

§ 246-1.
PURPOSES.

1.1.

To guide the future growth and development of the town in accordance with a comprehensive plan, which plan is embodied in this chapter, having taken into consideration applicable plans of town, county, regional, state and federal agencies.

1.2.

To regulate and limit the height, bulk and location of *structures* and *buildings*; to regulate and determine the area of yards, courts and any other *open space*; and to regulate the density of population in any given area and, for said purposes, to divide the town into districts.

1.3.

To regulate each class of *structures* and *buildings* uniformly throughout each district, although the regulations in some districts will differ from those in other districts.

1.4.

To secure safety from fire, flood and other dangers and to promote the public health, safety and general welfare, including, so far as conditions permit, making adequate provisions for light, air, convenience of access and solar energy use.

1.5.

To regulate for each district the uses for which *structures* may be erected, altered or occupied, and for which land may be used, in consideration of, among other things, the character of the district, the protection of the environment, the preservation of property values, the value and uses of the land, the pattern of *building* development and the protection of the public health, safety and general welfare.

1.6.

To protect the character and social and economic stability, and to encourage the orderly and beneficial development of the town and its neighborhoods; to protect the town against unsightly, obtrusive and obnoxious land uses and operations; and to enhance the aesthetic aspects of the natural and man-made elements of the town.

1.7.

To bring about the conformity of the use of *structures* and land with the comprehensive plan, and to minimize existing and potential future conflicts among the uses of land.

1.8.

To promote the most beneficial relationship between the use of *structures* and land and the circulation of traffic throughout the town, having particular regard to the avoidance of congestion in the *streets* and to the provision of safe and convenient vehicular and pedestrian traffic movements, including off-street parking and loading.

1.9.

To provide a guide for public policy and action in the efficient provision of public facilities and services, and for private enterprise in *building* development, investment and other economic activity relating to uses of *structures* and land throughout the town.

1.10.

To limit development to that which will not exceed the capacity of existing and programmed public facilities and services.

1.11.

To encourage the preservation and protection of the town's natural resources, including surface and groundwater quality and quantity, vegetation and wildlife habitats and waterfronts; and to ensure appropriate development with relation to those natural resources.

1.12.

To minimize *stormwater* runoff and maximize the quality and quantity of groundwater *recharge*; to minimize flooding and erosion by protecting the functions of *wetlands*, waterbodies, *watercourses*, floodplains, areas of high water table, *steep slopes*, erosion hazard areas and natural vegetative cover; and to encourage the appropriate use, protection and sound management of natural resources throughout the town.

1.13.

To encourage the protection of scenic vistas, historical *buildings* and sites, sensitive archaeological areas and other important visual and cultural resources.

1.14.

To offer the opportunity for a balanced array of housing, taking into consideration the needs of both the town and the region.

1.15.

To encourage the properly planned revitalization, rehabilitation and/or redevelopment of existing substandard areas.

§ 246-2.
DEFINITIONS AND WORD USAGE

2.1. Introduction.

For the purposes of this chapter, certain words and terms used herein are specifically defined. Defined words are printed in *italics* throughout the text.

2.2. General construction of language.

The following rules of construction apply to the language of this chapter:

2.2.1 The specific shall control the general.

2.2.2 All words used in the present tense include the past and the future tense.

2.2.3 All words in the singular number include the plural number, and vice-versa, unless the natural construction of the wording indicates otherwise.

2.2.4 Words used in the masculine gender include the feminine and neuter, and vice-versa, unless the natural construction of the wording indicates otherwise.

2.2.5 The word "shall" is mandatory; the word "may" is permissive.

2.2.6 The word "includes" shall not be limited to the specified examples but is intended to extend its meaning to all other instances or circumstances of like kind or character.

2.2.7 Unless the context clearly indicates the contrary, where a regulation involves two or more items, conditions, provisions or events connected by the conjunction "and," "or," "either...or," the conjunction shall be interpreted as follows:

2.2.7.1 "And" indicates that all of the connected items, conditions, provisions or events shall apply.

2.2.7.2 "Or" indicates that the connected items, conditions, provisions or events shall apply singly but not necessarily in combination.

2.2.7.3 "Either. . .or" indicates that the connected items, conditions, provisions or events shall apply but not in combination.

2.2.8 A "*building*" or "*structure*" includes any part thereof.

2.2.9 The words "*lot*," "*plot*" and "*tract of land*" shall each include the other.

2.2.10 The word "*premises*" shall include land and any improvements thereon.

2.2.11 References made to "*officials*" and "*official bodies*" shall mean officials and official bodies of the Town of Oyster Bay, unless the natural construction of the wording indicates otherwise.

2.2.12 Unless otherwise specified, all distances shall be measured horizontally.

2.2.13 In case of any difference of meaning or implication between the text of this chapter and any caption or illustration, the text shall control.

2.3. Terms not defined.

Where terms are not defined, they shall have their ordinarily accepted meaning consistent with their context.

2.4. Definitions.

AGRICULTURE — The raising of fruits, vegetables, nursery stock and the like, and *structures* incident thereto, including the retail sale of products grown on the premises, but not including the raising, breeding or keeping of animals.

AMUSEMENT DEVICE — A machine or *structure* that is intended for the amusement or recreation of a patron, including but not limited to sport-related games such as basketball, golf or football, pinball games, video or computer games and other similar games. **[Amended 10-16-2012 by L.L. No. 3-2012]**

ANIMAL BOARDING FACILITY — An establishment, other than an *animal hospital* or *veterinary office* or *clinic* principally used for the overnight boarding of animals.

ANIMAL HOSPITAL — A *building* for the medical and/or surgical care of sick or injured animals, and including the overnight boarding of such animals for a period of time in connection with primary medical and surgical care.

ANIMATED SIGN — Any *sign* that blinks or uses movement or change of lighting to depict action or to create a special effect or changing scene.

ANNUAL HOUSEHOLD INCOME — *Annual household income* as defined by the U.S. Department of Housing and Urban Development (HUD) under its HOME Program. **[Added 11-9-2004 by L.L. No. 16-2004]**

ANTENNA — A system of electrical conductors that transmit or receive electromagnetic waves or radio frequency or other wireless signals. **[Amended 9-12-2017 by L.L. No. 6-2017]**

APARTMENT — See "dwelling unit." **[Amended 10-16-2012 by L.L. No. 3-2012]**

ASSISTED-LIVING FACILITY — A *building*, portion of a building or group of buildings that provide dwellings in a residential environment where individual cooking facilities are limited to microwave ovens and/or cooktops, with assistance available by way of common meals, housekeeping and personal services. Occupancy is restricted to persons 62 years of age or older or couples, one of whose member is 62 years of age or older who may have difficulties with one or more essential activities of daily living, such as feeding, bathing, dressing or mobility. **[Amended 6-14-2022 by L.L. No. 6-2022]**

AVERAGE SETBACK — Computed by using the actual *front yard setbacks* of existing *buildings* in the same zoning district within a two-hundred-foot distance from each *side yard* of the subject property, including any *principal building* which may exist on the subject property. If the 200 feet is interrupted by an intersection, only the *front yard setbacks* up to that intersection shall be used in calculating the average. Where existing

buildings within 200 feet on either side have a *front yard setback* which is greater than the maximum required *front yard setback* as set forth in § 246-5.3, Schedule 246.5.3, Schedule of Dimensional Regulations, the maximum required *front yard setback* shall be used in the calculation. (See Figure 2-1 at the end of this chapter.)**[Amended 7-22-2003 by L.L. No. 7-2003; 4-25-2006 by L.L. No. 5-2006]**

BANNER — Any *sign* of flexible or lightweight fabric or similar material that is mounted or attached to a pole or a *building*. *Flags* shall not be considered *banners*.

BAR — A *building* or any part thereof in which there is primarily served and offered for sale beer, wine, and/or liquor for consumption on premises.**[Amended 10-16-2012 by L.L. No. 3-2012]**

BASEMENT — That portion of a *building* that is partly or completely below grade.**[Amended 10-16-2012 by L.L. No. 3-2012]**

BEST MANAGEMENT PRACTICES (BMPs) — Activities, structural improvements, maintenance procedures, prohibitions of certain practices, and other *stormwater management* techniques that help reduce the quantity and improve the quality of *stormwater runoff*. BMPs include treatment requirements, operating procedures, and practices to control site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.**[Added 9-21-2004 by L.L. No. 12-2004]**

BOATYARD — A facility for servicing and constructing watercraft, as well as providing supplies, provisions, out-of-water boat storage, fuel, sewage pumpout accommodations, and facilities for the rental and retail sale of boats, boat engines, and other marine equipment.**[Added 1-20-2004 by L.L. No. 2-2004]**

BUILDING — Any *structure* having a roof which is self-supporting, or supported by columns, air pressure or walls and intended for the shelter, housing or enclosure of *persons*, animals or chattel.

BUILDING or STRUCTURE, ACCESSORY — A *building* or *structure* subordinate to and separated by a distance of more than three feet from the *principal building* on a lot and used for purposes customarily incidental to those of the *principal building*. Where an *accessory building* or *structure* is attached to the *principal building*, such *accessory building* or *structure* shall be considered part of the *principal building*. No *accessory building* or *structure* shall exceed 1/3 of the maximum permitted *building coverage* of the district in which it is located; exceed 40% of the *building coverage* of the *principal building* on the *lot*, contain a cooking, sanitary and/or sleeping facility, or be used as a *dwelling*; or, be located less than three feet from another *building*. (See Figure 2-3 at the end of this chapter.)**[Amended 7-22-2003 by L.L. No. 7-2003; 10-16-2012 by L.L. No. 3-2012; 6-14-2022 by L.L. No. 6-2022]**

BUILDING AREA — The sum of the maximum horizontal cross-sectional area of the *building(s)* on a *lot*, excluding cornices, eaves or gutters not projecting more than 18 inches; one-story unenclosed and unroofed porches, balconies, decks or terraces not more than three feet above grade; steps; and bay windows not extending vertically more than one *story* and not projecting more than five feet.**[Amended 7-22-2003 by L.L. No. 7-2003]**

BUILDING COVERAGE — The *building area* and the area of all parking garages

divided by the *lot area*. (See Figure 2-5 at the end of this chapter.)

BUILDING HEIGHT — The mean vertical distance measured from the mean finished grade or existing natural, undisturbed grade (as determined by the Commissioner of the Department of Planning and Development), whichever is lower, adjacent to the exterior walls of the *building* to the level of the highest elevation of the roof. (See Figure 2-4 at the end of this chapter.)**[Amended 7-22-2003 by L.L. No. 7-2003; 4-25-2006 by L.L. No. 5-2006; 10-16-2012 by L.L. No. 3-2012]**

BUILDING, PRINCIPAL — A *building* in which is conducted the *principal use* of the *lot* on which such *building* is situated. (See Figure 2-3 at the end of this chapter.)

BUILDING MARKER — Any *sign* indicating the name of a *building*, date and incidental information about its construction, which *sign* is of or cut into a masonry surface or made of bronze or other similar quality permanent material.

CABANA — A shelter or *building* on a beach or at a *swimming pool* used as a bathhouse.

CABARET (or DANCE HALL, DISCOTHEQUE or NIGHTCLUB) — Any premises where, in conjunction with the sale or service of food and/or drinks, patrons are intended to dance to live or recorded music and/or to be entertained by performers. The concept of dinner-theater is included within this definition.

CANOPY SIGN — Any *sign* that is part of or attached to an awning, canopy or other plastic or structural protective cover over a door, entrance, window or outdoor service area. A marquee is not a canopy. For the purposes of regulation in this section, a *canopy sign* shall be considered a *wall sign*.

CATERING SERVICE ESTABLISHMENT — Any premises, a *principal use* of which is to regularly serve food and/or alcoholic beverages to patrons on a group basis, for functions, occasions or events, and where the facilities are capable of serving a meal to 99 or more *persons* at one sitting.

CELLAR — See "basement."**[Amended 10-16-2012 by L.L. No. 3-2012]**

CHANGEABLE COPY SIGN — A *sign* or portion thereof with characters, letters or illustrations that can be electronically 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 for purposes of this section. The following are not considered *changeable copy signs* for the purposes of this section: a *sign* on which the only copy that changes is an electronic or mechanical indication of time or temperature; nonelectronic manually changeable signs; and fast food restaurant menu boards located in drive-thru lanes which shall be considered a freestanding or building sign.**[Amended 6-14-2022 by L.L. No. 6-2022]**

COLLATERAL LOAN BROKER — Any *person*, partnership or corporation:**[Added 3-31-2009 by L.L. No. 3-2009]**

1. Loaning money on deposit or pledge of personal property, other than securities or printed evidences of indebtedness; or
2. Dealing in the purchasing of personal property on condition of selling back at a

stipulated price; or

3. Designated or doing business as a furniture storage warehouseman, and loaning and advancing money upon goods, wares or merchandise pledged or deposited as collateral security.

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.

COMMERCIAL VEHICLE — A vehicle bearing a commercial livery or taxi license plate or, in the event the vehicle is not registered, a vehicle that is other than a passenger car, or is designed to refrigerate, cook or sell food or to carry a cargo of flammable or other *hazardous materials*.**[Added 1-18-2005 by L.L. No. 1-2005; amended 10-16-2012 by L.L. No. 3-2012]**

CONGREGATE-CARE — A *building*, portion of a building or group of buildings containing three or more dwelling units where individual cooking facilities are limited to microwave ovens and/or cooktops, specially designed for use and occupancy by the elderly, including a common dining facility and other common amenities and whose occupancy is restricted to persons 62 years of age or older or couples, one of whose member is 62 years of age or older.**[Amended 6-14-2022 by L.L. No. 6-2022]**

COUNTRY CLUB — Land, *buildings* and facilities including a golf course, dining facilities, a yacht club or beach club, or a combination of these uses, for the purpose of accommodating not-for-profit recreational, social and similar activities for the exclusive use of its members.**[Amended 1-20-2004 by L.L. No. 2-2004]**

DANCE HALL — See "*cabaret*."

DAY-CARE FACILITY — An establishment licensed by the State of New York that is engaged in the care of infants, children or the elderly outside of a *family* home, where medical care or delinquency correction is not the *principal use* and where overnight accommodations are not included in the services provided. *Family* and group *family* day care is excluded from this definition because it is separately and exclusively regulated by the New York State Office of Children and Family Services.

DECIBEL — A unit of measurement of intensity of sound (the sound pressure level).

DISCOTHEQUE — See "*cabaret*."

DISTURBANCE — The removal of vegetation or soil, or any filling, draining, *grading*, excavation or other such activity which alters the condition of land.**[Added 6-24-2008 by L.L. No. 8-2008]**

DISTURBANCE OF NATURAL VEGETATION — Any action to change, interfere with or otherwise destroy *natural vegetation* beyond that required for customary vegetation management purposes.**[Added 9-21-2004 by L.L. No. 12-2004]**

DUST — Solid *particulate matter* capable of being air- or gas-borne.

DWELLING — A *building* containing one or more *dwelling units*.

DWELLING, MULTIFAMILY — A *dwelling* containing three or more *dwelling units*.

The term shall include "*apartment*."

DWELLING, ONE-FAMILY — A *dwelling* containing one *dwelling unit*.

DWELLING, TWO-FAMILY — A *dwelling* containing two *dwelling units*.

DWELLING UNIT — A *building* or portion thereof providing complete housekeeping facilities for one *family*, including independent cooking, sanitary and sleeping facilities, and that is physically separate from any other *dwelling unit*.

DWELLING UNIT, ATTACHED — A *dwelling unit* sharing a common side or rear wall or walls without openings with another *dwelling unit*, but occupying the entire volume within its portion of the *building* from the lowest level to the roof, and having its own separate entrance or entrances to the outside. The term is intended primarily for such *dwelling unit* types commonly referred to as "*townhouses*."

DWELLING UNIT, DETACHED — A *one-family dwelling* which does not abut any other *dwelling*.

FAMILY — A *family* is:

1. A householder plus one or more *persons* related by blood, marriage or adoption and limited to the spouse, parents, grandparents, children, grandchildren, brothers or sisters of the householder or of the householder's spouse, living together as a single, not-for-profit housekeeping unit sharing *kitchen* facilities; or
2. A group of *persons*, comprising a not-for-profit housekeeping unit, headed by a householder caring for a reasonable number of individuals in a *family-like* living arrangement which to all outward appearances is the functional and factual equivalent of a *family* of related *persons*; or
3. A maximum of four *persons*, living in a not-for-profit housekeeping unit, not all of whom share a relationship as described above.

FENCE — May consist of a woven wire, woven wood, picket, board or PVC. [Amended 10-16-2012 by L.L. No. 3-2012]

FIRST TIME HOMEBUYER — A homebuyer who has had no ownership in a principal residence during the five-year period immediately prior to the date of purchase (contract date) of the property. Such a homebuyer includes anyone who has only owned a residence with a former spouse while married or one who has only owned a principal residence not permanently affixed to a permanent foundation, or a property that was not in compliance with state, local or model *building* codes and cannot be brought into compliance for less than the cost of constructing a permanent *structure*. [Added 11-9-2004 by L.L. No. 16-2004]

FISHING STATION — A storefront business selling bait, renting or selling tackle, and renting boats and other fishing supplies and equipment for local use; or any private property on which members of the public are charged a fee to fish from a dock, a pier, or the shore. [Added 1-20-2004 by L.L. No. 2-2004]

FISH MARKET — A retail establishment specializing in the sale of fresh fish, shellfish, and other seafood which, with the exception of minor preparatory tasks, are processed

at an off-site seafood processing facility, and which are sold to area *restaurants* and the general public. A wholesale canning or packaging facility which prepares seafood for distribution to retail stores for sale shall not be constructed as a *fish market*.**[Added 1-20-2004 by L.L. No. 2-2004]**

FITNESS CENTER — A facility containing equipment and/or space used by members and/or nonmembers for the purpose of physical fitness, including gyms, health clubs and other similar facilities.**[Added 4-25-2006 by L.L. No. 5-2006]**

FLAG — Any noncommercial symbol, including *flags* of the Town, the state, foreign nations having diplomatic relations with the United States and any other *flag* adopted or sanctioned by an elected legislative body of competent jurisdiction, that is woven into, painted or printed on or otherwise attached to any flexible or lightweight fabric or similar material. Any similar *sign* not meeting one or more of these conditions shall be considered a *banner sign* and shall be subject to regulation as such. The *flag* of the United States of America shall not be subject to regulation by this chapter.

