exceed six months, or both; and upon conviction for a third or subsequent offense, all of which were committed within a period of five years, punishable by a fine not less than \$8,000 nor more than \$20,000 or imprisonment for a period not to exceed six months, or both. However, for the purposes of conferring jurisdiction upon courts and judicial officers generally, violations of this chapter shall be deemed misdemeanors and for such purpose only all provisions of law relating to misdemeanors shall apply to such violations. Each week's (seven consecutive days from date of incident) continued violation shall constitute a separate additional violation.
- J. Remedies not exclusive. The remedies listed in this chapter are not exclusive of any other remedies available under any

applicable statute, law and/or regulation and it is within the discretion of the Town of Brookhaven to seek cumulative remedies.

§ 86-12. Severability.

If any clause, sentence, paragraph, subdivision, section, or part of this chapter or the application thereof to any person, individual, corporation, firm, partnership, entity, or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section, or part of this chapter, or in its application to the person, individual, corporation, firm, partnership, entity, or circumstance directly involved in the controversy in which such order or judgment shall be rendered.

*Town of Brookhaven, NY
Thursday, October 3, 2019*

Chapter 86A. Prohibition of Illicit Discharges and Connections to the Town of Brookhaven Municipal Separate Storm Sewer System

[HISTORY: Adopted by the Town Board of the Town of Brookhaven 1-22-2008 by L.L. No. 2-2008, effective 1-30-2008; amended in its entirety 3-22-2018 by L.L. No. 7-2018, effective 3-29-2018. Subsequent amendments noted where applicable.]

GENERAL REFERENCES

Flood damage prevention — See Ch. 33.

Grading — See Ch. 35.

Coastal erosion hazard areas — See Ch. 76.

Water resources — See Ch. 78.

Wetlands and waterways — See Ch. 81.

Zoning — See Ch. 85.

Stormwater management and erosion control — See Ch. 86.

Subdivision regulations — See Ch. SR.

§ 86A-1. Legislative intent.

The purpose of this chapter is to provide for the health, safety, and general welfare of the residents of and general public within the Town of Brookhaven through the regulation of non-stormwater discharges to the municipal separate storm sewer system (MS4) to the maximum extent practicable as required by federal and state law. This chapter establishes methods for controlling the introduction of pollutants into the MS4 in order to comply with requirements of the SPDES General Permit for Municipal Separate Storm Sewer Systems. The objectives of this chapter are as follows:

- A. To meet the requirements of the SPDES General Permit for Stormwater Discharges from MS4s, Permit No. GP-0-15-003 or as amended or revised;
- B. To regulate the contribution of pollutants to the MS4 since such systems are not designed to accept, process or discharge non-stormwater wastes;
- C. To prohibit illicit connections, activities and discharges to the MS4;
- D. To ensure all stormwater runoff is contained on-site by approved drainage systems or natural drainage, except where otherwise approved by an authorized body;
- E. To establish legal authority to carry out all inspection, surveillance and monitoring procedures necessary to ensure compliance with this chapter; and
- F. To promote public awareness of the hazards involved in the improper discharge of trash, yard waste, lawn chemicals, pet waste, wastewater, grease, oil, petroleum products, cleaning products, paint products, hazardous waste, sediment and other pollutants into the MS4.

§ 86A-2. Definitions.

The terms used under this chapter shall have the meanings as set forth in this section:

BEST MANAGEMENT PRACTICES (BMPs)

Management practices designed to prevent or reduce the discharge of pollutants directly or indirectly to stormwater, receiving waters, or stormwater conveyance systems; schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to stormwater, receiving waters, or stormwater conveyance systems. Such practices may include pollution prevention and educational practices, maintenance procedures, treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.

CLEAN WATER ACT

The Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), and any subsequent amendments thereto.

CONSTRUCTION ACTIVITY

Activities requiring authorization under the SPDES General Permit for Stormwater Discharges from Construction Activity,

GP-0-15-002, as amended or revised. These activities include construction projects resulting in land disturbance of one or more acres. Such activities include but are not limited to clearing and grubbing, grading, excavating, and demolition.