FLAG LOT — A *lot* whose buildable area, i.e. the "*flag*" portion, is connected to the *street* or right-of-way giving access to it by a strip of land, i.e. the "*pole*" portion, whose principal purpose is to provide legal and/or actual physical access to the buildable area. In general, the buildable area of a *flag lot* is located to the rear of another *lot(s)* fronting on the same or an intersecting *street*.**[Added 7-10-2001 by L.L. No. 3-2001]**

FLOOR AREA, GROSS (Nonresidential) — The sum of the horizontal areas of all floors of a *building*, including interior balconies and mezzanines, but excluding uncovered exterior balconies, decks or porches. All horizontal dimensions of each floor are to be measured from the exterior faces of the walls of each such floor, including all roofed-over areas, or from the center line of party walls with any adjoining *building*. In computing *gross floor area*, attic space having a headroom of less than seven feet six inches, *cellar* and *basement* space, floor space used exclusively for mechanical equipment and *building* maintenance or service purposes (e.g., elevators, HVAC, required stairways, public restrooms, etc.), and floor space used for off-street parking and/or loading purposes shall be excluded. Notwithstanding the foregoing, that portion of *gross floor area* comprising any covered plaza or similar pedestrian common area amenity which is not used directly for commercial purposes shall be excluded in calculating required off-street parking and loading spaces, except for any kiosk or similar commercial facility, the area of which shall be included.¹**[Added 2-13-2007 by L.L. No. 4-2007]**

FLOOR AREA, GROSS (Residential) — The sum of the horizontal areas of all floors of all *buildings*, on a *lot*, measured from the exterior faces of the walls of each floor. *Gross floor area* includes the area of all structures on the premises including garages, roofed-over balconies, decks, [except for decks not more than three feet above grade], or porches except for unenclosed roofed-over porches up to six feet in width which face a *street* or extend continuously from the *street* side to the *side yard*(wrap-around porch)], attic space and loft floor space, if any. The *floor area* of any basement having a headroom of seven feet or more (measured from the floor of the basement to the lowest

1. Editor's Note: The definitions of "nonresidential gross floor area" and "residential gross floor area" superseded the former definition of "gross floor area," as amended.

point of the floor framing above) (including conversions of all basements to finished storage and/or habitable space) shall also be counted in all residential zoning districts except R1-20, RI-1A, R1-2A and R1-5A. The *floor area* of any space which exceeds 10 feet in height, excluding garages and excluding second story floor space where the extra ceiling height is within what would otherwise be attic space, shall be counted at 1.5 times their actual *floor area*. The area of any detached garage shall be included if it exceeds 400 square feet in area.**[Added 2-13-2007 by L.L. No. 4-2007; amended 6-24-2008 by L.L. No. 8-2008; 12-16-2008 by L.L. No. 15-2008; 1-24-2023 by L.L. No. 1-2023]**

FLOOR AREA RATIO — The *gross floor area* of all *buildings* on a *lot*, including *accessory buildings*, divided by the total *lot area*. (See Figure 2-5 at the end of this chapter.)

FREESTANDING SIGN — Any *sign* supported by *structures* or supports that are anchored in the ground and are independent from any *building*.

FRONT SETBACK — The distance from the closest point of a *building* on a *lot* to the *front lot line*, measured perpendicular to the closest point of the *front lot line*.

FRONTAGE — The extent of a *lot* along a *street*. (See Figure 2-6 at the end of this chapter.)

GAME ROOM — All or any part of any *building*, *structure* or room within which is located more than two *amusement devices*.

HABITABLE AREA — Any *floor area* designed to be used for living, sleeping or cooking purposes, enclosed on all sides by permanent walls and having a headroom of at least seven feet six inches.

HAZARDOUS MATERIAL — Any material, substance or chemical which, if spilled or released, would represent a present or potential future danger to public health or the environment, including any *toxic*, caustic or corrosive chemical, radioactive material or other similar substance which is identified in any Town, county, state or federal regulation as posing or potentially posing such a danger.**[Added 9-21-2004 by L.L. No. 12-2004]**

HEIGHT:SETBACK RATIO (INCLINED PLANE) — A measurement designed to regulate the height of *buildings* in relation to topography and setbacks. This ratio effectively creates an imaginary *inclined plane* beginning at the mean natural grade of the portion of the *lot line* facing the *building* and rising toward the *building* at the ratio specified elsewhere in this chapter. (See Figures 2-11.1, 2-12, 2-13 and 2-14 at the end of this chapter.)**[Added 2-13-2007 by L.L. No. 4-2007]**

HELIPAD — A landing area for the exclusive use of helicopters, including servicing, storage and refueling.

HOME BUSINESS — An *accessory use* within a *dwelling* that involves a professional activity offering skilled services to clients, such as those services offered by a physician, dentist, lawyer or engineer, and which involves a limited number of nonresident employees and a limited number of business-related visits.**[Added 7-22-2003 by L.L. No. 7-2003]**

HOME OFFICE — An *accessory use* within a *dwelling* that involves activities which

only require the use of typical light *office* equipment, and which involve no nonresident employees and no business-related visits.[**Added 7-22-2003 by L.L. No. 7-2003**]

ILLUMINATED SIGN — Any *sign* that is illuminated by or created from an artificial light source, including, but not limited to, neon *signs*, *signs* illuminated by a light source that is either internal or external to the *sign* itself and *signs* illuminated by exposed bulbs.

INFORMATION SIGN — A *sign* that has a noncommercial purpose accessory to the *principal use* of the *lot* on which it is located, such as "NO PARKING," "ENTRANCE," "LOADING ONLY," "TELEPHONE" and other similar directives.

INTEGRATED PEST MANAGEMENT (IPM) — A system of pest control that employs multi-disciplinary knowledge to manage pest problems in a way that optimizes results while minimizing any potential environmental impact.[**Added 9-21-2004 by L.L. No. 12-2004**]

KITCHEN — That portion of a *building* designed for the storage and cooking or preparation of food, having at least but not limited to facilities for cooking, a sink and refrigerator.[**Amended 10-16-2012 by L.L. No. 3-2012**]

LIGHT MANUFACTURING USE — The processing, fabrication, assembly, treatment, packaging and incidental storage and distribution of products made predominantly from previously prepared materials and/or finished products or parts and excluding basic industrial processing finished products or parts and excluding basic industrial processing.

LODGING PLACE — A *building* or portion thereof offering overnight accommodations for transient guests for compensation, either with or without meals, and possibly providing ancillary uses to meet the needs of registered guests such as *restaurants*, meeting rooms and recreational facilities. This definition shall include hotels, motels and inns.

LOT — An individual parcel of land shown on a subdivision plat filed at the *office* of the Nassau County Clerk either as approved by the Nassau County Planning Commission, or as legally filed at the *office* of the Nassau County Clerk prior to the granting of subdivision approval authority to the Nassau County Planning Commission.

LOT AREA — The total horizontal area included within *lot lines*, except that:[**Amended 7-10-2001 by L.L. No. 3-2001; 6-24-2008 by L.L. No. 8-2008**]

1. For *lots* created after July 20, 2001, *lot area* shall exclude any portion of the *lot* which is less than 1/3 of the required *lot width* as measured at right angles to its depth; and
2. For *lots* created after the effective date of this amendment, *lot area* shall exclude 75% of any *wetland* areas, as well as 50% of any *steep slope* areas, both as defined herein.

LOT, CORNER — A *lot* at the junction of and abutting on two intersecting *streets*.

LOT COVERAGE — That percentage of a *lot* covered by the combined area of all *buildings*, *structures*, paved areas and other impervious surfaces.[**Added 9-21-2004 by L.L. No. 12-2004**]

LOT DEPTH — The mean horizontal distance between the *front* and *rear lot lines*, measured in the general direction of the *side lot lines*.

LOT, DOUBLE FRONTAGE — A *lot* having *frontage* on two or more *streets*. This term shall apply to both *corner lots* and through *lots*.

LOT LINE — A property line bounding a *lot*.

LOT LINE, FRONT — In the case of a *lot* abutting upon only one *street*, the *lot line* separating the *lot* from the *street*. In the case of a *corner lot* in a residence district, the shortest *frontage* abutting a *street* shall be considered to be the *front lot line*. In addition, in the case of a *lot* having *frontage* on two or more *streets*, the *front setback* and all other requirements of this chapter applicable to *front yards* shall apply to all *street frontages*. (See Figure 2-6 at the end of this chapter.) [Amended 7-22-2003 by L.L. No. 7-2003]

LOT LINE, REAR — The *lot line* which is generally opposite the *front lot line*. If the *rear lot line* is less than 10 feet in length, or if the *lot* comes to a point at the rear, the *rear lot line* shall be deemed to be a line parallel to the *front lot line*, not less than 10 feet in length, lying wholly within the *lot* and farthest from the *front lot line*. (See Figure 2-7 at the end of this chapter.)

LOT LINE, SIDE — Any *lot line* other than the *front lot line* and the *rear lot line*.

LOT WIDTH — The width of a *lot* measured parallel to the *front lot line* at the minimum required *front setback*. Such minimum *lot width* shall be maintained to at least the minimum required *rear yard*. (See Figure 2-8 at the end of this chapter.) For any *lot* created after July 20, 2001, *lot width* shall be measured parallel to and at the *front lot line* and shall be maintained to at least the minimum required *rear yard*. *Lot width* and *frontage* may be reduced in the *front yard* to not less than 1/3 of the minimum dimension required in the district in which it is located provided that said *lot's frontage* is on a cul-de-sac or on the outside of a curve with a horizontal radius of 500 feet or less and further provided that the required *lot width* is met at the *front yard* setback. [Amended 7-10-2001 by L.L. No. 3-2001]

MARICULTURE — The cultivation of marine organisms, including such protein foods as oysters, clams, mussels, and other shellfish in their natural environment, on underwater farmlands. [Added 1-20-2004 by L.L. No. 2-2004]

MARICULTURE RESEARCH AND DEVELOPMENT FACILITY — A facility which conducts marine-related research for the purpose of developing methods, strategies, and technologies designed to support *mariculture* activities, including increasing the health, yield, quality, sustainability and profitability of fish and shellfish stocks. [Added 1-20-2004 by L.L. No. 2-2004]

MARINA — A facility for the berthing, fueling, and furnishing of sewage pumpout equipment and supplies and provisions for all types of recreational watercraft. The term "*marina*" shall not be deemed to include the term "*boatyard*" or to include out-of-water storage, repair, or vessel construction facilities. [Added 1-20-2004 by L.L. No. 2-2004]

MARINE EDUCATIONAL INSTITUTION — An institution which provides instruction in the physical, chemical, biological, ecological, geological, historical, economic, or navigational aspects of the marine environmental or similar instruction

relating to marine coastal, and waterfront issues and resources.**[Added 1-20-2004 by L.L. No. 2-2004]**

MARINE-RELATED BUSINESS COMPLEX — A grouping of two or more *marine-related business* uses developed in accordance with an approved master site plan for unified parking, shared access, landscaping, pedestrian circulation, architecture, *stormwater* control, waste disposal and the like and which will support such uses as retail businesses which provide commodities to *persons* or businesses occupying or utilizing waterfront areas, including boat sales, sale of boat engines, marine-related supplies and accessories, fishing equipment, and other similar items.**[Added 1-20-2004 by L.L. No. 2-2004]**

MARQUEE SIGN — Any *sign* attached to, in any manner, or made a part of a *marquee*.

MEDICAL OFFICE — A *building* designed and used for the diagnosis and treatment of human patients that does not include overnight care facilities.

MINIMUM CONTIGUOUS BUILDABLE AREA — For *lots* created after the effective date of this amendment, a contiguous area which excludes *wetlands* and *steep slopes*, both as defined herein, and whose minimum dimension in all directions is at least equal to 1/2, of the minimum required *lot width* in the zoning district in which it is located.**[Added 6-24-2008 by L.L. No. 8-2008]**

MOTOR VEHICLE DEALERSHIP — A facility used principally for the indoor sale and display of new motor vehicles of a specific brand or brands of vehicle and/or the leasing or rental of motor vehicles, which use may include accessory maintenance, servicing and outdoor storage of such vehicles. See also "*outdoor motor vehicles sales*."**[Amended 7-22-2003 by L.L. No. 7-2003]**

MUSEUM — A not-for-profit institution devoted to the procurement, care and display of objects of lasting interest.

NATURAL VEGETATION — Existing and/or naturally occurring indigenous plant growth which does not require artificial irrigation or the application of fertilizer, pesticides, herbicides or other such substances for its maintenance and which has been undisturbed for a period of at least 20 years.**[Added 9-21-2004 by L.L. No. 12-2004]**

NIGHTCLUB — See "*cabaret*."

NONCONFORMING SIGN — Any *sign* that does not conform to the requirements of this section.

NONRESIDENTIAL USE SIGN — Any *sign* located in a residential district for a legally permitted nonresidential *principal use* and which *sign* is accessory to such use and contains no *commercial message* except for the identification of the permitted nonresidential use on the premises where the *sign* is located.

NOTIFICATION SIGN — A *sign* required pursuant to the provisions of this chapter, and intended for the display of the date, time and location of public meetings related to site plan, special permit and zoning applications to be heard before the Town Board or Planning Advisory Board.

OCTAVE BANK — A means of dividing the range of sound frequencies into octaves,

in order to classify sound according to pitch.

OCTAVE BAND FILTER — An instrument, standardized by the American National Standards Association, used in conjunction with a *sound level meter* to take measurements in specific octave bands.

OFFICE — A *building* or portion of a *building* wherein services are performed involving predominantly administrative, professional or clerical operations.

OPEN SPACE — Any vegetated area of land, including undisturbed areas of *natural vegetation*, landscaped areas, buffer planting areas, forests, meadows, groundwater *recharge* areas, *wetlands*, waterbodies and other similar natural features, but excluding *buildings*, *structures*, all types of pavement including stone and gravel, and all other impervious surfaces. The approval of any site plan or subdivision plat showing *open space* within a special groundwater protection area must consider the impact of such *open space*, and the uses permitted thereon, including recreational uses, on the basic objective of protecting water quality and maximizing groundwater *recharge* capabilities. [Added 7-22-2003 by L.L. No. 7-2003]

OUTDOOR MOTOR VEHICLE SALES — A facility used primarily for the outdoor sale, rental, leasing, display or storage of motor vehicles other than an *accessory use* to a *motor vehicle dealership*, and which does not provide on-site maintenance or servicing of motor vehicles. See also "*motor vehicle dealership*."

PARENT-CHILD RESIDENCE — A *one-family dwelling* altered to include a second *kitchen* for the sole use by a member of the immediate *family* of the resident/owner. It is understood that a member of the immediate *family* of a resident/owner shall be deemed to be a resident/owner's spouse, children, mother, father, brother, sister, grandparents, step-parents, step-children, mother-in-law, father-in-law, brother-in-law, sister-in-law, daughter-in-law, son-in-law, grandchild, aunt (limited to a sister, natural born or adopted, of the resident/owner's father or mother) or uncle (limited to a brother, natural born or adopted, of the resident/owner's father or mother). [Amended 10-16-2012 by L.L. No. 3-2012; 6-26-2018 by L.L. No. 6-2018]

PARTICULATE MATTER — Any finely divided liquid or solid matter, including *smoke*, capable of being air- or gas-borne.

PAVED SURFACE — An area laid or covered with material (such as asphalt or concrete) that forms a firm level surface. Gravel and crushed stone are not considered a *paved surface* for purposes of this section unless applied on top of an asphalt or concrete surface. [Added 6-14-2022 by L.L. No. 6-2022]

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

PORTABLE SIGN — Any *sign* not permanently attached to the ground or other permanent *structure* and only to be displayed during normal business hours. This includes, but is not limited to, menu and sandwich board *signs* and *signs* attached to or painted on vehicles visible from the public right-of-way, unless said vehicle is regularly used for other substantial purposes in the normal day-to-day operations of the business.

PRIVATE GARAGE — A *building* used for the storage of noncommercial automobiles

and all types of farm machinery and conveyances owned and regularly used by or on behalf of the owner or tenant of the *lot* on which it is erected and only for a purpose accessory to the permitted use of the *lot*.

PRIVATE MEMBERSHIP CLUB — Land, *buildings* and facilities operated by a membership corporation, association or fraternal order for the purpose of accommodating not-for-profit recreational, social, literary or similar activities for the exclusive use of its members.

PRIVATE SCHOOL — Any kindergarten, primary or secondary school not operated by a public school district but conducting a regularly scheduled comprehensive curriculum of study similar to that of a public school and operated in accordance with the Education Law of the State of New York.

PROFESSIONAL OFFICE — The *office* of an attorney admitted to practice in the State of New York, or a certified public accountant, a professional engineer, or an architect, all as defined in the Education Law of the State of New York, or a *medical office*.

PROJECTING SIGN — Any *sign* affixed to a *building* or wall in such a manner that any part of said *sign* extends more than six inches beyond the surface of such *building* or wall.

PUBLIC GARAGE — A *building*, other than a *private garage*, used for housing, storage or repair or trucks, trailers and automobiles, whether or not accessory or incidental to another use.

PUBLIC MARKET — A use containing four or more stalls or places, allotted on payment of rents or fees, open to the general public for the purchase of retail goods, wares, produce, farm products or other merchandise.

REDUCED PRESSURE ZONE (RPZ) DEVICE — A water flow device with a minimum of two independently acting check valves, together with an automatically operated pressure differential relief valve located between the two check valves.

RESEARCH AND DEVELOPMENT USE — An establishment which conducts investigations in the natural, physical or social sciences, or engineering and development, as an extension of investigation with the objective of creating end products.

RESTAURANT — An enterprise primarily engaged in preparing and serving food and beverages intended to be consumed on the premises by patrons seated and served at tables or counters, but not including a *fast-food restaurant*.

RESTAURANT, FAST-FOOD — An establishment whose principal business is the sale of foods, including desserts or beverages, in ready-to-consume servings, for consumption either within the *restaurant building* or for carry-out, and where either: (1) foods, including desserts and beverages, are usually served in paper, plastic or other disposal containers, and where consumers are not served by a *restaurant* employee at the same table or counter where the items are consumed; and/or (2) the establishment includes a drive-through service facility. This term does not include a retail grocery store, convenience store, delicatessen, dairy store, candy store or other similar outlet selling food items primarily for home consumption; and does not include a *restaurant*

providing a minor proportion of carry-out service, provided that such carry-out service is not the principal business of such *restaurant*.

RINGELMANN SMOKE CHART — A chart which is issued by the federal Bureau of Mines and which is used for determining the density of *smoke*.

ROOF PITCH — The slope of a roof, or any section of a roof, measured as the ratio of vertical distance to horizontal distance.**[Added 6-24-2008 by L.L. No. 8-2008]**

ROOF SIGN — Any *sign* attached to a *building* which extends vertically above the eave line of a roof.

ROOMING HOUSE — Any *building* containing three or more *rooming units*. The term shall include "boardinghouse" and "lodging house."

ROOMING UNIT — One or more rooms, with or without private bathroom facilities but without private cooking facilities, which are rented or available for rent for residence purposes.

SELF-SERVICE STORAGE FACILITY — A *building* or group of *buildings* divided into separate storage compartments that are rented or leased to individuals or businesses for self-storage of property. A *self-service storage facility* may include one *apartment* for a resident manager.**[Added 7-22-2003 by L.L. No. 7-2003]**

SIGN — A *structure* or device for visual communication which is used for the purpose of bringing the subject thereof to the attention of the public. See § 246-11 of this chapter.

SIGN SETBACK — The distance from the *lot line* to the nearest point of the *sign*.

SMOKE — Any emission into the open air from any source, except emissions of uncontaminated water vapor.

SMOKE UNIT — A measure of the quantity of *smoke* being discharged, obtained by multiplying the *smoke* density in a *Ringelmann Smoke Chart* by the time of emission in minutes. For example, the emission of *Ringelmann Smoke Chart* Number 1 for one minute equals one *smoke unit*.

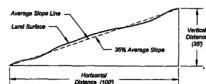
SOLID WASTE — Garbage, hazardous waste, industrial waste, pathological waste, rubbish and *solid waste* as defined in Chapter 201 of the Code of the Town of Oyster Bay, as amended.

SOLID WASTE MANAGEMENT FACILITY — Any facility designed to sort, compact, transfer, treat, bale, recycle, ship, store, dispose of or otherwise process *solid waste* after the initial *solid waste* collection process.

SOUND LEVEL METER — An instrument, standardized by the American Standards Association, used for measurement of the intensity of sound and calibrated in *decibels*.

STEEP SLOPE — A geographic area, whether natural or man-made and whether on one or more *lots*, which has a ratio of vertical distance to horizontal distance of 25% or more over a horizontal area measuring at least 25 feet in all directions, based on two-foot contour intervals (see illustration below of how slope is measured).**[Added 6-24-2008 by L.L. No. 8-2008]**

Illustration of Slope Measurement



STORAGE SHED — An *accessory building* on a residential property, no larger than 200 square feet in area and no taller than 10 feet in height, used exclusively by the *principal use* of the property for storage purposes. [Added 7-22-2003 by L.L. No. 7-2003]

STORMWATER POLLUTION PREVENTION PLAN (SWPPP) — A plan for controlling *stormwater* runoff and pollutants from a site during and after construction activities. [Added 9-29-2009 by L.L. No. 9-2009]

STORY — That portion of a *building* included between the upper surface of any floor and the upper surface of the next floor above, except that the top *story* shall be that portion of a *building* included between the upper surface of the topmost habitable floor and the ceiling or roof above. A *basement* or *cellar* shall not be considered a *story*. An intermediate floor between the floor and ceiling of any *story*, covering less than 1/3 of the *floor area* immediately below the intermediate floor shall be considered a *mezzanine*, which shall also not be considered a *story*. (See Figure 2-9 at the end of this chapter.)

STREET — An existing state, county or Town road or a road shown upon a subdivision plat duly filed and recorded in the Office of the Nassau County Clerk.

STRUCTURE — Anything constructed or erected which requires location on the ground or attachment to something having location on the ground, including *buildings*, *fences*, walls, tennis courts, pools and decks.

SUSPENDED SIGN — A *sign* that is rigid and is suspended from the underside of a horizontal plane surface and is supported by such surface.

SWIMMING POOL — Any *structure*, basin, chamber or tank which is intended for swimming, diving, recreational bathing or wading and which contains, is designated to contain, or is capable of containing water more than 24 inches (610 mm) deep at any point. This includes in-ground, above-ground and on-ground pools; semi-inground pools; indoor pools; hot tubs; spas and wading pools. [Amended 6-14-2022 by L.L. No. 6-2022]

TEMPORARY SIGN — A nonilluminated *sign* that is used in connection with a circumstance, situation or event that is designed, intended or expected to take place or to be completed within a reasonably short or definite period after the erection of such *sign* or is intended to remain on the location where it is erected or placed for a period as specified in § 246-11 of this chapter. If such *sign* display area is permanent but the message displayed is subject to periodic changes, that *sign* shall not be regarded as "temporary."

THEATER — Any premises normally used for spectator presentations, such as a cinema, playhouse or concert hall, but not including a *cabaret*, *dance hall*, *discotheque* or *nightclub*.

THREE-COMPONENT MEASURING SYSTEM — A device for recording the

intensity of any vibration in three mutually perpendicular directions.

TOWNHOUSE — See "*dwelling unit, attached.*"

TOXIC OR NOXIOUS MATTER — Any solid, liquid or gaseous matter, including but not limited to gases, vapors, *dusts*, fumes and mists containing properties which by chemical means are inherently harmful and likely to cause injury to the well-being of *persons* or damage to property.

USE, ACCESSORY — A use which is customarily incidental and subordinate to the *principal use* on a *lot*, and located on the same *lot* therewith, except that where specifically permitted by this chapter, accessory off-street parking need not be located on the same *lot*. An *accessory use* may not be accessory to another *accessory use*.**[Amended 7-22-2003 by L.L. No. 7-2003]**

USE, PRINCIPAL — The specific purpose for which land, water, a *building* or a *structure* is designed, arranged, intended or for which it is or may reasonably be expected to be occupied or maintained.

VETERINARY OFFICE or CLINIC — An establishment used for the medical and surgical treatment of domestic animals, excluding the overnight boarding of animals.

VIBRATIONS, IMPACT — Earth-borne oscillations occurring in discrete pulses at or less than 100 times per minute.

VIBRATIONS, STEADY-STATE — Continuous earth-borne oscillations occurring in discrete at more than 100 times per minute.

WALL SIGN — Any *sign* either attached parallel to and maintained within six inches of a wall, painted on the wall surface or forming a portion of any outside wall of a *building* or *structure*, which *sign* displays only one *sign* surface. For the purposes of regulation in this section, a *canopy sign* shall be considered a *wall sign*.

WATER-DEPENDENT USE — An establishment which requires direct access to tidal surface waters as an integral part of its operation. A *water-dependent use* shall be construed to include such uses as; *marinas*, *boatyards*, yacht basins and similar facilities which provide dockage/berthing for watercraft; fishing piers; boat launching ramps; boat services; boat and kayak rentals; *mariculture*, *marine educational institutions*; public swimming beaches; and the like.**[Added 1-20-2004 by L.L. No. 2-2004]**

WATER-ENHANCED USE — An establishment that does not require a waterfront location in order to function, but which contributes to the economic viability of *water-dependent uses* or which increases the public's use and enjoyment of the waterfront. A water-related use shall be construed to include: small marine-related *offices* or marine-retail and services; marine-related not-for-profit, philanthropic, fraternal, or scientific research organizations; compatible recreational uses; *museums*, *restaurants*; and delicatessens.**[Added 1-20-2004 by L.L. No. 2-2004]**

WETLAND — A horizontal geographic area of at least 1,000 square feet which is under water, including water bodies and *watercourses*, or is covered with shallow and sometimes temporary or intermittent waters commonly referred to as "swamps," "marshes," "bogs," or "vernal pools," "including all areas of hydric soils and all areas inundated or saturated by surface water or groundwater at a frequency and duration

sufficient to support, and which under normal circumstances do support, a prevalence of hydrophytic vegetation, all as defined by the Federal Manual For Identifying and Delineating Jurisdictional Wetlands (1989), as such may, from time to time, be amended.**[Added 6-24-2008 by L.L. No. 8-2008]**

WINDOW SIGN — Any *sign*, picture or symbol, or combination thereof, designed to communicate information about an activity, business, commodity, event, sale or service that is placed inside a window or upon the windowpane or glass and is readily visible at any point three or more feet from the exterior of the window.

WIRELESS TELECOMMUNICATIONS FACILITY — Includes a telecommunications site and personal wireless facility. It means a structure, facility or location designed, or intended to be used as, or used to support antennas or other transmitting or receiving devices. This includes, without limit, towers of all types and kinds and structures, including, but not limited to, buildings, church steeples, signs or other structures that can be used as a support structure for antennas or the functional equivalent of such. It further includes all related facilities and equipment such as cabling, equipment shelters and other structures associated with the site. It is a structure and facility intended for transmitting and/or receiving radio, television, cellular, SMR, paging, 911, personal communications services (PCS), commercial satellite services, microwave services and any commercial wireless telecommunication service not licensed by the FCC.**[Added 9-12-2017 by L.L. No. 6-2017]**

XERISCAPING — A method of landscaping that results in low water usage through selection of plants with cultural requirements that are appropriate to the local climate and avoidance of wasting water to evaporation and runoff. The seven principles guiding the method are creative planning and design; soil improvement; limiting of turf areas; appropriate plant selection; efficient irrigation; use of mulches; and regular maintenance.**[Added 9-21-2004 by L.L. No. 12-2004]**

YARD, FRONT — A yard extending across the full width of the *lot* and lying between the *front lot line* and the nearest point of the *building*. (See Figure 2-10 at the end of this chapter.)

YARD, REAR — A yard extending across the full width of the *lot* and lying between the *rear lot line* and the nearest point of the *building*. (See Figure 2-10 at the end of this chapter.)

YARD, SIDE — A yard between a *side lot line* and the nearest point of the *principal building* on that *lot* and extending from the *front yard* to the *rear yard*. (See Figure 2-10 at the end of this chapter.)

§ 246-3.
ESTABLISHMENT OF DISTRICTS

3.1. District classifications. [Amended 7-22-2003 by L.L. No. 7-2003; 1-20-2004 by L.L. No. 2-2004; 9-21-2004 by L.L. No. 11-2004; 9-21-2004 by L.L. No. 12-2004; 11-9-2004 by L.L. No. 16-2004; 3-8-2005 by L.L. No. 2-2005; 2-13-2007 by L.L. No. 4-2007; 8-9-2011 by L.L. No. 2-2011; 12-18-2012 by L.L. No. 4-2012; 2-23-2021 by L.L. No. 1-2021]

The Town of Oyster Bay is hereby divided into the following districts:

Residence Districts:	
R1-5A	One-Family Residence
R1-2A	One-Family Residence
R1-1A	One-Family Residence
R1-20	One-Family Residence
R1-15	One-Family Residence
R1-10	One-Family Residence
R1-10/OHG	One-Family Residence
R1-7	One-Family Residence
R1-6	One-Family Residence
RMF-6	Multi-Family Residence
RMF-10	Multi-Family Residence
RNG-12	Multi-Family Next Generation Residence
RMF-16	Multi-Family Residence
RPH-20	Multi-Family Public Housing Residence
RSC-25	Multi-Family Senior Citizen Residence
PUD	Planned Unit Development
PUD/R-30	Planned Unit Development/Residence-30

Nonresidence Districts:	
REC	Recreation
RO	Residence-Office
OB	Office Building
NB	Neighborhood Business
GB	General Business

Nonresidence Districts:

WF-A	Waterfront-A
WF-B	Waterfront-B
ORD	Office, Research and Development
LI	Light Industry

Hicksville Downtown Districts:

HD-III	Downtown Residential Subdistrict
HD-II	Downtown Gateway Transition Subdistrict
HD-I	Downtown Core Subdistrict

Overlay Districts:

APO	Aquifer Protection Overlay
OBHRD	Oyster Bay Hamlet Residence Design District

3.2. Zoning Map Establishment. [Amended 3-8-2005 by L.L. No. 2-2005; 4-25-2006 by L.L. No. 5-2006]

The boundaries of all districts are hereby established as shown on a map entitled "Building Zone Map, Town of Oyster Bay, Nassau County, New York" dated April 25, 2006, and as amended from time to time by the Town Board and certified by the Town Clerk, which map accompanies, and with all explanatory matter thereon is made a part of, this chapter. The up-to-date Official Copy of the Building Zone Map is maintained by the Town Clerk, with copies thereof kept by the Department of Planning and Development for the use and benefit of the public. Whenever the Town Board amends the Building Zone Map, the Town Clerk shall notify the Commissioner of Planning and Development, who shall cause the amendment to be made to the Official Copy of the Building Zone Map and to the copies kept by the Department of Planning and Development and the *office* of the Town Clerk.

3.3. Interpretation of District Boundaries.

Where uncertainty exists as to the locations of any boundaries shown on the Zoning Map, the following rules shall apply:

3.3.1 District boundary lines are intended to follow *streets*, municipal boundaries, rights-of-way, railroad rights-of-way or *watercourses*, or to be parallel or perpendicular thereto.

3.3.2 Where district boundaries are shown approximately following *streets*, rights-of-way, railroad rights-of-way or *watercourses*, such boundaries are intended to be the centerlines thereof.

3.3.3 Where tidal lands are not shown as zoned on the Zoning Map, they shall be considered to lie within the district to which they are contiguous.

3.3.4 Where dimensions are shown on the Zoning Map between a *street* and a district boundary line, such dimension indicates that the district boundary line runs parallel with the *street* line at the distance so indicated by such dimension.

3.3.5 Where district boundary lines do not fit within the descriptions provided above, the location of any such boundary shall be determined by use of the map scale appearing thereon.

3.3.6 If the district classification of any property or portion thereof is in question, it shall be deemed to be in the most restrictive of the districts.

3.4. Order of Restrictiveness.

Where zoning districts are referred to as more restrictive or less restrictive, the designations shall refer to the order in which the districts are named in § 246-3.1, the first named being the most restrictive.

3.5. Lots in Two or More Districts or Municipalities.

3.5.1 *Lots* in two or more districts. Where a *lot* in one ownership of record is divided by one or more district boundary lines, the following shall apply:

3.5.1.1 Uses permitted in one district may not extend into another district where they would not otherwise be permitted. However, where a district boundary line divides a *lot* which was held in single and separate ownership since November 1, 1929, the Zoning Board of Appeals may permit the less restrictive use to extend to the whole or any part of such *lot* for a distance not exceeding 50 feet.

3.5.1.2 Dimensional requirements shall be those of the zoning district in which the *principal building* or use is located. If a *principal building* or use is located in more than one district then the dimensional requirements of the more restrictive district shall prevail.

3.5.1.3 Dimensional requirements shall be measured from *lot lines* and not zoning district boundary lines.

3.5.2 *Lots* in two or more municipalities. Where a *lot* in one ownership of record is divided by one or more municipal boundary lines, the following shall apply:

3.5.2.1 The use and dimensional requirements of the Town of Oyster Bay shall prevail for that portion of the *lot* located within the Town of Oyster Bay.

3.5.2.2 Where a portion of the *lot* not located within the Town of Oyster Bay is required to be maintained in conjunction with the Oyster Bay portion in order to meet the use or dimensional requirements applicable in the Town of Oyster Bay, a deed restriction or other suitable legal agreement which will assure such

continuation to the satisfaction of the Town Attorney's *office* of the Town of Oyster Bay shall be required. In such case, setback requirements shall be measured from the *lot line* of the *lot* which is to be maintained and not from the municipal boundary.

§ 246-4.
GENERAL REGULATIONS

4.1. Application of Regulations.

4.1.1 Conformity required. No *structure* shall be erected, constructed, moved, altered, rebuilt or enlarged, nor shall any property be used, designed or arranged to be used, for any purpose except in conformity with this chapter.

4.1.2 Minimum requirements. In interpreting and applying this chapter, the requirements contained herein are declared to be the minimum requirements necessary for the protection and promotion of the public health, safety, morals, comfort, convenience and general welfare.

4.1.3 Conflicting standards. Where this chapter imposes a different restriction upon the use of property, or upon the erection, construction, establishment, movement, alteration or enlargement of *buildings* or other *structures*, than are imposed by other applicable codes, rules, regulations, licenses, certificates, easements, covenants, agreements or other authorizations, the more restrictive requirements shall prevail.

4.1.4 Governmental uses.

4.1.4.1 Applicability to municipal uses. This chapter shall not apply to or affect any *structure* or premises which shall or may be erected, altered or used by the Town of Oyster Bay for any municipal purposes, including municipal purposes of special purpose districts, subject to Town Board approval. No public hearing shall be required.

4.1.4.2 Applicability to uses of other governmental agencies. Uses of federal, state or county governmental agencies, or special purpose districts thereof, are subject to Town Board approval based on the special use permit standards of § 9.4 of this chapter and such other standards as may be determined appropriate by the Town Board. No public hearing shall be required.