HAZARDOUS MATERIALS

Material, including any substance, waste, or combination thereof, which, because of its quantity, concentration, physical, chemical, or infectious characteristics, may cause or significantly contribute to a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

ILLCIT CONNECTIONS

Any surface runoff or subsurface drain or conveyance that allows an illegal discharge to enter the MS4 or private property, including, but not limited to:

- A. Conveyances that allow any non-stormwater discharge including treated or untreated sewage, process wastewater, wash water, or water conveying solids to enter the MS4; and any connections to the storm drain system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by an authorized enforcement agency; or
- B. A drain or conveyance connected from a commercial or industrial land use to the MS4 or private property, which has not been documented in plans, maps, or equivalent records and approved by an authorized enforcement agency.

ILLCIT DISCHARGE

Any direct or indirect non-stormwater discharge to the MS4, except as exempted in § **86A-5** of this chapter.

INDUSTRIAL ACTIVITY

Activities requiring the SPDES Permit for Discharges from Industrial Activities as defined by the SPDES Multi-Sector General Permit, GP-0-12-001, as amended or revised.

MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4)

A conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains) that is owned or operated by the Town and designed or used for collecting or conveying stormwater; the MS4, as defined, is not a combined sewer or part of a publicly owned treatment works (POTW) as defined at 40 CFR 122.2.

NON-STORMWATER DISCHARGE

Any discharge, through overland flow or direct conveyance, to the MS4 that is not composed entirely of stormwater.

PERSON

Any individual, owner, lease holder, entity, corporation, agent, company, parent company, subsidiary, limited-liability company, substantially owned affiliated entity, successor, partnership, joint venture, association, legal representative, agent, or any other form of doing business.

POLLUTANT

A substance that may cause or might reasonably be expected to cause pollution of the waters of the state in contravention of the standards, including, but not limited to: dredged spoil, filter backwash, solid waste, incinerator residue, treated or untreated sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, soil, industrial, municipal or agricultural waste, and ballast discharged into water.

POLLUTANT OF CONCERN

Sediment or a water quality measurement that addresses sediment (such as total suspended solids, turbidity or siltation) or any other pollutant, including, but not limited to, nitrogen, phosphorus or pathogens, that have been identified as a cause of impairment to any water body that will receive a discharge from the land development activity.

PREMISES

Any building, lot, parcel of land, or portion of land, whether improved or unimproved, including adjacent sidewalks and parking strips.

PROPERTY OWNER

Any individual, group of individuals, company or corporation having certain rights and duties over the property.

SECTION 303(d) LISTED WATERS

NYSDEC-published list, and any amendments thereto, of all surface waters in the state for which beneficial uses of the water (i.e., drinking, recreation, aquatic habitat, and fisheries) are impaired by pollutants, as required by Section 303(d) of the Federal Clean Water Act. 303(d) listed waters include estuaries, lakes, and streams that fall short of state surface water quality standards and are not expected to improve within the next two years from date of publishing.

SPECIAL CONDITIONS

- A. Discharge compliance with water quality standards: The condition that applies where a municipality has been notified that the discharge of stormwater authorized under its MS4 permit may have caused or has the reasonable potential to cause or contribute to the violation of an applicable water quality standard. Under this condition, the municipality must

take all necessary actions to ensure future discharges do not cause or contribute to a violation of water quality standards.

- B. 303(d) listed waters: The condition in the municipality's MS4 permit that applies where the MS4 discharges to a 303(d) listed water. Under this condition, the stormwater management program must ensure no increase of the listed pollutant of concern to the 303(d) listed water.
- C. Total maximum daily load (TMDL) strategy: The condition in the municipality's MS4 permit where a TMDL, including requirements for control of stormwater discharges, has been approved by the EPA for a water body or watershed into which the MS4 discharges.
- D. The condition in the municipality's MS4 permit that applies if a TMDL is approved in the future by the EPA for any water body or watershed into which an MS4 discharges. Under this condition, the municipality must review the applicable TMDL to see if it includes requirements for control of stormwater discharges. If an MS4 is not meeting the TMDL stormwater allocations, the municipality must, within six months of the TMDL's approval, modify its stormwater management program to ensure that reduction of the pollutant of concern specified in the TMDL is achieved.