4.2. Nonconforming Uses and Other Nonconformities.

4.2.1 Continuing existing uses, *buildings* and *structures*.

4.2.1.1 Except as otherwise provided herein, the lawfully permitted use of property and the lawfully permitted existence of *buildings* and *structures* at the time of adoption of this chapter may be continued although such use, *building* or *structure* does not conform to the standards specified in this chapter for the district in which such property, *building* or *structure* is located. Similarly, whenever a zoning district classification or the restrictions effecting property within any zoning district shall be changed hereafter so as to render nonconforming a use, *building* or *structure* then presently lawfully existing, such use, *building* or *structure* may nevertheless be continued, subject to the conditions set forth below. Said uses shall be deemed nonconforming uses and said *buildings* and *structures* shall be deemed dimensionally nonconforming.

4.2.1.2 Notwithstanding the above, any *one-* or *two-family dwelling* located in any nonresidential district which was lawfully existing on the effective date of this amendment, shall be considered to be a conforming use and may continue to be used, expanded and altered in accordance with the requirements of the R1-6 District. [Amended 7-22-2003 by L.L. No. 7-2003]

4.2.1.3 Any use in existence as of the effective date of this chapter which by this chapter is made a special permit use in the district in which it is located shall be presumed to have a special use permit to the extent such use is then legally conforming.

4.2.2 Nonconforming use of land, *buildings* and *structures*.

4.2.2.1 Any legal nonconforming use of land may be continued; provided, however, that no such use shall be enlarged or intensified, nor shall it be extended to occupy a greater area of land than that occupied by such use at the time of the adoption of this chapter, unless specifically allowed by other provisions in this chapter, nor shall any such 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 time of the adoption of this chapter. Any change in use on a parcel of land on which a nonconforming use is located and will be continued, either in whole or in part, shall require Zoning Board of Appeals approval unless a Town Board special use permit is required, in which case Town Board approval shall be required. [Amended 9-13-2005 by L.L. No. 6-2005²]

4.2.2.2 A *building* or *structure*, the use of which does not conform to the use regulations for the district in which it is situated, shall not be enlarged, extended or altered structurally unless the use therein is changed to a conforming use, except those repairs or modifications as may be determined necessary by the Department of Planning and Development to either correct an unsafe condition or to conform to the requirements of other applicable laws or ordinances.

4.2.2.3 No nonconforming use of a *building* or *structure* shall be enlarged or extended, except that any such nonconforming use may be extended throughout any parts of a *building* or *structure* which were obviously or manifestly arranged or designed only for such use at the time of the adoption of this chapter.

4.2.2.4 No nonconforming use shall be changed to another nonconforming use, except as provided herein.

4.2.2.5 If a nonconforming use ceases for any reason for a period of one year, or is changed to a conforming use, then any future use of the land, *building* or *structure* shall be in conformity with the provisions of this chapter. Substantial cessation of activities consistent with or required for the operation of such

2. Editor's Note: This local law provided that where its requirements impose a different restriction or requirement than imposed by other sections of the Town Code, the Town Law of New York State, or other applicable rules or regulations, the requirements of this local law would prevail.

nonconforming use, or substantial vacancy of the *building* or *structure* in which the nonconforming use, was conducted together with substantial cessation of activities consistent with or required for the operation of such nonconforming use shall be deemed to constitute a discontinuance thereof within the meaning of this chapter, irrespective of whether an intention to abandon the nonconforming use may exist. Upon application, however, the Zoning Board of Appeals may extend the one-year period upon finding that it is not reasonable in its application to the particular premises, taking into consideration the characteristics of the use, the investment which has been made in it, the circumstances of the discontinuance and the suitability of the *structure* for a permitted or special permit use in the district in which it is located.

4.2.2.6 If any *building* or *structure* in which any nonconforming use is conducted or maintained is hereafter removed, the subsequent use of the land on which such *building* or *structure* was located and the subsequent use of any *building* or *structure* erected thereon shall be in conformity with the standards specified by this chapter for the district in which such land is located.

4.2.3 Dimensional nonconformity. A *building* or *structure* that is conforming in use but does not conform to the *lot* dimension, yard dimension, height, *building coverage*, *floor area ratio*, off-street parking, off-street loading or other dimensional requirements of this chapter shall be deemed to be dimensionally nonconforming. No permit shall be issued that will result in the increase of any such dimensional nonconformity, but any *building* or *structure*, or portion thereof, may be altered to decrease its dimensional nonconformity.

4.2.4 Reconstruction. Should a *building* or *structure*, the use of which, or the use of a portion of which, is nonconforming or which is dimensionally nonconforming, be destroyed or damaged by any means to an extent greater than 75% of the replacement cost of the entire *building* or *structure* used in connection therewith at the time of the reconstruction, as determined by the Department of Planning and Development and any duly authorized assistants, it shall not thereafter be reconstructed or used except in conformity with the provisions of this chapter. Should the damage be 75% or less, it may be reconstructed and any accompanying nonconformity continued, provided that the reconstruction is commenced within one year of the date of such damage and completed within two years of said date, and further provided that the reconstruction shall be conducted in accordance with a plan approved by the Zoning Board of Appeals and designed to result in the greatest reasonable conformity with the provisions of this chapter.

4.2.5 Change to other nonconforming use. Upon application, a nonconforming use of land, *buildings* or *structures* may be changed to another nonconforming use upon approval by the Zoning Board of Appeals based upon a finding that the proposed use is more appropriate to the district than the existing nonconforming use. In permitting such change, the Zoning Board of Appeals may impose such conditions and safeguards as it may deem necessary or appropriate to further the purposes of this chapter.

4.2.6 Improvement of nonconforming uses. In order that the adverse external effects of nonconforming uses may be reduced, and such uses may gradually be brought into greater conformity with the requirements of this chapter and, upon application to and approval by the Zoning Board of Appeals, the owner of any land, *building* or *structure* so used may be permitted to make changes to such *building*, *structure* or use in conjunction with a plan whereby through the addition of landscaped screening and buffer areas, control of noise, *smoke* or odors, the improvement of lighting, architectural changes, redesign of parking areas and access drives, or by any other appropriate means, these purposes may be achieved. The Zoning Board of Appeals may grant approval, or approval with modifications, provided said Board finds that the purposes of this section would be furthered by such action. This procedure shall not supersede any of the rights, powers and duties of the Landmarks Preservation Commission pursuant to Chapter 143 of the Town of Oyster Bay Town Code.

4.3. Provisions Governing Lots.

For *lots* located in two or more districts or municipalities, refer to § 246-3.3.5.

4.3.1 *Lot* for every *building*. Every *building* hereafter erected shall be located on a *lot* and there shall be no more than one *principal building* and its *accessory building(s)* on one *lot*, except for multifamily and nonresidential *buildings* in districts where such uses are permitted.

4.3.2 Subdivision of a *lot*. Where a *lot* is formed hereafter from part of a *lot* already occupied by a *building*, such separation shall be effected in a manner which will not impair conformity with any of the requirements of this chapter with respect to the existing *building* and all yards and other required spaces in connection therewith. No permit shall be issued for the erection of a *building* on a newly created *lot* unless it complies with all provisions of this chapter.

4.3.3 Irregularly shaped *lots*. Where a question exists as to the proper application of any of the requirements of this chapter to a particular *lot* because of its irregular shape, the Department of Planning and Development and/or any duly authorized assistants shall determine how the requirements of this chapter will apply.

4.3.4 New *buildings* on substandard *lots*. A permit may be issued for the erection of a *building* for a permitted use on a *lot* for which a valid conveyance has been recorded prior to the adoption of this chapter, notwithstanding that the area or dimensions of such *lot* are less than that required for the district in which such *lot* is located, provided that:

4.3.4.1 The *lot* met the zoning requirements at the time the subdivision plat was filed in the *office* of the Nassau County Clerk, the deed to the *lot* was recorded or the title to the *lot* was conveyed.

4.3.4.2 The *building* complies with all yard setbacks and other *building*-related requirements which were in effect at the time of obtaining the *building* permit.

4.3.4.3 The *lot* was continuously held in single and separate ownership since the day the *lot* became nonconforming. If that is not the case, such other *lot* or *lots* contiguous thereto which are or were held in the same ownership, or so much thereof as may be necessary, shall be considered to be merged with the first-named *lot* to make one or more conforming *lots*, whereupon a permit may be issued, but only for such merged *lots*. Where the required area or dimensions of *lots* are changed by an amendment to this chapter, any *lot* legally in existence on that date and made nonconforming by such amendment may be built upon as provided in this section.

4.3.5 *Flag lots.* [Added 7-10-2001 by L.L. No. 3-2001; amended 7-22-2003 by L.L. No. 7-2003]

4.3.5.1 As a result of the Town Board's concern with the impact of the subdivision and development of reduced area, width and *frontage lots*, including but not limited to *flag lots*, upon adjacent properties and upon the neighborhood in which they are located, it is the legislative intent of the Town Board to prevent the creation of any such new or additional reduced *frontage lots*, except in the R1-1A, R1-2A and R1-5A Residence Districts and then only subject to compliance with all of the following standards and requirements. In all other districts, *flag lots* shall be deemed to be specifically prohibited.

4.3.5.1.1 All yard setbacks for *principal buildings*, whether front, side or rear, on each *flag lot* shall be equal to or exceed the minimum required *front yard setback* applicable in the district in which it is located.

4.3.5.1.2 Notwithstanding the minimum access width standard of Paragraph 5 in Section 280-a of the Town Law of the State of New York, the access strip ("pole" portion) of each *flag lot* shall be at least 20 feet in width and, in accordance with the definition of *lot area* in § 246-2, shall be excluded in the calculation of minimum *lot area*.

4.3.5.1.3 The "flag" portion of any such *lot* shall contain a *building envelope* (area in which *principal buildings* can be constructed) which is equal to at least 20% of the minimum required *lot area* in the district in which it is located and which *building envelope* is at least 50 feet in every dimension.

4.3.5.1.4 Any non-*flag lot* which is a part of a subdivision containing a *flag lot* shall fully comply with all area, dimensional and setback standards applicable in the district in which it is located.

4.3.5.1.5 The total number of *lots* in any subdivision containing one or more *flag lots* shall not exceed the number of *lots* which would have been permitted, in the judgment of the approving agency, if no *flag lots* were involved.

4.3.5.1.6 Prior to approving the creation of any *flag lot*, the approving agency shall first determine that it will serve to reduce potential *disturbance* to

the natural environment and will result in the placement of the potential new home(s) in an appropriate relationship to neighboring homes and other uses on surrounding properties.

4.3.6 Minimum contiguous buildable area. As a result of the Town Board's concern for the protection of the environment, and in order to assure that there will be a sufficient area of non-environmentally sensitive land available for the proper development of new homes and their customary *accessory uses* on any new residential *lot* created subsequent to the effective date of this amendment, any such *lot* shall contain a *minimum contiguous buildable area*, as defined herein, of not less than the following size: [Added 6-24-2008 by L.L. No. 8-2008; amended 8-9-2011 by L.L. No. 2-2011]

Residence District	With On-Lot Sewage Disposal (square feet)	With Central Sewer Service (square feet)
R1-6	6,000	5,000
R1-7	7,000	6,000
R1-10	10,000	8,000
R1-10/OHG	10,000	8,000
R1-15	13,000	10,000
R1-20	16,000	12,000
R1-1A	21,000	15,000
R1-2A	26,000	18,000
R1-5A	34,000	24,000

4.4. Provisions Governing Yards.

4.4.1 Yard for every building. No yard or other *open space* provided about any one *building* for the purpose of complying with the provisions of this chapter shall be included as any part of the yard or *open space* which may be required for any other *building*. No yard or other *open space* on one *lot* shall be considered as a yard or *open space* for a *building* on any other *lot*.

4.4.2 Use of yards. No *building* or *structure* shall be permitted within any minimum required yard except in accordance with the Schedule of Dimensional Regulations³ or as otherwise permitted by this chapter. Any *structure* more than eight inches above finished grade, other than *fences* and walls, shall comply with the minimum setbacks for *accessory buildings*. Notwithstanding the provisions of § 4.4.2.1 below, *buildings* and *structures* shall be considered attached for zoning purposes, unless they are separated by a distance of not less than three feet.

3. Editor's Note: The Schedule of Dimensional Regulations is included at the end of § 246-5.

4.4.2.1 Encroachments. Encroachments or structural projections into required yard areas which do not conflict with other applicable codes, rules or regulations shall be permitted as follows: [Amended 7-22-2003 by L.L. No. 7-2003; 4-25-2006 by L.L. No. 5-2006]

4.4.2.1.1 In all R1 Residence Districts, the RO Residence-Office District and HD-III Hicksville Downtown Residential Subdistrict: [Amended 2-23-2021 by L.L. No. 1-2021]

4.4.2.1.1.1 One-story enclosed additions to the *principal building* containing only an aboveground oil storage tank or an unenclosed aboveground oil storage tank screened with dense evergreen plantings and/or solid fencing extending at least one foot above the top of the tank, may project into one of the required *side yards*, provided that the *side yard* shall maintain a minimum width of five feet at that location.

4.4.2.1.1.2 Roof overhangs, canopies and other similar architectural features (not including those roofed-over or otherwise covered features that are enclosed with materials such as glass) shall be permitted to project a maximum of six feet into a required *front* or *rear yard*.

4.4.2.1.1.3 Air conditioning condensing units (only if screened with dense evergreen plantings and/or solid fencing), window sills, steps, and other similar architectural features and minor utility *structures*, such as *reduced pressure zone devices*, shall be permitted to project no more than four feet into any *side yard* or six feet into any *front* or *rear yard*, but in any case not nearer than three feet from any property line.

4.4.2.1.1.4 Handicap-accessible ramps shall be permitted to project no more than five feet into any *side yard* or 10 feet into any *front* or *rear yard*, but in any case not nearer than three feet from any property line.

4.4.2.1.1.5 Propane tanks screened with dense evergreen plantings and/or solid fencing extending at least one foot above the top of the tank shall be permitted to project a maximum of eight feet into a *side* or *rear yard* only, but in any case not nearer than eight feet from any property line. Propane tanks must also conform to the requirements of the New York State Uniform Building and Fire Protection Code, the Nassau County Fire Marshal and the National Fire Protection Association.

4.4.2.1.1.6 Dormers may project into any required *side yard*, provided they do not extend beyond the wall of the existing *structure* and do not raise the existing main ridge.

4.4.2.1.1.7 Generators may be located up to a maximum of eight feet into a *side* or *rear yard*, but in any case not nearer than eight feet from any property line.

4.4.2.1.2 In all R1 Residence Districts, the RO Residence-Office District and HD-III Hicksville Downtown Residential Subdistrict: **[Amended 2-23-2021 by L.L. No. 1-2021]**

4.4.2.1.2.1 One-story enclosed vestibules shall be permitted to project a maximum of six feet in width and five feet in depth into a required *front yard*.

4.4.2.1.2.2 One-story open and unroofed porches, decks, balconies and terraces not more than three feet above grade shall be permitted to project a maximum of six feet into a required *front* or *rear yard*.

4.4.2.1.2.3 Cornices, eaves, gutters, chimneys, windows, canopies and other similar architectural features shall be permitted to project a maximum of two feet into any required yard.

4.4.2.1.3 In all Nonresidence Districts, awnings shall be permitted to project a maximum of four feet into a required *front yard*.

4.4.2.1.4 On any *lot* for which the Zoning Board of Appeals granted a variance for a yard of deficient width, none of the encroachments listed above, except as identified in § 246-4.4.2.1.1.3, 4.4.2.1.1.4, 4.4.2.1.1.5 and 4.4.2.1.1.6, shall be permitted into such diminished yard.

4.4.2.2 Underground setbacks. All setback restrictions as set forth in this chapter shall be applicable below as well as above grade, except that electrical, plumbing, sanitary and drainage facilities, fixtures, pipes, wires and similar accessory utility services shall be excluded where they are located below grade from such abovegrade setback restrictions.

4.4.2.3 *Average setbacks*. In an established neighborhood, as determined by the Department of Planning and Development, with an existing pattern of *front yard setbacks* substantially different from the minimum *front yard setback* required in the district in which it is located, the *average setback* shall control. If, however, in the opinion of the Department of Planning and Development, there is a predominant pattern of existing *front yard setbacks* which is different than the *average setback*, the predominant setback may be used instead. Whatever setback is determined to apply, shall apply to both new and expanded construction. Notwithstanding the foregoing, this chapter shall not require any *building* to be set back more than the maximum required *front yard setback* as set forth in the Schedule of Dimensional Regulations (§ 246-5.3).⁴ **[Amended 7-22-2003 by L.L. No. 7-2003; 4-25-2006 by L.L. No. 5-2006]**

4.4.3 *Corner lots*. In the case of a *corner lot* held in single and separate ownership on

4. Editor's Note: The Schedule of Dimensional Regulations is included at the end of § 246-5.

January 27, 1953, which *lot* then had and still has a *lot width* at the *front setback* line of less than 200 feet in the R1-2A District, 125 feet in the R1-1A District, 100 feet in the R1-20 District or 60 feet in the R1-6 District, the required *front yard* depth along the *street frontage* upon which the *building* will not face and will not have a principal entrance may be decreased by up to 50% but not less than 20 feet. Other than as described above, a yard equal in depth to the required *front yard* shall be provided on all *street frontages* in all residence and nonresidence districts.

4.4.4 Visibility at street intersections. No wall, *fence* or other *structure* shall be erected or altered, and no hedge, tree, shrub or other planting shall be planted or allowed to grow, in such a way as to obscure or interfere with traffic sight lines as required for safety purposes. Obstructions to visibility which exceed 2.5 feet in height, other than tree trunks, shall be prohibited on *corner lots* in the triangle formed by intersecting *street* right-of-way lines, and a line joining points located along such *street* right-of-way lines, which are 30 feet from the theoretical point of intersection of such lines, as extended.

4.4.5 (Reserved)

4.4.6 Height:Setback Ratio (Inclined Plane) — Oyster Bay Hamlet Residence Design District. Notwithstanding the maximum permitted *building height* and minimum required *yard setbacks* as set forth in § 246-5.3, Schedule of Dimensional Regulations, of this chapter, no part of any new or expanded one-family residence located within the Oyster Bay Hamlet Residence Design District, excluding chimneys, dormers and similar architectural features which do not exceed, in total, 10% of the area of the horizontal roof section on which they are located and which do not extend more than five feet above the plane of that roof, shall be permitted to project above the *inclined plane* represented by the applicable *height:setback ratio* as set forth in the following table: [Added 2-13-2007 by L.L. No. 4-2007]

Maximum Permitted Height:Setback Ratio (Inclined Plane)			
Zoning District	Front Yard	Side Yard	Rear Yard
R1-10	0.7:1	2:1	0.6:1
R1-6	0.8:1	3:1	0.7:1

4.5. Provisions Governing Height.

4.5.1 Height of buildings and structures. No *structure* shall exceed the maximum permitted *building height* for the district in which it is located except as set forth below or otherwise permitted by law.

4.5.2 Height exceptions in residence districts and HD-III Hicksville Downtown Residential Subdistrict. [Amended 2-23-2021 by L.L. No. 1-2021]

4.5.2.1 Spires, cupolas, belfries, parapet walls, chimneys, solar panels, flagpoles, antennas and other similar structures or architectural features covering a maximum of 10% of the horizontal area of the roof on which they are located

shall be permitted to be constructed to a height of not more than 10 feet above the portion of the roof on which they are located. The maximum roof coverage provision shall not be applicable to solar panels.

4.5.2.2 Permitted public and semi-public *buildings*, such as schools and places of worship, may have a maximum *building height* of up to 45 feet, provided that the width of each of the required yards is increased by at least three feet for each one foot of *building height* above 28 feet.

4.5.2.3 For *antennas*, see § 246-5.5.4 of this chapter.

4.5.3 Height exceptions in nonresidence districts. Spires, cupolas, belfries, parapet walls, chimneys, solar panels, flagpoles, *antennas* and other similar *structures* or architectural features covering a maximum of 10% of the horizontal area of the roof on which they are located shall be permitted to be constructed to a height of not more than 15 feet above the portion of the roof on which they are located. The maximum roof coverage provision shall not be applicable to solar panels.

4.5.4 Other exceptions. Elevator or stair bulkheads, mechanical equipment, water towers and similar equipment shall be permitted to be located on the roof only if determined necessary by the Department of Planning and Development and only if enclosed or screened and set back a minimum of 10 feet from all roof edges, except 20 feet where within 100 feet of residentially used properties. Where the roof area cannot accommodate such a minimum setback from all edges, the equipment shall be placed in a location which mitigates potential visibility impacts from *streets* and neighboring properties, but in no event closer than five feet from any roof edge. The aggregate area covered by such features shall not exceed 20% of the roof area, and their height shall not be in excess of 12 feet. [Amended 7-22-2003 by L.L. No. 7-2003]

4.6. Provisions Governing *Buildings*.

4.6.1 Distance between *buildings*. All *buildings*, and *buildings* and *structures*, shall be separated by a distance of not less than three feet unless attached or abutting. See also § 246-4.4.2 of this chapter.

4.7. Provisions Governing *Fences* and Walls.

4.7.1 *Fences* and walls. The requirements of this chapter shall not be deemed to prohibit any otherwise lawful *fence* or wall. A *fence* or wall, or any combination thereof, not located within a required yard shall not exceed 10 feet in height. *Fences* and walls, including retaining walls, are permitted within required yards, provided that, except in R1-5A, R1-2A and R1-1A Districts, such *fences* or walls, or combination thereof, do not extend more than four feet above grade in any yard abutting a *street*, and six feet above grade in any other required yard, and further provided that they do not interfere with vehicular access and sight distance. For the purposes of this section, *average setback* shall not apply to *fences* and walls. In the R1-5A, R1-2A and R1-1A Districts and in all nonresidence districts, *fences* or walls, or a combination thereof, up to six feet in height above grade are permitted in any yard. Any *fence* or

wall in nonresidence districts over six feet in height will require approval from the Zoning Board of Appeals, unless a site plan approval is granted from either the Town Board or Planning Advisory Board. In a nonresidence district, where any *fence* or wall located within a required yard has a finished or more attractive side, such side shall face the neighboring property or *street*. Required landscaping in a nonresidence district shall be provided on the side facing into the property, unless the *fence* is along a *street*, so as to allow for the maintenance of the landscaping. The height of a *fence* located along any *street* or *front lot line* shall be measured from the existing elevation of the center line of such *street*. The height requirements noted in this section are subject to the provisions of § 246.4.4.4, Visibility at *street* intersections. [Amended 7-22-2003 by L.L. No. 7-2003; 10-16-2012 by L.L. No. 3-2012; 6-14-2022 by L.L. No. 6-2022]

4.7.2 Barbed wire *fences*. Electrically charged *fences*, barbed wire *fences* and other *fences* constructed of sharp materials are not permitted within residence districts or along public *streets*. No barbed wire or similar *fence* or any *fence* in which barbed wire or similar wire is used shall be erected, maintained or used except in nonresidence districts, and subject to approval of the Zoning Board of Appeals in accordance with the following conditions and after a public hearing:

- 4.7.2.1 The *fence* on which barbed wire is to be used is six feet or higher;
- 4.7.2.2 The construction of the barbed wire and *fence* meets the specifications of the Zoning Board of Appeals;
- 4.7.2.3 The use of barbed wire will not prevent the reasonable and orderly use of adjacent properties;
- 4.7.2.4 The use of barbed wire will not prevent the reasonable and orderly use of permitted or legally established uses in the district wherein the property is located or in adjacent districts;
- 4.7.2.5 The use of barbed wire will cause no undue endangerment of the health, safety and welfare of the populous of the Town;
- 4.7.2.6 In a nonresidence district, the use of barbed wire atop a six-foot high or higher chain link *fence* surrounding open storage areas (i.e., car *lot*, industrial supply, equipment, etc.) will inhibit unauthorized access into such areas; and
- 4.7.2.7 Wherever barbed wire is installed, a *sign* must be posted cautioning the public about said barbed wire.

4.8. Provisions Governing Exterior Lighting. [Added 4-25-2006 by L.L. No. 5-2006]

4.8.1 Exterior lighting. Exterior lighting located in any zoning district shall be directed away from neighboring properties and from adjoining *streets* and public areas, and shall otherwise be designed so that it will not interfere with the reasonable use and enjoyment of any such neighboring property, *street* or public area.

4.9. Provisions Governing *Gross Floor Area*. [Amended 2-13-2007 by L.L. No. 4-2007; 12-16-2008 by L.L. No. 15-2008; 8-9-2011 by L.L. No. 2-2011]

The maximum permitted *gross floor area* on any residential *lot* in the Town of Oyster Bay shall not exceed the amounts set forth herein.

4.9.1 Oyster Bay Hamlet Residence Design District Overlay. Irrespective of the zoning district in which it is located, the maximum permitted *gross floor area* on any residential *lot* in the Oyster Bay Hamlet Residence Design District shall not exceed the amounts as set forth in the following table:

<i>Lot Area</i>	Maximum Permitted <i>Gross Floor Area</i>
Less than 6,000 square feet	40% of <i>lot area</i>
6,000 to 6,999 square feet	2,400 square feet plus 30% of <i>lot area</i> in excess of 6,000 square feet
7,000 to 9,999 square feet	2,700 square feet plus 20% of <i>lot area</i> in excess of 7,000 square feet
10,000 to 19,999 square feet	3,300 square feet plus 14% of <i>lot area</i> in excess of 10,000 square feet
20,000 square feet to 0.999 acre	4,700 square feet plus 9% of <i>lot area</i> in excess of 20,000 square feet
1.0 to 1.999 acres	6,820 square feet plus 5% of <i>lot area</i> in excess of 1.0 acre
2.0 to 4.999 acres	9,000 square feet plus 4% of <i>lot area</i> in excess of 2.0 acres
5.0 acres or more	14,225 square feet plus 3% of <i>lot area</i> in excess of 5.0 acres

4.9.2 1I-10/OHG One-Family Residence. The maximum permitted *gross floor area* on any residential *lot* in the R1-10/OHG One-Family Residence District shall not exceed the amounts as set forth in the following table:

<i>Lot Area</i>	Maximum Permitted <i>Gross Floor Area</i>
Less than 7,000 square feet	39% of <i>lot area</i>
7,000 to 9,999 square feet	2,750 square feet plus 15% of <i>lot area</i> in excess of 7,000 square feet
10,000 to 19,999 square feet	3,200 square feet plus 12% of <i>lot area</i> in excess of 10,000 square feet
20,000 square feet to 0.999 acre	4,400 square feet plus 9% of <i>lot area</i> in excess of 20,000 square feet

Lot Area	Maximum Permitted Gross Floor Area
1.0 to 1.999 acres	6,520 square feet plus 5% of <i>lot area</i> in excess of 1.0 acre
2.0 acres or more	8,700 square feet plus 4% of <i>lot area</i> in excess of 2.0 acres

4.9.3 All other areas, irrespective of the zoning district in which it is located, the maximum permitted *gross floor area* on any one-family residential *lot* in any area of the Town situated outside the Oyster Bay Hamlet Residence Design District, the R1-10/OHG One-Family Residence District and the HD-III Hicksville Downtown Residential Subdistrict shall not exceed the amounts as set forth in the following table: [Amended 2-23-2021 by L.L. No. 1-2021]

Lot Area	Maximum Permitted Gross Floor Area
Less than 6,000 square feet	45% of <i>lot area</i>
6,000 to 6,999 square feet	2,900 square feet plus 30% of <i>lot area</i> in excess of 6,000 square feet
7,000 to 9,999 square feet	3,200 square feet plus 15% of <i>lot area</i> in excess of 7,000 square feet
10,000 to 19,999 square feet	3,650 square feet plus 12% of <i>lot area</i> in excess of 10,000 square feet
20,000 square feet to 0.999 acre	4,850 square feet plus 9% of <i>lot area</i> in excess of 20,000 square feet
1.0 to 1.999 acres	7,000 square feet plus 6% of <i>lot area</i> in excess of 1.0 acre
2.0 acres or more	9,600 square feet plus 3% of <i>lot area</i> in excess of 2.0 acres

4.10. Provisions Governing Slopes. [Added 6-24-2008 by L.L. No. 8-2008]

4.10.1 Legislative intent. The Town Board hereby finds that it is necessary to preserve, protect and conserve Oyster Bay's *steep slope* areas for a variety of physical, ecological, aesthetic, recreational and economic reasons related to promoting and protecting the public health, safety and general welfare of present and future residents of the Town of Oyster Bay and surrounding areas. Specifically, the Town Board finds that:

4.10.1.1 The *disturbance* of *steep slope* areas tends to cause erosion and sedimentation at rates in excess of those experienced under more level topographic conditions. Erosion and sedimentation often includes the loss of topsoil (a valuable natural resource) and can result in the *disturbance* of natural habitats, the degradation of water quality, the alteration of drainage patterns, the gulling of land, the obstruction of drainage *structures* and the

intensification of flooding.

4.10.1.2 The inadequately or uncontrolled *disturbance of steep slopes* can also lead to their failure and the mass movement of earth which creates concerns for the safety of *persons*, wildlife, vegetation and man-made *structures*.

4.10.1.3 The existing vegetation on *steep slope* areas helps to contribute to the attractive visual character of the Town since these areas are normally more highly visible from neighboring properties, roadways and other public spaces than are more level lands.

The avoidance of development on *steep slopes* or, where this is not practical, the careful regulation of such development, can mitigate or eliminate such potential adverse environmental impacts to the maximum extent practicable.

4.10.2 Regulations. The regulations established in this section shall apply to any proposed *disturbance of steep slopes*, as defined in § 246-2 hereof.

4.10.2.1 Regulated activities. Within any *steep slope* area, no *disturbance* of the land or any vegetation thereon, other than an activity permitted by right as set forth below, shall be permitted without a permit from the Town of Oyster Bay Department of Planning and Development issued pursuant to the standards, procedures and requirements of this chapter. Notwithstanding the foregoing, if a site plan or special use permit approval is required in connection with the proposed slope *disturbance*, the slope permit shall be incorporated within such action and shall be subject to approval by the approval authority therefor.

4.10.2.2 Activities permitted by right. Within any *steep slope* area, the following activities are permitted by right:

4.10.2.2.1 Normal ground maintenance, including mowing, trimming and pruning of vegetation, planting and replanting, and removal of dead or diseased vegetation, provided that such activity does not involve any regrading or other *disturbance* of the land, and further provided that any such activity conforms with all other applicable ordinances, laws and regulations, including obtaining a tree permit, as required by Chapter 225 of the Town Code, if required.

4.10.2.2.2 The customary, ongoing maintenance and repair of existing *buildings*, driveways, walkways, walls, utilities or other similar *structures*.

4.10.2.2.3 *Disturbance* required under emergency conditions where such *disturbance* is necessary to protect *persons* or property from present or imminent danger, as determined by the Town of Oyster Bay Department of Planning and Development.

4.10.2.3 Standards, procedures and requirements.

4.10.2.3.1 Approval authority. The approval authority for all *steep slope*

disturbance permits shall be the Town of Oyster Bay Department of Planning and Development, except that, where the proposed *steep slope disturbance* is a part of an application for site plan or special use permit approval, the approval authority for the *steep slope disturbance* permit shall be the approval authority for such other action.

4.10.2.3.2 Application. All applications for *steep slope disturbance* permits shall include the following information, unless waived by the approval authority:

4.10.2.3.2.1 The name, address, signature and telephone number of the property owner and *applicant*, if different. If the *applicant* is not the property owner, a signed statement by the owner authorizing the application shall be provided.

4.10.2.3.2.2 The *street* address and Tax Map designation of the subject property.

4.10.2.3.2.3 A boundary survey of the property prepared by a licensed professional engineer or land surveyor.

4.10.2.3.2.4 A statement that both the property owner and the *applicant*, if different, will indemnify and hold harmless the Town of Oyster Bay and its representatives against any damage or injury to any *person* or property in connection with the processing and issuance of the requested permit.

4.10.2.3.2.5 A written statement describing the proposed work, the purpose therefor, and why such work cannot be done on a portion of the property which would not impact, or would impact to a lesser extent, the *steep slope* area(s) sought to be protected by these regulations.

4.10.2.3.2.6 A site plan, drawn at an appropriate scale and prepared and sealed by a professional engineer, landscape architect, architect, surveyor or other properly qualified *person*, showing the following information, as appropriate, unless waived by the approval authority:

(a) Property lines plus existing and proposed *structures*, onsite sewage disposal systems, wells, drainage infrastructure and other site improvements.

(b) The specific location of the proposed area of *disturbance* and the specifications and quantities of all material proposed to be added to or removed from the site, as well as the procedures and timing to be used to undertake such work.

(c) Existing and proposed contours at a maximum vertical interval of two feet.

- (d) The location of all existing *steep slope* areas within the above referenced area.
- (e) The delineation of all soil types on the property, as per the Nassau County Soil Survey.
- (f) The proposed location and type of all surface materials and/or other surface treatments to be used.
- (g) The details of any proposed surface or subsurface drainage system to be installed, including any special measures designed to provide for proper surface and/or subsurface drainage, both during the performance of the work and after its completion.
- (h) A *stormwater pollution prevention plan* (SWPPP) prepared in accordance with all applicable requirements of the New York State Standards and Specifications for Erosion and Sediment Control and the New York State Stormwater Management Design Manual (New York State Department of Environmental Conservation, most current versions or their successors).
[Amended 9-29-2009 by L.L. No. 9-2009]

4.10.2.3.2.7 If the approval authority determines that the extent or nature of the proposed *steep slope disturbance* will be extensive, or that blasting may be involved, it may require such other additional information, including reports prepared by properly qualified professionals, as it deems necessary and appropriate. This required additional information may include, among other things, cross-sections of all proposed disturbed areas, a cut and fill analysis, a blasting plan and/or other such technical studies or information.

4.10.2.4 Professional review fees. The approval authority, in reviewing any application pursuant to this section, may refer such application to any independent professional as said authority may determine to be appropriate to advise it with respect to such application. The *applicant* shall be responsible for reimbursing the cost of such professional review by establishing an escrow account in advance of consideration of the application and/or in advance of the retention of the outside professional by the approval authority. The payment of such fees shall be in addition to any and all other fees required by the Town of Oyster Bay or the County of Nassau.

4.10.2.5 Decision. In arriving at its decision, the approval authority shall be guided by at least the following considerations:

4.10.2.5.1 The potential environmental impact of the proposed action.

4.10.2.5.2 Alternatives to the proposed action which would eliminate the need for the requested permit or would reduce the potential impact of it.

4.10.2.5.3 The nature and extent of any mitigation proposed by the *applicant*.

4.10.2.5.4 Other mitigation which would serve to reduce potential adverse environmental impacts, including a reduction or change in the nature or scale of the proposed action.

4.10.2.6 Start of work. No work of any kind, including site clearing and preparation, shall be undertaken on the subject property prior to the issuance of the required permit and the installation of all erosion and *sediment controls* required in connection therewith.

4.10.2.7 Term. Any permit issued pursuant to this section shall be valid for a period of not to exceed one year from the date of approval, unless otherwise specified by the approval authority. Any such permit shall expire upon completion of the work specified therein.

4.10.2.8 Inspection. The property upon which the activity is approved shall be open to inspection by the Department of Planning and Development, or its duly authorized representatives, at any reasonable time and on any day of the week or weekend. The *applicant* shall notify the Department of Planning and Development at least five working days prior to the start of work for which the *steep slope disturbance* permit has been issued. The *applicant*, by having made application for such permit, shall be deemed to have granted its consent for inspection. A notice of violation or *stop-work order* shall be issued if it is found that the *applicant* has not complied with any of the conditions or limitations as set forth in the permit or has exceeded the scope of the approved activity.