STATE POLLUTANT DISCHARGE ELIMINATION SYSTEM (SPDES) STORMWATER DISCHARGE PERMIT

A permit issued by the New York State Department of Environmental Conservation (NYSDEC) that authorizes the discharge of pollutants to waters of the state.

STORMWATER

Rainwater, surface runoff, snowmelt and drainage.

STORMWATER MANAGEMENT OFFICER (SMO)

The Superintendent of Highways or his/her authorized designee, having responsibility for the overall implementation of the Town's Stormwater Management Program.

TOTAL MAXIMUM DAILY LOAD (TMDL)

The maximum amount of a pollutant allowed to be released into a water body so as not to impair uses of the water, allocated among the sources of that pollutant.

WASTEWATER

Water that is not stormwater, which is contaminated with pollutants and is or will be discarded.

WATERCOURSE

A permanent or intermittent stream or other body of water, either natural or man-made, which gathers or carries surface water.

WATERS OF THE STATE

Shall be construed to include lakes, bays, sounds, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Atlantic Ocean within the territorial seas of the State of New York, and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, public or private, which are wholly or partially within or bordering the state or within its jurisdiction.

WATERWAY

Any natural or artificial fresh or marine body of water commonly known as a stream, river, creek, lake, pond, estuary, bay, harbor, ocean, or the like. A waterway includes those areas defined as lands under water.

WETLANDS

Areas that meet the definition of "tidal wetland" or "freshwater wetland" as defined in Chapter 81 of the Town Code.

§ 86A-3. Applicability.

The requirements under this chapter shall be applicable to all water entering the MS4, or private property, generated from any developed or undeveloped lands, unless explicitly exempted by an authorized enforcement agency.

§ 86A-4. Stormwater Management Officer's responsibility for administration.

- A. The Stormwater Manager shall serve as the Stormwater Management Officer, as defined under this chapter.
- B. The Stormwater Management Officer (SMO) shall be authorized to administer, implement, and enforce the provisions of this chapter.

§ 86A-5. Discharge prohibitions; exceptions.

- A. Stormwater runoff, natural drainage, or any means of stormwater conveyance shall not be diverted to other private or public real property, unless previously approved by an authorized body.

- B. Prohibition of illegal discharges. No person or constructed system shall discharge or cause to be discharged into the MS4 any materials other than stormwater, except as provided herein. The commencement, conduct or continuance of any illicit discharge to the MS4 is prohibited except as described herein.
- C. Exceptions to discharge prohibitions. The following discharges are exempt from discharge prohibitions established by this chapter, unless the discharges are determined to be substantial contributors of pollutants:
 - (1) Water line flushing or other potable water sources, landscape irrigation or lawn watering, existing diverted stream flows, rising groundwater, uncontaminated groundwater infiltration to storm drains, uncontaminated pumped groundwater, foundation or footing drains, crawl space or basement sump pumps, air-conditioning condensate, irrigation water, springs, water from individual residential car washing, natural riparian habitat or wetland flows, chlorine-free swimming pool discharges, residential street wash water, water from fire-fighting activities, and any other water source not containing pollutants. Such exempt discharges shall be made in accordance with an appropriate plan for reducing pollutants, as approved in writing by the SMO.
 - (2) Discharges approved in writing by the SMO to protect life or property from imminent harm or damage, provided that such approval shall not be construed to constitute compliance with other applicable laws and requirements, and further provided that such discharges may be permitted for a specified time period and under such conditions as the SMO may deem appropriate to protect such life and property while reasonably maintaining the purpose and intent of this chapter.
 - (3) Dye testing in compliance with applicable state and local laws, provided the SMO receives written notification of the test location and duration 48 hours prior to the discharge.
 - (4) Discharge authorized pursuant to a SPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the NYSDEC, provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations.

§ 86A-6. Prohibition of illicit connections.