4.10.2.9 Certification. Within 30 days of the date of completion of all work for which a permit pursuant to this section has been issued, a certification shall be submitted by a properly qualified professional attesting that all work has been properly completed in accordance with said permit and with any requirements issued pursuant thereto.

4.10.2.10 Continued conformance required. Continued conformance with all requirements as shown on the approved plan shall be deemed to be a condition for the continuation of the certificate of occupancy for the subject property. Any violation of a condition of approval shall be subject to the same penalties as a zoning violation. In addition, the Department of Planning and Development shall not issue any other permit or certificate related to any property for which a notice of violation of these regulations has been served until said violation shall have been resolved to the satisfaction of the approval authority, or to the court, as appropriate.

4.11. Provisions Governing *Roof Pitch*. [Added 6-24-2008 by L.L. No. 8-2008]

4.11.1 Sloped roofs. No *building* permit shall be issued for a new *one-* or *two-family dwelling*, or for any expansion of an existing *one-* or *two-family dwelling* which involves the construction of a new roof, unless the *roof pitch* is no less than 6:12.

4.11.2 Flat roofs. Notwithstanding the foregoing, *building* permits may continue to be

issued for the construction or expansion of flat-roof *dwellings* in the R1-20 or larger minimum *lot* size residence districts if located on a *lot* which complies with all dimensional requirements of the district in which it is located.

4.12. Tree Planting Requirements. [Added 7-14-2009 by L.L. No. 8-2009]

4.12.1 *Street* trees. As a condition pursuant to the issuance of a *building* permit for the construction or reconstruction of any *one- or two-family dwelling*, but not including additions or renovations to an existing *dwelling*, the *applicant* shall agree to plant, prior to the issuance of the certificate of occupancy, at least one *street* tree for each 35 feet, or major portion thereof (50% or more), of *street frontage* of the *lot* for which the *building* permit is sought. Each such tree shall have a diameter at breast height (DBH) of not less than four inches at the time of planting and shall be of a species as listed in § 225-6D of the Trees Ordinance, Chapter 225 of the Code of the Town of Oyster Bay, Nassau County, New York. The location and species of each such *street* tree shall be subject to the approval of the Superintendent of the Highway Division, Town of Oyster Bay Department of Public Works, or his/her designee.

4.12.2 Shade trees. In addition to the foregoing, and also as a condition pursuant to the issuance of a *building* permit for the construction or reconstruction of any *one- or two-family dwelling*, but not including additions or renovations to an existing *dwelling*, the *applicant* shall agree to plant, prior to the issuance of the certificate of occupancy, at least one new shade tree for each 5,000 square feet, or major portion thereof (50% or more), of *lot area*. Each such tree(s) shall have a diameter at breast height (DBH) of not less than three inches at the time of planting, shall be of a species as listed in § 225-6D or E of the Trees Ordinance, Chapter 225 of the Code of the Town of Oyster Bay, Nassau County, New York, and shall be in a location as approved by the Commissioner of the Town of Oyster Bay Department of Parks, or his/her designee.

4.12.3 Protection of existing healthy trees. The tree planting requirements as set forth above shall be waived by the Commissioner of the Department of Planning and Development, or his/her designee, where, based upon input received from the Highway Division of the Department of Public Works and the Department of Parks, it is determined that existing healthy *street* trees and/or shade trees on the subject *lot* already meet or exceed the above stated requirements. In such a situation, the existing trees shall be properly pruned and adequately protected by the *applicant* during the construction process, to the satisfaction of the Department of Planning and Development, so that they are in a healthy, undamaged condition at the time of the issuance of the certificate of occupancy for the new or reconstructed *dwelling*.⁵

5. Editor's Note: Former Subsection 4.13, Stormwater Management and Erosion and Sediment Control, added 10-16-2012 by L.L. No. 3-2012, was repealed 6-26-2018 by L.L. No. 6-2018.

§ 246-5.

DISTRICT REGULATIONS**5.1. Purposes. [Amended 1-20-2004 by L.L. No. 2-2004; 9-21-2004 by L.L. No. 11-2004; 9-21-2004 by L.L. No. 12-2004; 8-9-2011 by L.L. No. 2-2011; 2-23-2021 by L.L. No. 1-2021]**

In addition to the general purposes of this chapter as set forth in § 246-1, the following specific purposes are set forth for the establishment of residence, nonresidence and Hicksville Downtown Districts:

5.1.1 Residence districts:

- 5.1.1.1 To promote and encourage a suitable environment for *family* life where safe *streets*, wide yards and quiet neighborhoods are of paramount importance.
- 5.1.1.2 To achieve a balanced array of housing types, sizes and densities meeting the needs of households of varying ages and income levels, consistent with the character of existing neighborhoods, the need for protection of the natural environment, and the provision of adequate *open space*, sunlight and air.
- 5.1.1.3 To avoid, insofar as possible, commercial and through traffic in residential neighborhoods.
- 5.1.1.4 For the R1-10/OHG One-Family Residence District: to preserve the historical development character of the community, particularly with respect to the pattern of individual *lots* having relatively large yard areas in comparison to the size of the respective houses, as measured in terms of *lot coverage* and *gross floor area*, in relation to what is permitted in the R1-10 One-Family Residence District.

5.1.2 Nonresidence districts:

- 5.1.2.1 For the REC Recreation District — to help assure the preservation and continuation of existing recreational/*open space* uses so as to protect the quality and quantity of groundwater *recharge*, preserve *open space* and scenic beauty, reduce flooding, meet important recreational and *open space* needs of present and future Town residents and minimize potential adverse environmental impacts, including groundwater impacts, which might be associated with the redevelopment of such recreational/*open space* properties for more intensive use.
- 5.1.2.2 For the RO Residence-Office District — to allow limited *office* use with minimal community impact on residential sites located adjacent to commercial areas.
- 5.1.2.3 For the OB Office Building District — to provide a low density, campus-style *office* environment intended to encourage the development of modern *office buildings* in attractive landscaped settings.

5.1.2.4 For the NB Neighborhood Business District — to provide the opportunity for the development and maintenance of local-oriented retail and service business uses, as well as multifamily residence uses, in or adjacent to the Town's hamlet centers.

5.1.2.5 (Reserved)

5.1.2.6 For the GB General Business District — to provide the opportunity for the attractive development of retail, *office* and service business uses with adequate automobile access and off-street parking and loading facilities in appropriate locations along major commercial arteries.

5.1.2.7 For the ORD Office, Research and Development District — to promote a well-planned, low impact combination of light manufacturing, research and development, and *office* uses, with related business services, in locations which have an established industrial character but are proximate to established residential areas.

5.1.2.8 For the LI Light Industry District — to provide the opportunity and encouragement for the development of manufacturing, assembly, warehousing, research and development, *office* and other compatible types of job-creating commercial activities in established industrial areas in accordance with modern development standards.

5.1.2.9 For the Waterfront-A District — to promote a mix of recreational and water-dependent marine commercial land uses that are consistent with the physical, cultural, socioeconomic, and environmental features of the Town of Oyster Bay's coastal waterfront and which serve to enhance the accessibility, enjoyment, and utility of these vital areas.

5.1.2.10 For the Waterfront-B District — to promote a mix of recreational and *water enhanced* marine commercial, neighborhood business, and recreational land uses that are consistent with the physical, cultural, socioeconomic, and environmental features of the Town of Oyster Bay's coastal waterfront and which serve to enhance the accessibility, enjoyment, and utility of these vital areas.

5.1.3 Overlay districts:

5.1.3.1 For the APO Aquifer Protection Overlay District — to establish special standards and procedures regulating the use and development of land within the Oyster Bay Special Groundwater Protection Area, as designated by the Nassau County Public Health Ordinance (Article X) and by the New York State Environmental Conservation Law (Article 55), with the intent of protecting both the quality and quantity of groundwater, and which regulations are to be in addition to all other requirements and limitations of the underlying zoning district.

5.1.4 For the Hicksville Downtown Subdistricts — To establish development rules and procedures for three subdistricts to establish Downtown Hicksville as a vibrant

community where people will want to live, work, shop, dine, and enjoy leisure time in a walkable transit-oriented mixed-use area in the vicinity of the Hicksville Train Station.

5.2. Schedule of Use Regulations.⁶

The accompanying Schedule of Use Regulations lists the permitted uses of land, *buildings* and *structures* and indicates in which districts, and subject to what manner of approval, each is permitted. Any use not specifically listed shall be deemed to be prohibited, unless the Town Board determines by the grant of a special permit that such use is of the same general character as other permitted uses in the district and that such use will not be detrimental to the district. All uses are subject to the requirements and conditions set forth in the noted sections (§). Any *accessory building* or use determined by the Department of Planning and Development to be customarily accessory or incidental to a permitted *principal use* shall be a permitted *accessory use* in the district in which it is located.

5.3. Schedule of Dimensional Regulations.⁷ [Amended 2-23-2021 by L.L. No. 1-2021]

The accompanying Schedule of Dimensional Regulations sets forth the minimum and maximum dimensional requirements to be met in each zoning district. For the Hicksville Downtown Subdistricts see Section 5.9.

5.4. Additional Regulations.

5.4.1 Conservation subdivisions.

5.4.1.1 Purpose and policy. The Town Board of the Town of Oyster Bay hereby finds that preservation and protection of groundwater and surface water resources, natural landforms, existing vegetation and wildlife habitats will benefit the general health, safety and welfare of present and future residents. Clustering of residential development in a conservation subdivision is a proven means of accomplishing this goal. Pursuant to § 1610 of the County Government Law of Nassau County, the Town Board and the Nassau County Planning Commission must work together to establish residential conservation subdivisions.

5.4.1.2 Applicability. All residential subdivision applications for parcels having an area of five acres or more shall be considered for possible conservation subdivision.

5.4.1.3 Subdivision application. The *developer* shall present to the Nassau County Planning Commission a conceptual drawing outlining the requested residential subdivision as well as an accurate survey depicting acreage, topography, vegetation, surface water, improvements and any other natural or man-made

6. Editor's Note: The Schedule of Use Regulations is included at the end of § 246-5.

7. Editor's Note: The Schedule of Dimensional Regulations is included at the end of § 246-5.

characteristics on the property. The *developer* shall also present a sketch conventional subdivision layout plan conforming to the standards of the zoning district in which the property is located and also conforming to all other normally applicable requirements. The purpose of such a conventional plan shall be to determine the maximum permitted density (*lot yield*) for the property. A site inspection may be conducted to determine whether any of the following natural resources exist

- Slopes exceeding 15%.
- Areas with severe soil erosion potential, as defined by the Nassau County Soil Survey.
- Lands within deepwater *recharge* areas and/or the Oyster Bay Special Groundwater Protection Area, as defined by the County Department of Health.
- Flood hazard areas, as defined by the National Flood Insurance Program.
- Shallow depth to groundwater, less than 20 feet.
- Tidal and freshwater *wetlands*, including but not limited to those *wetlands* identified and classified by the New York State Department of Environmental Conservation.
- Land within the Coastal Zone, as defined by the New York State Department of State.
- Mature woodlands.
- Habitat for rare, unique, threatened, endangered or protected species of plants and animals, as defined by the New York State Natural Heritage Program or federal or state law.
- Local topographic phenomena, such as kettleholes, kames and high points.
- Scenic views, corridors and *open space*.
- Land adjacent to federal, state or county lands, state parkways, state and county highways, railroads and Town parks.
- Officially designated local, state or federal historic landmarks.
- Any other characteristics which the Town Board and the County Planning Commission find a conservation subdivision would serve to protect.

5.4.1.4 Conceptual meeting. Within 30 days of receipt of a conceptual or informal subdivision application, the Nassau County Planning Commission shall call for a meeting between representatives of the Town Board, the *applicant* and the County Planning Commission. At this time, the *applicant's* subdivision proposal and the characteristics of the subject parcel shall be reviewed with respect to the desirability of use of the conservation subdivision technique.

The Town Board and the County Planning Commission may require the *applicant* to design a conservation subdivision. The *applicant* should be prepared to discuss types of housing units to be constructed, methods of preserving *open space*, density and efficient means of providing utilities and services to future residences. Any directives issued shall be presented to the *applicant* within 30 days of the conceptual meeting.

5.4.1.5 Submission of revised proposal. The *applicant* may then present the County Planning Commission with a proposal in accordance with the directives and recommendations resulting from the conceptual meeting. Within 30 days of the submission of a revised conceptual layout, representatives of the Town Board and the Commission shall meet and determine whether the *applicant* shall be authorized to proceed with a preliminary subdivision. The *applicant* may or may not be required to attend this meeting. This authorization to proceed does not in any way constitute any approval, but will direct the *applicant* as to whether to submit a plan for a conservation subdivision.

5.4.1.6 Preliminary subdivision application.

5.4.1.6.1 The *applicant* shall submit simultaneously to the Town and the County the necessary fees and drawings for a Town Board public hearing and for County Planning Commission subdivision approval. These drawings shall be in accordance with Town Board regulations for a public hearing, § 1610 of the County Government Law of Nassau County and the Subdivision Regulations of Nassau County. A listing of all proposed modifications from the requirements of this chapter and a draft agreement to preserve and maintain the *open spaces* shall also be submitted to the Town and the county.

5.4.1.6.2 Preliminary *stormwater pollution prevention plan*: A preliminary *stormwater pollution prevention plan* (SWPPP) shall be required for preliminary subdivision plat approval. The SWPPP shall meet the performance and design criteria and standards set forth in § 246-4.13.
[Amended 10-16-2012 by L.L. No. 3-2012]

5.4.1.7 Town Board public hearing. Upon submission of a preliminary subdivision application, the *applicant* shall request that a public hearing before the Town Board be held to consider Town Board approval of the use of a conservation subdivision. The Town Board shall establish the density of the parcel, the height and type of *structures*, the *front*, *rear* and *side yard* requirements, *lot width*, percentage of *lot coverage*, off-street parking and any other requirements it deems appropriate, including agreements on *open space* preservation and maintenance. The Town Board conservation plan approval shall be valid for one year. The Town Board may, by resolution, grant an extension of time where, in its sole discretion, there appear to be extenuating circumstances warranting said extension.

5.4.1.8 County Planning Commission approval. After approval of the use of a conservation subdivision by the Town Board, the *applicant* shall proceed with

the preliminary and final subdivision review processes before the Nassau County Planning Commission in accordance with § 1610 of the County Government Law of Nassau County and the Subdivision Regulations of Nassau County.

5.4.1.9 Additional filing requirements.

5.4.1.9.1 The *applicant* shall file zoning modifications and agreements with the Town and County Clerks. Deeds for lands dedicated to the Town or county shall be filed simultaneously with the County Clerk. Two duplicate tracings and two copies of all agreements shall be filed with the Nassau County Planning Commission, or as otherwise required. The filed plat shall contain the signature of the Town Supervisor attesting to the modifications.

5.4.1.9.2 Final *stormwater pollution prevention plan*: A final *stormwater pollution prevention plan* (SWPPP), consistent with the terms of the preliminary plan approval, shall be required for final subdivision plat approval. The SWPPP shall meet the performance and design criteria and standards set forth in § 246-4.13 and the approved final subdivision plat shall be consistent with said design criteria and standards. [Amended 10-16-2012 by L.L. No. 3-2012]

5.4.1.10 Conditions.

5.4.1.10.1 The permitted number of *building lots* or *dwelling units* in a conservation subdivision shall not exceed the maximum number of *lots* permitted had the land been subdivided into buildable *lots* conforming to the minimum *lot* size and density requirements set forth in this chapter for the district in which said land is situated and shall conform to all other applicable requirements not modified by the conservation subdivision application. A buildable *lot* is that which may be developed without legal, geological or topographic hindrances preventing construction in a safe and sound manner. The number of *lots* will be determined by the Town Board based upon a subdivision layout prepared by the *applicant* in accordance with the property's zoning and all other applicable requirements.

5.4.1.10.2 The Town Board may require that the *dwelling units* be constructed as detached, semi-detached or attached *structures*.

5.4.1.10.3 In the event that the application of this procedure results in a plat or plats showing lands available for park, recreation, *open space* or other municipal purposes directly related to the plat or plats, then the Town Board, as a condition of plat approval, may establish such conditions on the ownership, use and maintenance of such lands as it deems necessary to assure the permanent preservation of such lands for their intended purposes.

5.4.2 Additional regulations for RMF, RNG, RPH and RSC Districts. [Amended 11-9-2004 by L.L. No. 16-2004]

5.4.2.1 Units per *building*. In RMF, RPH and RSC Residence Districts, there shall be a maximum of eight *dwelling units* per *building*, except that the site plan reviewing agency may approve an increase to a maximum of 16 *dwelling units* per *building* where said agency determines that such *structures* would result in increased *open space* preservation or other such benefit to the Town.

In RNG Residence Districts, there shall be a maximum of six *dwelling units* per *building* except that the site plan reviewing agency may approve an increase to a maximum of eight *dwelling units* per *building* where said agency determines that such larger *structures* would result in increased *open space* preservation, improved site design or other such benefit to the Town.

5.4.2.2 Distance between *buildings*.

5.4.2.2.1 In RMF Residence Districts, the distance between any two main *buildings* shall equal at least the average height of such *buildings* at the points where they are nearest to one another. In any event, the distance between any two main *buildings* or any main *building* and any *accessory building* or between two detached *accessory buildings* on the same *lot* shall be not less than 25 feet. Any other provision notwithstanding, a minimum distance of 50 feet shall be maintained between the center of any legal window, other than a legal bathroom or *kitchen* window, and any wall of the same or of another *building* on the same *lot*, the plane of which is parallel to or which intersects the plane of the wall in which said window is located at an angle of less than 90°, such distance being measured in horizontal projection at the sill level of said window.