The following illicit connections shall be prohibited:

- A. The construction, use, maintenance or continued existence of illicit connections to the MS4.
- B. This prohibition expressly includes, without limitations, prior illicit connections, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.
- C. A property owner shall be in violation of this chapter if a connecting line or overland flow conveying wastewater to the municipality's MS4 is found on the property; or allows such a connection to continue.

§ 86A-7. Prohibition against activities contaminating stormwater.

- A. Activities that are subject to the requirements of this section include any activity that:
 - (1) Causes or contributes to a violation of the Town's MS4 SPDES permit.
 - (2) Causes or contributes to the Town being subject to the special conditions as defined by this chapter.
- B. Upon notification to a property owner that an activity is causing or contributing to violations of the Town's MS4 SPDES permit, that property owner shall take all reasonable actions, within 30 days of written notification, to correct such activities such that the activity no longer causes or contributes to violations of the municipality's MS4 SPDES permit authorization. If special conditions warrant a delay in corrective action, a request for an extension of time must be made in writing to the SMO. The granting of an extension shall not be construed as permission to violate conditions set forth in this chapter, nor shall it be used to set precedent for future extension requests.

§ 86A-8. Use of best management practices to prevent, control, and reduce stormwater pollutants.

- A. Best management practices. Where the SMO has identified illicit discharges under this chapter or activities contaminating stormwater, the SMO may require implementation of best management practices (BMPs) to control those illicit discharges and activities, which may include the following:
 - (1) The owner or operator of private property or a commercial or industrial establishment to provide, at his/her own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the MS4 or to private property through the use of structural and nonstructural BMPs.
 - (2) Any person responsible for a property or premises which is, or may be, the source of an illicit discharge or an activity contaminating stormwater, to implement additional structural and nonstructural BMPs to reduce or eliminate the source of pollutant(s) to the MS4.

- B. Compliance with all terms and conditions of a valid SPDES permit authorizing the discharge of stormwater associated with industrial activity, to the extent practicable, shall be deemed compliance with the provisions of this section.

§ 86A-9. Suspension of access to MS4.

- A. The SMO may, without prior notice, suspend MS4 discharge access to a property owner when such suspension is necessary to stop an actual or threatened discharge which presents or may present imminent and substantial danger to the environment, to the health or welfare of persons, or to the MS4. The SMO shall notify the responsible party of such suspension within a reasonable time thereafter, in writing, of the reasons for the suspension. If the violator fails to comply with a suspension order issued in an emergency, the SMO may take such steps as deemed necessary to prevent or minimize damage to the MS4 or to minimize hazardous conditions which may adversely affect the health, safety, welfare, and property of Town residents and the general public.
- B. Termination due to the detection of illicit discharge. Any property owner conveying a discharge to the Town's MS4 or private property in violation of this chapter may have his/her MS4 access terminated if such termination would abate or reduce an illicit discharge. The SMO will notify a violator in writing of the proposed termination of its MS4 access and the reasons therefor. The violator may petition the SMO within 15 calendar days for reconsideration and an abatement conference or hearing. The SMO may grant access if he/she finds that the illicit discharge has ceased and the discharger has taken steps to prevent its recurrence. Access may be denied if the SMO determines in writing that the illicit discharge has not ceased or is likely to recur. A property owner commits an offense, punishable by fines, if the property owner reinstates MS4 access to premises terminated pursuant to this section without the prior approval of the SMO.

§ 86A-10. Industrial or construction activity discharges.

Any person subject to an industrial or construction activity SPDES stormwater discharge permit shall comply with all provisions of such permit. Proof of compliance with said permit may be required in a form acceptable to the Town prior to the allowing of discharges to the MS4.

§ 86A-11. Access to facilities; monitoring of discharges.

- A. Applicability. This section applies to all facilities that the SMO must inspect to enforce any provision of this chapter, or whenever the authorized enforcement agency has cause to believe that there exists, or potentially exists, in or upon any premises any condition which constitutes a violation of this chapter. The SMO is authorized to make or cause to be made inspections to determine compliance with the Town's MS4 permit and provisions of this chapter; and to determine the cause of illicit discharge in order to safeguard the health, safety, and welfare of the Town residents and the general public. The SMO or his/her designated representative is authorized to enter, upon the consent of the owner or facility operator, any premises at any reasonable time or at such other time as may be necessary in the event of an emergency, without the consent of the owner or facility operator, for the purpose of performing his/her duties under this chapter.
- B. Access to facilities.
- (1) The SMO shall be permitted to enter and inspect facilities subject to regulation under this chapter as often as may be necessary to determine compliance with this chapter. If a discharger has security measures in force, which require proper identification and clearance before entry into its premises, the discharger shall make the necessary arrangements to allow access to the SMO.
 - (2) Facility operations and/or property owners shall allow the SMO ready access to all parts of the premises for the purposes of inspection, sampling, examination and copying of records as may be required to implement this chapter.
 - (3) The Town shall have the right to set up on any facility subject to this chapter such devices as are necessary in the opinion of the SMO to conduct monitoring and/or sampling of the facility's discharge points.
 - (4) The Town has the right to require the facilities subject to this chapter to install monitoring equipment as is reasonably necessary to determine compliance with this chapter. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the discharger at its own expense. All devices used to measure stormwater flow and quality shall be calibrated to ensure their accuracy.
 - (5) If the SMO has been refused access to any part of the premises from which an illicit discharge is suspected, and the SMO has reasonable cause to believe that a violation of this chapter has occurred, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program designed to verify compliance with this chapter or any order issued hereunder, then the SMO may seek issuance of a search warrant from any court of competent jurisdiction. The refusal to allow access to any part of the premises shall be presumptive evidence that a violation exists.

§ 86A-12. Notification of spills.

Notwithstanding other requirements of law, as soon as any person responsible for a facility or operation, or responsible for emergency response for a facility or operation, has information of any known or suspected release of materials which results or may result in illegal discharges or pollutants discharging into the MS4 or private property, said person shall take all necessary steps to ensure the source and discovery, containment, and cleanup of such release. In the event of such a release of hazardous materials, said person shall immediately notify NYSDEC of the occurrence via emergency dispatch services or 911. In the event of a release of nonhazardous materials, said person shall notify the SMO in person, by telephone, or email no later than the next business day. Notifications in person, by telephone, or email shall be confirmed by written notice addressed and mailed to the SMO within three business days of the notification. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three years.

§ 86A-13. Penalties for offenses corrective actions.

A. Criminal sanctions.

- (1) Any property owner who violates any provision of this chapter or the conditions imposed by the SMO or his/her designated representative shall, in addition to administrative sanctions, be guilty of a violation punishable by a fine of not less than \$1,000 nor more than \$3,000 and for a second and each subsequent offense be guilty of a misdemeanor, punishable by a fine of not less than \$3,000 nor more than \$10,000 or a term of imprisonment of not less than 15 days nor more than six months, or both.
- (2) Each offense shall be a separate and distinct offense, and, in the case of a continuing offense, each day's continuance thereof shall be deemed a separate and distinct offense.

B. Any property owner who violates any provision of this chapter or the conditions imposed by the SMO or his/her designated representative may, in lieu of administrative and criminal sanctions, enter into an order of consent with the SMO. Such order may include:

- (1) Payment to the Joseph P. Macchia Environmental Trust Fund in an amount determined by the SMO or Town Attorney, but not to exceed \$20,000; and/or
- (2) Partaking in an environmental restoration project.

C. Equitable relief. The Town of Brookhaven shall have the right to seek equitable relief to restrain any violation or threatened violation of any of the provisions of this chapter.

§ 86A-14. Injunctive relief.

It shall be unlawful for any person or property owner to violate any provision or fail to comply with any of the requirements of this chapter. If a person or property owner has violated or continues to violate the provisions of this chapter, the SMO may petition for a preliminary or permanent injunction restraining the person or property owner from activities which would create further violations or compelling the person or property owner to perform abatement or remediation of the violation. In addition to any other available remedy at law or as provided under this chapter, the Town may institute a suit in equity, injunction relief, to restrain, correct or abate such violations of this chapter.