5.4.2.2.2 In RNG, RPH and RSC Residence Districts, the distance between any two main *buildings* shall equal at least the average height of such *buildings* at the points where they are nearest to one another. In any event, the distance between any two main *buildings* or any main *building* and any *accessory building* or between two detached *accessory buildings* on the same *lot* shall not be less than 20 feet. Any other provision notwithstanding, the distance between any two *buildings* shall also comply with the following:

5.4.2.2.2.1 A minimum distance of 30 feet shall be maintained between the center of any legal window, other than a legal bathroom or *kitchen* window, and any wall of the same or of another *building* on the same *lot*, the plane of which is parallel to or which intersects the plane of the wall in which said window is located at an angle of less than 90°, such distance being measured in horizontal projection at the sill level of said window.

5.4.2.2.2.2 A minimum distance of 40 feet shall be maintained between

the center of any legal window, other than a legal bathroom or *kitchen* window, and any other window of the same or of another *building* on the same *lot*, the plane of which is parallel to or which intersects the plane of the wall in which said window is located at an angle of less than 90°, such distance being measured in horizontal projection at the sill level of said window.

5.4.2.3 Habitable area. In RMF Residence Districts, each *dwelling unit* shall have a minimum *habitable area* as follows:

Number of Habitable Rooms in Dwelling Unit	Habitable Area Required Per Dwelling Unit (square feet)
1	300
2	500
3	750
4 or more	750, plus 200 for each habitable room in excess of 4

In RNG Residence Districts, each *dwelling unit* shall have two bedrooms, a minimum *habitable area* of 1,200 square feet and a maximum *habitable area* of 1,500 square feet.

5.4.2.4 In RMF Residence Districts, no off-street parking spaces shall be located within the required *front yard*. In the RMF, RNG, RPM and RSC Residence Districts, there shall be a minimum distance of 10 feet between unenclosed off-street parking areas and residential *buildings*, which area shall consist of landscaping and/or walkways. Detached parking garages shall contain a minimum of three off-street parking spaces. At least one garage space shall be provided within each *townhouse dwelling unit*, and such garage space be set back at least 25 feet from the curbline.

5.4.2.5 Recreation areas, facilities and *open space*. In the RMF, RNO and RPM Residence Districts, a minimum area of 150 square feet of active recreation and child play areas shall be provided per residential *dwelling unit*. In the RNG, RPH and RSC Residence Districts, a minimum floor area of 10 square feet of usable indoor recreation area shall be provided per residential *dwelling unit*. In the RMF Districts, a minimum of 25% of the site. In an area(s) having a minimum width of 50 feet, shall be reserved for *open space* and recreational purposes. All recreational facilities shall be utilized only by on-site residents and their nonpaying guests.

5.4.2.6 In the RSC Residence District, all *dwelling units* shall be occupied only by *persons* who are 62 years of age or older, except that in the case of spouses and/or significant others, only one of the two occupants needs to be 62 years

of age or older (hereinafter "qualified occupant"). Additional requirements for qualified occupants for these districts within the Town of Oyster Bay shall be outlined in a schedule, as approved by the Town Board of the Town of Oyster Bay. [Amended 10-24-2006 by L.L. No. 11-2006]

5.4.2.7 In the RNG and RSC Residence Districts no *basement* or *cellar* shall be occupied as living or sleeping quarters. In the RMF and RPH Residence Districts a *basement* can only be occupied as living or sleeping quarters for management and/or custodial employees.

5.4.2.8 It is the purpose of the RNG District to provide first-time home buying opportunities with preference for residents and children of residents of the Town of Oyster Bay with the objective of encouraging such *persons* to remain in the Town and eventually transition into detached single-family homes as their household size and income level increases. Therefore, in the RNG Next Generation Residence District, the following regulations shall apply;

5.4.2.8.1 All next-generation housing units shall be owner occupied.

5.4.2.8.2 A *dwelling unit* owners' association shall be established for each next-generation housing development. The association shall be responsible for the ownership, maintenance, payment of taxes, liability and other expenses for all commonly owned facilities and land, and for all exterior portions of each individual *townhouse* and, where applicable, *townhouse lot*. Each individual *townhouse* owner shall be required to be a member of the association and shall be responsible for the payment of their proportionate share of all association expenses.

5.4.2.8.3 For the purpose of preventing overcrowding, occupancy of next-generation housing units by more than two *persons* per bedroom shall be prohibited.

5.4.2.8.4 The initial sales price of each next-generation housing unit, and the subsequent resale price of each such unit, shall not exceed three times the estimated median *annual household income* for a three-person household in the Town of Oyster Bay. Median *annual household income* by household size for the Town of Oyster Bay shall be estimated based upon the ratio of median *annual household income* for all households in the Town of Oyster Bay to the median *annual household income* for all households in Nassau County, multiplied by the median *annual household income* by household size for Nassau County, as reported annually by HUD. At the time of resale of next-generation housing units, the maximum permitted sales price shall be increased to include the actual cost of any permanent capital improvements which have been made to the *dwelling unit*.

5.4.2.8.5 The maximum permitted *annual household income* for purchasers of new or resale next-generation housing units shall not exceed 120% of the estimated median *annual household income* for a household of their size

in the Town of Oyster Bay. If a contract with an income-eligible purchaser is not signed within a period of 120 days from the date that such a unit is first publicly offered for initial sale or for a period of 60 days from the date that such a unit is first publicly offered for resale, the seller shall no longer be obligated to sell to a purchaser within the household income limitations as set forth herein. However, all other requirements and/or preferences as set forth in this section shall remain applicable.

5.4.2.8.6 Notwithstanding the foregoing, the declaration and covenants on the deed to each *dwelling unit* shall be subject to and subordinate to any and all mortgages on the property held by a commercial bank, savings and loan association, credit union, savings bank, national bank, licensed funding company or licensed mortgage banker or the State of New York Mortgage Agency, its successors and assigns, and shall be extinguished by a sale at foreclosure by any of said lenders or a deed given to one of them in lieu of foreclosure.

5.4.2.8.7 The Town of Oyster Bay Department of Planning and Development shall be responsible for the administration of all next-generation housing zoning regulations, including making any necessary determinations or interpretations in connection therewith.

5.4.2.9 Next-generation housing in RMF Districts. In any RMF Zoning District, next-generation housing shall be permitted on a portion of a proposed development site, provided that such housing is built in accordance with the same standards, procedures and requirements as though such portion of the site is actually located within an RNG Residence District.

5.4.3 Additional regulations in the RO District.

5.4.3.1 *Frontage*. An application for change of zone to the RO District shall be considered only when the subject property has *frontage* on a *street* which has a minimum right-of-way width of 80 feet.

5.4.3.2 Number of employees. The maximum number of *persons* working in any *building* in an RO District at the same time shall be one *person* per 400 square feet of usable nonresidential floor space.

5.4.3.3 Entrance. A *corner lot* or *double frontage lot* shall have only one *front yard*, which shall face the primary entrance of the *building*. In an RO District, the location of the primary entrance shall be determined by the Department of Planning and Development, or duly authorized assistant, with consideration given to the size and location of pedestrian entrances to the *building*, the location of vehicular access and the *street name* listed in the postal address.

5.4.3.4 Accessory *apartment*. A maximum of one accessory *apartment* shall be permitted on a *lot* in an RO District. An outdoor living area for the use of the resident(s) of the accessory *apartment* shall be provided in the *rear yard*.

5.4.3.5 *Signs*. Illuminated signs shall be equipped with an automatic device that will

shut off the light source no later than 10:00 p.m.

5.4.3.6 No outdoor display. There shall be no display of products visible from any *street* or neighboring property in a residence district.

5.4.3.7 Architectural style. Any *building, structure* or addition thereto shall be designed and constructed so that the property maintains the character of a *one-family dwelling*.

5.4.4 (Reserved)⁸

5.4.5 Additional regulations in the OB District.

5.4.5.1 Accessory active recreational uses. Accessory active recreational facilities planned for the use of on-site employees and their visitors shall be located at least 100 feet from any *street* or *lot line* and 200 feet from any property located in a residence district or used primarily for residence purposes.

5.4.5.2 Off-street parking and loading. Off-street parking, loading and truck maneuvering areas shall be located at least 100 feet from any *street* or *lot line*. No loading areas shall be permitted along any *building* wall that faces a *street*.

5.4.6 Additional regulations in the Waterfront-A and Waterfront-B Districts. [Added 1-20-2004 by L.L. No. 2-2004]

5.4.6.1 Consistency with Town Code. The proposed use shall be in harmony with and promote the general purposes set forth under § 246-1 of the Code of the Town of Oyster Bay, New York.

5.4.6.2 Suitable *lot area*. The *lot area* of the subject parcel shall be sufficient and appropriate for the use and the reasonably anticipated expansion thereof.

5.4.6.3 Prevention of nuisance conditions. The proposed use shall not prevent the orderly and reasonable use of adjacent properties, particularly where adjoining parcels are located within different zoning districts.

5.4.6.4 Compatibility with adjoining uses and consistency with community character. The site shall be a suitable location for such a use, and if sited at that location, the proposed use will, in fact, be compatible with its surroundings and consistent with the character of the neighborhood and of the community in general, and particularly as it relates to its visibility, mass scale, and overall appearance.

5.4.6.5 Access, traffic flow, and transportation safety. Access facilities shall be adequate to accommodate the estimated traffic from public *streets* and sidewalks, so as to assure the public safety and to avoid traffic congestion.

5.4.6.6 Parking. Where appropriate, adequate provisions shall be implemented to

8. Editor's Note: Former Subsection 5.4.4, Additional regulations in the CB District, was repealed 2-23-2021 by L.L. No. 1-2021.

ensure the availability of off-street truck parking and loading spaces, that the number of off-street parking spaces are at or above and beyond the requisite number of spaces, and that sufficient area is provided for internal circulation, as set forth by §§ 246-7 and 246-8 of the *Code of the Town of Oyster Bay, New York*.

5.4.6.7 Buffers and screening. Adequate buffers and screening shall be established to protect adjoining uses from the potentially detrimental impacts of the proposed use.

5.4.6.8 Disposal of wastes. Suitable measures shall be taken for the collection and disposal of *stormwater* runoff, sewage, refuse, and other liquid, solid, and gaseous waste, which the proposed use will generate.

5.4.6.9 Environmental protection. The natural features of the site shall be such that the proposed use may be established there without substantial *disturbance* or degradation of important environmental features, systems, or processes, and without significant adverse impact to both ground and surface waters.

5.4.6.10 Public health, safety, and welfare. The uses proposed shall not have an adverse effect, in terms of public health, safety, and welfare; nor, shall such uses significantly affect public utilities.

5.4.6.11 Site design. The uses, landscaping, lighting, and buffering areas proposed shall be consistent with the Town Site Design Standards set forth under § 246-7 with preference given toward native landscape species.

5.4.6.12 Community character. The project design provides for the protection or enhancement of significant natural, historical, or architectural features within the proposed development area.

5.4.6.13 Consistency with adopted plans. The use, layout, design, buffering, and environmental controls of the proposed project shall be consistent with the spirit and intent of the uncodified recommendations of the duly adopted *Final Recommendations of the Glenwood Landing Waterfront Redevelopment and Revitalization Plan; Summary of Recommendations to the Town Board (October 2002)*.

5.4.6.14 Scale of retail stores, personal service businesses, and *marine-retail business complexes*. The *gross floor area* of all retail stores, personal service businesses, and marine-retail business complexes on any *lot* within the Waterfront-B Zoning District shall not exceed 7,500 square feet.

5.4.6.15 Types and scale of *offices*. *Offices* proposed within the Waterfront-B Zoning District shall be *professional offices* (e.g., attorneys, dentists, doctors, real estate agents, architects, accountants, insurance salespersons, waterfront business owners, etc.) that are consistent with the character of a neighborhood business district, and which support the local community or are related to local *water-enhanced* or *water-dependent uses*. Total *office* space on a single *lot* shall not exceed a total *gross floor area* of 3,750 square feet or involve more

than four separately operated *office* suites.

5.4.7 Additional regulations in the APO District. [Added 9-21-2004 by L.L. No. 12-2004]

5.4.7.1 Legislative intent. It is the legislative intent of the Town Board of the Town of Oyster Bay to promote the public health, safety and general welfare by protecting both the quality and quantity of groundwater *recharge* into the sole source aquifers which provide drinking water for all residents, businesses and other uses in the Town of Oyster Bay and in Nassau County, through the establishment of special regulatory standards and procedures designed to control land use and development within the Oyster Bay Special Groundwater Protection Area, as designated by the Nassau County Public Health Code (Article X) and by the New York State Environmental Conservation Law (Article 55). For the purpose of so doing, the Aquifer Protection Overlay District is hereby established with standards and regulations which are in addition to those provided by the underlying zoning district and to those provided by other applicable federal, state, county and Town laws, regulations and statutes.

5.4.7.2 Boundaries. The boundaries of the APO District shall be as shown on the seven maps on the following seven pages entitled "Aquifer Protection Overlay Districts, Town of Oyster Bay, N.Y.,⁹ and as delineated in either Article X of the Nassau County Public Health Ordinance or in Article 55 of the New York State Environmental Conservation law, or in both.

5.4.7.3 Development standards.

5.4.7.3.1 Protection of *natural vegetation*. In furtherance of the purposes and legislative intent as set forth in this chapter, the following limits are hereby established for clearing, *grading* or other such *disturbance of natural vegetation*:

5.4.7.3.1.1 *Disturbance of natural vegetation*. No *disturbance of natural vegetation* shall be permitted on any *lot* in an APO District (other than on residential *lots* which were legally in use for one- or two-family-residence purposes as of the effective date of this amendment or for changes affecting less than (1,000 square feet), until such time as a *building* permit, site plan approval, special permit approval and/or final subdivision plat approval is issued. If none of the foregoing are required, no *disturbance of natural vegetation* shall be permitted until such time as a site *disturbance* plan is submitted to and approved by the Department of Planning and Development. Such site *disturbance* plan, as well as any application for site plan, special permit or subdivision approval, shall delineate the specific areas to be disturbed and shall include a statement specifying the purpose and need for such *disturbance*, e.g., to create a drainage reserve area

9. Editor's Note: Said maps are on file in the Town offices.

(DRA) rather than a detention basin (sump). The goals of the site *disturbance* plan, or any other plan for which approval is required, shall include the minimum necessary *disturbance of natural vegetation* and the preservation of the contiguity of any remaining areas of *natural vegetation* to the maximum extent reasonably feasible. The decision of the Department of Planning and Development shall be based upon the standards as set forth in § 5.4.6.3.1.2 below. If revegetation is required, the Department of Planning and Development may require that the *applicant* post a performance bond in an amount equal to the estimated cost of restoring any disturbed areas to their natural state. The term of said performance bond shall be for a period of not less than one year and shall not be released until the Department of Planning and Development has determined that the *disturbance* and restoration has been completed in accordance with the approved site *disturbance* plan, or other approved plan.

5.4.7.3.1.2 One-Family Residence Districts. The maximum permitted *disturbance of natural vegetation* on a residential *lot* which has an area of 10,000 square feet or greater in a One-Family Residence District and was not legally in use for one- or two-family-residence purposes as of the effective date of this amendment shall be as follows:

<i>Lot Area</i>	<i>Maximum Permitted Disturbance of Natural Vegetation</i>
10,000 to 19,999 square feet	10,000 square feet plus 40% of <i>lot area</i> in excess of 10,000 square feet
20,000 to 43,559 square feet	14,000 square feet plus 35% of <i>lot area</i> in excess of 20,000 square feet
1 to 2 acres (43,560 to 87,120 square feet)	22,250 square feet plus 30% of <i>lot area</i> in excess of 1 acre
2 to 5 acres (87,120 to 217,800 square feet)	35,300 square feet plus 25% of <i>lot area</i> in excess of 2 acres
Over 5 acres (over 217,800 square feet)	68,000 square feet plus 20% of <i>lot area</i> in excess of 5 acres

5.4.7.3.1.3 Multifamily and nonresidence uses. The maximum permitted *disturbance of natural vegetation* for any multifamily or nonresidence use on a one acre or larger *lot* shall be 30,000 square feet plus 60% of *lot area* in excess of one acre. On a *lot* which is less than one acre in area, the maximum permitted *disturbance of natural vegetation* shall be 30,000 square feet. In either case, *disturbance of natural vegetation* shall be minimized by the approving agency to the maximum extent practicable.

5.4.7.3.2 Lot coverage. In furtherance of the purposes and legislative intent as set forth in this chapter, the following limits are hereby established for *lot* (impervious surface) *coverage*, except that, in conjunction with the reuse or redevelopment of any existing developed *lot* that has impervious surface coverage in excess of the maximum permitted limits as set forth below, such limits shall not apply but the amount of *lot coverage* shall nevertheless be minimized to the maximum extent practicable:

5.4.7.3.2.1 One-Family Residence Districts. The maximum permitted *lot coverage* for a residential use on a *lot* which has an area of 10,000 square feet or greater in a One-Family Residence District and was not legally in use for one- or two-family residence purposes as of the effective date of this amendment, shall be as follows:

<i>Lot Area</i>	<i>Maximum Permitted Lot Coverage</i>
10,000 to 19,999 square feet	4,000 square feet plus 20% of <i>lot area</i> in excess of 10,000 square feet
20,000 to 43,559 square feet	6,000 square feet plus 12% of <i>lot area</i> in excess of 20,000 square feet
1 to 2 acres (43,560 to 87,120 square feet)	8,830 square feet plus 10% of <i>lot area</i> in excess of 1 acre
2 to 5 acres (87,120 to 217,800 square feet)	13,180 square feet plus 8% of <i>lot area</i> in excess of 2 acres
Over 5 acres (over 217,800 square feet) acres	23,600 square feet plus 6% of <i>lot area</i> in excess of 5

5.4.7.3.2.2 Multifamily and nonresidence uses. The maximum permitted *lot coverage* for any multifamily or nonresidence use on a one acre or larger *lot* shall be 22,000 square feet plus 45% of *lot area* in excess of one acre. On a *lot* which is less than one acre in area, maximum permitted *lot coverage* shall be 22,000 square feet. In either case, *lot coverage* shall be minimized by the approving agency to the maximum extent practicable.