§ 86A-15. Alternative remedies.

A. Any provision contained in the Town Code to the contrary notwithstanding, the Town Attorney, or his/her designee, in consultation with the Stormwater Management Officer, in addition to or in lieu of seeking criminal penalties or seeking to restrain or enjoin activity in violation of this chapter, may enter into a civil compromise, whereby the person or property who or which committed such violation agrees to pay to the Town a civil penalty in an agreed amount. The payment of a civil penalty must be made in conjunction with an agreement on consent whereby the violator agrees to take steps to comply with the requirements under this chapter.

B. Where a property owner has violated a provision of this chapter, he/she may be eligible for alternative remedies in lieu of a civil penalty, upon recommendation of the Town Attorney and concurrence of the SMO, upon a determination that:

- (1) The violation was unintentional.
- (2) The violator has no history of previous violations of this chapter.
- (3) The environmental damage was minimal.
- (4) The violator has acted expeditiously to remedy the violation.
- (5) The violator has cooperated in the investigation and resolution.

C. Alternative remedies may consist of, but not be limited to, one or more of the following:

- (1) Attendance at compliance workshops;
- (2) Storm drain stenciling or storm drain marking;
- (3) Beach, river, stream or creek cleanup activities;
- (4) Implementing one or more of the recommendations of a watershed management plan that has been adopted by the Town or another agency;
- (5) Partaking in an environmental restoration or planting project; or
- (6) A payment to the Joseph P. Macchia Environmental Trust Fund in an amount determined by the SMO or Town Attorney in an amount not to exceed \$20,000.

§ 86A-16. Violations deemed public nuisance.

In addition to the enforcement processes and penalties provided, any condition caused or permitted to exist in violation of any of the provisions of this chapter is a threat to public health, safety, and welfare, and is declared and deemed a nuisance, and may be summarily abated or restored at the violator's expense, and/or a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance may be taken.

§ 86A-17. Remedies not exclusive.

The remedies listed in this chapter are not exclusive of any other remedies available under any applicable statute, law and/or rule and regulation; and it is within the discretion of the Town to seek cumulative remedies.

§ 86A-18. Severability.

If any clause, sentence, paragraph, subdivision, section, or part of this chapter or the application thereof to any person, individual, corporation, firm, partnership, entity, or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section, or part of this chapter, or in its application to the person, individual, corporation, firm, partnership, entity, or circumstance directly involved in the controversy in which such order or judgment shall be rendered.

Local Law Filing

A: 12/19/2019

New York State Department of State

E: 12/31/2019

41 State Street, Albany, NY 12231

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

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

Town of Brookhaven

Local Law No. 26 of the year 2019

A local Law amending CHAPTER 53 OF THE CODE OF THE TOWN OF BROOKHAVEN ENTITLED "SAND AND GRAVEL PITS; EXCAVATION; REMOVAL OF TOPSOIL"

Be enacted by the Town Board of the Town of Brookhaven as follows:

Section 1. Legislative Intent. This local law would permit the removal of topsoil for construction purposes.

Section 2. Text Amendment. Chapter 53 of the Code of the Town of Brookhaven entitled "Sand and Gravel Pits; Excavation; Removal of Topsoil" is hereby amended as follows:

§ 53-1. Intent.

The Town Board of the Town of Brookhaven recognizes that sand, gravel and topsoil are valuable natural resources of property owners within certain areas of the Town and that in past years the excavation of sand, gravel and/or topsoil have proceeded in an unsatisfactory manner resulting in the elimination of ground cover, natural vegetation and the degradation of slopes, radical changes in stormwater runoff and other problems which, in all likelihood, will lead to the permanent sterilization of property within the Town; therefore, the purpose and intent of this chapter is to restrict the removal of sand, gravel and topsoil to those instances where it is absolutely essential to remove said raw materials from a site in connection with the residential, commercial or industrial development of the premises, and further that the purpose and intent of this chapter is to encourage development which utilizes existing slope contours wherever possible so that drainage patterns and existing vegetation will be subjected to the least disturbance as is practicable.

§ 53-2. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

MINING

The extraction of overburden and minerals from the earth; the preparation and processing of minerals, including any activities or processes or parts thereof for the extraction or removal of minerals from their original location and the preparation, washing, cleaning, crushing, stockpiling or other processing of minerals at the mine location so as to make them suitable for commercial, industrial, or construction use; exclusive of manufacturing processes, at the mine location; the removal of such materials through sale or exchange, or for commercial, industrial or municipal use; and the disposition of overburden, tailings and waste at the mine location.

(If additional space is needed, attach pages the same size as this sheet, and number each.)

(1)

"Mining" shall not include the excavation, removal and disposition of minerals from construction projects, exclusive of the creation of water bodies, or excavations in aid of agricultural activities.

§ 53-3. Operations regulated; fees.

A. No lands or other premises shall be operated or used for mining operations unless the premises is zoned L-2 Industrial and has a DEC mining permit or is a legal pre-existing mine with a DEC permit.

B. "Mining operations" does not include the removal of sand, gravel, stone, topsoil or other materials for the construction of roads, drainage structures, recharge basins, sanitary systems, drywells, foundations, pools, parking lot construction, including cross access. In the event a subdivision, site plan or other land use application includes the removal of materials for the construction of roads, drainage structures, recharge basins, sanitary systems, drywells, parking lots or foundations, the applicant must submit a materials removal plan. The materials removal plan shall be reviewed by the Department of Planning, Environment and Land Management. The least amount of material to allow for construction shall be approved by the Department of Planning, Environment and Land Management. The Department shall accept, reject or accept with modification each materials removal plan. The final determination of the amount of material subject to the fees set forth in § 29-7C shall rest with the Commissioner of the Department of Planning, Environment and Land Management. Topsoil may be removed as required for construction purposes, but removal should be minimized. Topsoil retention on site for landscaping purposes should be maximized.

C. The Materials Removal Plan shall:

- (1) Be prepared by a New York State (NYS) licensed Professional Engineer (PE) with the objective of ensuring the least amount of material is removed from the premises; and**
- (2) Include a PE-certified estimate of the amount of material to be removed for the construction of roads, drainage structures, recharge basins, sanitary systems, drywells, parking lots, foundations or pools; and**
- (3) Include a PE-certified engineer's analysis of the amount of materials to be removed; and**
- (4) Include the reasons for material removal and an explanation as to why other engineering techniques that would eliminate the need for removal of soils cannot be accomplished on the subject site, including, but not limited to, cutting and filling, the import of soil backfill approved by an environmental regulatory agency and certified by the PE to be clean (meet 6NYCRR Subpart 375.6.8(b) soil cleanup objectives for residential land use and protection of groundwater), use of retaining walls and/ or grading.**

D. In the event a subdivision, site plan or other land use application includes removal of excess material, other than for construction of roads, recharge basins, drainage structures, sanitary systems, drywells, parking lots, foundations or pools, the applicant may appeal to the Board of Zoning Appeals for permission to conduct said activities. The appeal shall be made in the form of a use variance and the Board of Zoning Appeals shall review the application as a use variance in conformance with Town Code §85-57C and Town Law §267-b. The application shall be on a form prescribed by the Board of Zoning Appeals and shall include a materials removal plan indicated above. The Board of Zoning Appeals shall hold a public hearing and shall make a determination as to approval, deny or approve with conditions the proposed mining operations. In addition

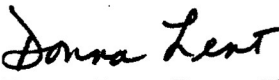
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to the criteria contained herein, the Board of Zoning Appeals shall consider the following criteria in making its determination:

Section 3. Authority – The Town Board is vested with the authority to make these amendments by local law pursuant to Municipal Home Rule Law §10 and in conformance with Town Law §130(23).

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

Dated: December 19, 2019
Farmingville, NY


Donna Lent, Town Clerk
Town of Brookhaven

(If additional space is needed, attach pages the same size as this sheet, and number each.)

(3)