5.4.7.3.3 Hazardous materials. The disposal, storage, creation, manufacturing or treatment of any *hazardous material* is prohibited, except for the storage of such material in sealed containers for retail sale or for normal household use and fuel oil in sound storage vessels for on-site heating purposes. If any expansion is proposed of an existing nonresidential use which manufactures, generates, stores, discharges, uses or is involved in the transport of any *hazardous materials* either on, to or from a site in the APO District, a groundwater protection plan shall be prepared and submitted for Department of Planning and Development approval. Said plan shall provide a description of both the existing and proposed amount and composition of all such *hazardous materials* and shall include

proposed implementation measures designed to mitigate, to the maximum extent feasible, any reasonable possibility that the groundwater supply may be degraded or contaminated in any way as a result of the approval and operation of the proposed new or expanded use.

5.4.7.3.4 Nassau County Department of Health approval. All proposed new residential subdivisions and new nonresidential developments within an APO District shall obtain approval from the Nassau County Department of Health demonstrating compliance with Article X "Groundwater Protection Regulation of Sewage and Industrial Wastewater" of the Nassau County Public Health Ordinance. Wherever public sewerage systems are available, to the extent practical, both multifamily and nonresidential uses within the APO District shall be connected to them.

5.4.7.3.5 Revegetation or new planting. Any proposed revegetation or other new planting on multifamily and nonresidential *lots* shall be of such type as will minimize the need for the application of fertilizers, pesticides and herbicides, and shall require minimal water usage through application of the principles of *xeriscaping*.

5.4.7.3.6 *Best management practices*. *Best management practices* (BMPs) shall be implemented for all new single-family subdivisions and in connection with the development and operation of multifamily and nonresidential uses in the APO District for the purpose of protecting groundwater and quantity. Said BMPs shall be consistent with generally accepted standards and, in addition to the requirements specified elsewhere in this chapter governing impervious surface coverage, clearing of *natural vegetation*, and the mitigation of potential impacts posed by hazardous substances in the APO District, may include, but not necessarily be limited to, the following:

- Irrigation systems shall be designed to minimize water consumption. Wherever practicable, rain gauges and/or drip irrigation should be used to achieve this objective.
- Where feasible, irrigation systems shall utilize recycled water, such as *stormwater* collected into detention ponds.
- To the extent practicable, permeable surfaces shall be used instead of impervious pavement.
- To the extent practicable, landscape plantings shall consist of water-efficient and drought-tolerant native or other vegetative species that are adapted to minimal irrigation and are resistant to diseases and pest infestations.
- Areas of turf shall be minimized.
- Planting designs shall group plants according to their water requirements for efficient irrigation.

- Where appropriate, existing soil *structure* shall be improved by addition of amendments that increase the water-holding capacity of the soil.
- An appropriate maintenance schedule shall be established for pruning, fertilizing, pest control and weeding to maintain the water efficiency of landscape plantings.
- In general, and where appropriate, the use of drainage reserve areas (DRA's) is preferred to the use of Detention Basins (sumps).
- *Integrated pest management* techniques shall be utilized to the degree practicable, including proper monitoring and soil testing, in order to determine the optimal timing for fertilizer and pesticide application. Site-specific conditions should dictate when these substances are used, rather than a routine application schedule which does not account for actual need.
- Slow-release fertilizers shall be used whenever practicable.
- Animal waste shall be collected and properly disposed of in a manner that minimizes the potential for groundwater contamination.
- On-site mulching and composting including "don't bag it" practices for the management of grass clippings, shall be used in order to reduce the need for fertilizer application.
- *Solid waste* collection and storage facilities shall be properly sealed to prevent leakage to the pound and shall be covered to prevent the infiltration of rainfall into the waste material.
- To the extent practicable, traction aids and other suitable practices shall be implemented in order to minimize the use of chemical de-icing materials.
- Storm drains shall be stenciled, or otherwise appropriately marked, to warn about the impacts associated with improper dumping of *hazardous materials*.
- Runoff shall receive suitable pretreatment prior to discharge to *infiltration structures*.
- Clean roof runoff shall be piped directly into the ground, rather than being allowed to flow overland in a manner that would mobilize contaminants on the land surface prior to the *recharge* of this runoff.
- For projects that include the creation of man-made water bodies, suitable measures shall be implemented to control waterfowl populations.

5.4.7.4 Application requirements. In addition to the applicable requirements for the submission of site plan and/or special use permit applications in accordance

with §§ 246-6 and 246-9 of this chapter, site plan and/or special use permit applications within the APO District shall also include a plan delineating all existing and proposed *buildings, structures, paved areas and other impervious surfaces, all areas of existing and proposed vegetation, all areas of proposed disturbance to existing natural vegetation, all areas where pesticides, herbicides, fertilizers or other such chemicals may be applied and all proposed best management practices.* The same shall also be required for subdivision applications.

5.4.7.4.1 Each subdivision, site plan and/or special use permit application shall also include a *stormwater management* plan and any other additional information or plans as may be required by the approving agency in order to ensure that the project mitigates, to the maximum extent reasonably feasible, any possible degradation or contamination of the groundwater supply as a result of *stormwater runoff*. Said *stormwater management* plan shall demonstrate that appropriate BMPs have been incorporated into the project design, and at a minimum shall include:

5.4.7.4.1.1 Suitable maps and associated construction plans and details showing existing site features and proposed alterations, highlighting the location and type of proposed *stormwater management* systems; and

5.4.7.4.1.2 A written statement explaining the natural and proposed drainage systems, a detailed description of projected runoff quantity and quality, and an explanation as to why certain BMPs were chosen for pollution control.

5.4.7.4.2 The *stormwater management* plan shall include provisions for the long-term maintenance of approved management measures, and shall address the degree to which the proposed measures comply with the following general standards:

5.4.7.4.2.1 To the maximum extent practicable, the site design shall incorporate natural drainage patterns and vegetation in order to maintain or improve predevelopment *stormwater* patterns and water quality.

5.4.7.4.2.2 To the maximum extent practicable, the generation of pollutants shall be avoided or limited, by means of appropriate source control measures (e.g., controlled usage of fertilizers, pesticides, roadway salts, etc.).

5.4.7.4.2.3 To the maximum extent practicable, runoff velocities and volumes shall be moderated in order to reduce the likelihood of pollutant transport, by means of measures such as directing flow over grassed water quality swales or other vegetated areas, storing runoff in constructed ponds or *wetlands*, and installing sand filters, organic filters and/or similar systems capable of removing nitrogen

from *stormwater*.

5.4.7.4.2.4 Site runoff shall not be discharged directly to rivers, streams, or other surface water bodies, *wetlands* or vernal pools.

5.4.7.4.2.5 In addition, new *infiltration structures* installed for *stormwater management* shall be separated:

- [1] At least four feet vertically from the seasonal high water table;
- [2] At least 100 feet horizontally from any water supply well; and
- [3] At least 25 feet horizontally down-gradient from any subsurface sewage disposal system.

5.4.7.5 Conservation (cluster) development. The Town Board of the Town of Oyster Bay, pursuant to the authority granted to it by § 278 of the Town Law of the State of New York, and in furtherance of the purposes and legislative intent as set forth in this chapter, may permit or require *applicants* for subdivision approval in the Towns One-Family Residence Districts, to apply for conservation (cluster) development subdivision approval, except that in the case of properties which are 20 acres or larger and located in an APO District, conservation development shall be mandatory. In addition to the goal of increasing the amount of *open space* and *natural vegetation* to be preserved, any such conservation development plan shall also seek to maximize the contiguity of such preserved areas as well as the quantity and quality of groundwater *recharge*. The Town Board in each case may specify the minimum permissible *lot area* for *one-family dwellings*, the types of *dwellings* to be permitted, and any other special standards as it may determine appropriate, taking into consideration the size, location and nature of the property involved, as well as the purposes of this Chapter. The procedure for so doing shall be as set forth in § 5.4.1 of this chapter.

5.4.7.6 Nonconforming uses. Any legally existing use made nonconforming by this Section may be continued subject to the provisions of § 246-4.2 of this chapter.

5.4.7.7 Conflicting standards. If the provisions of any other federal, state, county or Town statute, law, rule or regulation imposes stricter standards to protect groundwater within an APO District, the more restrictive provisions shall prevail.

5.5. Individual standards and requirements for certain uses.

5.5.1 Accessory outdoor sales and display. The outdoor sale or display of merchandise, excluding perishable items such as fruit, vegetables, plants or flowers, shall require a permit from the Department of Planning and Development. Such use shall only be permitted if it is incidental to the permitted *principal use* and only on a temporary basis for special sale events, not to exceed two weeks in any six-month period. The display of any merchandise, perishable or otherwise, shall not be placed in any required parking or loading spaces, sidewalks or fire lanes, or be located in

any required yards, and shall not exceed 15% of the indoor store floor area.

5.5.2 *Agriculture*. No storage of manure or odor or dust-producing substances shall be permitted within 100 feet of any *side* or *rear lot line* or within 150 feet of any *street*.

5.5.3 *Animal hospitals*. Outdoor runs, pens or other facilities used for the boarding of animals shall be set back at least 200 feet from any property in a residence district. The hospital shall be designed and operated in such a manner as to produce no objectionable noise, odors or other nuisances beyond the boundaries of the site on which it is located. Waste materials shall be stored and disposed of in accordance with all applicable federal, state, county and Town laws. [Amended 7-22-2003 by L.L. No. 7-2003]

5.5.4 *Antennas*.

5.5.4.1 Purpose. In the interest of public health, safety and aesthetics, the Town Board has determined that it is necessary to provide reasonable regulations for the installation and maintenance of *antennas*.

5.5.4.2 Permit required. All antennas and wireless telecommunications facilities shall require a permit and any other approvals as required by Chapter 242, unless such antenna or wireless telecommunications facility is excluded as provided by § 242-4. [Amended 9-12-2017 by L.L. No. 6-2017]

5.5.4.3 (Reserved)¹⁰

5.5.4.4 Standards and requirements.

5.5.4.4.1 Freestanding *antennas* shall not be located in any minimum required *side* or *rear yard*.

5.5.4.4.2 Freestanding *antennas* shall not be located in any yard along a *street* line and shall conform with all setback requirements for *accessory buildings* as identified in § 246-5.3, Schedule of Dimensional Regulations,¹¹ but in no case shall any portion of an *antenna* be located less than 10 feet from any property line.

5.5.4.4.3 Not more than one freestanding *antenna* shall be permitted on any *lot* located in a residence district.

5.5.4.4.4 Every *antenna* must be adequately grounded for protection against a lightning strike.

5.5.4.4.5 Freestanding *antennas* shall be provided with fencing and/or evergreen plantings to screen the visibility of the *antenna* to the satisfaction of the Department of Planning and Development, while not interfering with operational requirements.

10. Editor's Note: Former Subsection 5.5.4.3, Application, was repealed 9-12-2017 by L.L. No. 6-2017.

11. Editor's Note: The Schedule of Dimensional Regulations is included as an attachment to this chapter..

5.5.4.4.6 The design and location of *antennas* shall minimize visual impact on neighboring properties and *streets*.

5.5.4.4.7 The operation of any *antenna* shall not interfere with the radio, television, telephone reception or similar signals serving nearby properties and shall include appropriate anti-climbing measures.

5.5.4.4.8 Freestanding amateur radio *antennas* used for noncommercial purposes shall be permitted to be constructed to a height of not more than 35 feet above grade. Such an amateur radio *antenna* may exceed 35 feet in height above grade, provided it is retractable and does not exceed 75 feet in height above grade when fully extended nor 35 feet in height above grade when fully retracted ("nested"). Such a retractable shall only be extended above 35 feet in height when actually being used for communications as part of amateur radio services.

5.5.4.4.9 All other freestanding *antennas* shall be permitted to be constructed to a height of not more than 18 feet above grade.

5.5.5 (Reserved)¹²

5.5.6 *Bars*. No more than two *amusement devices* used in connection with and customarily incidental to a *bar* or tavern is permitted. In those districts where a *bar* is permitted as an *accessory use*, it shall only be permitted as an *accessory use* with *country clubs* and *private membership clubs*. Such *accessory bars* shall be limited to functions involving only members having all of the membership rights and privileges of the club. [Amended 9-21-2004 by L.L. No. 11-2004]

5.5.7 *Catering services*. In those districts where catering services are permitted as *accessory uses*, such uses shall only be permitted with *country clubs*, *private membership clubs* and places of worship. Accessory catering services shall be limited to functions involving only members having all of the membership rights and privileges of the club or place of worship.

5.5.8 Colleges, universities or *private schools*.

5.5.8.1 The minimum required *lot area* for a college or university shall be 75 acres, and the minimum continuous *street frontage* shall be 400 feet.

5.5.8.2 The maximum total *building coverage* shall be 10%.

5.5.8.3 No *buildings*, parking or loading areas shall be located within 150 feet of any *lot line*.

5.5.8.4 No *structure* shall be erected in excess of three stories or 45 feet in height.

5.5.8.5 *Private schools*, including full curriculum religious schools, shall comply with New York State public school site size and layout requirements.

12. Editor's Note: Former § 246-5.5.5, Apartments over stores or offices, as amended, was repealed 7-14-2020 by L.L. No. 4-2020 and 1-24-2023 by L.L. No. 1-2023.

[Amended 7-22-2003 by L.L. No. 7-2003]**5.5.9 Wireless telecommunications facilities. [Amended 9-12-2017 by L.L. No. 6-2017]**

5.5.9.1 All antennas and wireless telecommunications facilities shall require a permit and any other approvals as required by Chapter 242, unless such antenna or wireless telecommunications facility is excluded as provided by § 242-4.

5.5.10 *Country clubs.* The minimum *lot area* shall be 50 acres. No *building*, parking or loading area shall be located within 50 feet of any *street* or *lot line*. The maximum *building coverage* shall be 2% of the *lot area*. [Amended 9-21-2004 by L.L. No. 11-2004]

5.5.11 Day care, play care, nursery school and similar facilities.

5.5.11.1 *Day-care facilities* shall conform to the NYS Office of Children & Facility Services licensing requirements.

5.5.11.2 Any *day care*, play care, nursery school or similar facility with a capacity of more than 12 patrons, attendees or students in a residence district shall be permitted only on a *lot* with *frontage* on a *street* that has a minimum right-of-way width of at least 80 feet and with a minimum area equal to at least the minimum required *lot size* for a single-family *dwelling* in that district for each 12 *persons*' capacity, or portion thereof. For example, a proposed facility with a capacity of between 37 and 48 *persons* in an R1-10 District must have a *lot area* of not less than 40,000 square feet.

5.5.11.3 Required outdoor play areas for children shall be fenced on all sides, and landscaping or other screening shall be provided to the satisfaction of the Department of Planning and Development. Play areas shall not be located within any required yard setbacks.

5.5.11.4 A drop-off/pick-up plan shall be provided for each such facility. If the driver is to remain in the vehicle when picking up or dropping off the attendee, a separate drop-off/pick-up area shall be provided directly in front of the main entrance to the facility. Such area shall provide sufficient queuing space for at least one vehicle for each 12 *persons* capacity, or portion thereof, expected to attend the facility during the peak period of attendance, or as otherwise required by the Department of Planning and Development in order to provide for safe pick-up and drop-off. If the driver will be exiting the vehicle to bring the attendee into the facility, or to pick up the attendee, specific parking spaces shall be designated and reserved for such use. Such spaces shall be located in proximity to the main entrance to the facility, shall each be a minimum of 10 feet in width, shall be limited to a maximum of 10 minutes use, shall be appropriately signed, and shall be provided in sufficient quantity so that at least one such space will be available for each 12 *persons* capacity, or portion thereof, expected to attend the facility during the peak period of attendance, or as otherwise required by the Department of Planning and Development.

[Amended 4-25-2006 by L.L. No. 5-2006]**5.5.12 Domestic employees' residences.**

5.5.12.1 Accessory living quarters for domestic employees may be located either in a *one-family dwelling* or in an *accessory building*.

5.5.12.2 Accessory living quarters for domestic employees shall be limited in size to a maximum of 1/4 of the *habitable area* of the *one-family dwelling* or 750 square feet of *habitable area*, whichever is less.

5.5.12.3 Any *accessory building* containing living quarters for domestic employees shall comply with the minimum setback requirements for *principal buildings* in the district in which it is located.

5.5.13 Drive-through services. All accessory drive-through services, excluding those for *fast-food restaurants*, shall be subject to site plan review by the Department of Planning and Development. Drive-through services for *fast-food restaurants* shall require special permit approval from the Town Board. Drive-through services shall provide per lane on-site queuing spaces as follows:

<i>Fast-food restaurant</i>	6 spaces
Car wash	10 spaces
All others	5 spaces

5.5.14 Home businesses and home offices. [Amended 7-22-2003 by L.L. No. 7-2003]

5.5.14.1 Purpose. The Town Board recognizes that *home businesses* and *home offices* may provide benefits to the Town and to its residents through the opportunity to work at home for two-working-parent households, single-parent households and the handicapped, the reduction of peak-hour traffic on the roadway system and the added protection afforded by increased daytime population in residential neighborhoods. The Town Board also recognizes that unrestricted use of *dwellings* for nonresidence uses may create the potential for detrimental impacts on the primarily residential purposes and character of the residence districts, including increases in traffic, noise, odor, light, *solid waste*, utility services and other similar types of impacts. In order to prevent the potentially detrimental impacts of *home businesses* and *home offices*, the Town Board hereby enacts the following regulations.

5.5.14.2 *Home office.* The operation of a *home office* shall be permitted as-of-right so long as such use complies with all of the following standards and limitations:

5.5.14.2.1 All activity is conducted solely by a resident of the *dwelling* and no nonresident employees are involved.

5.5.14.2.2 All activity is conducted fully within the *dwelling*.

5.5.14.2.3 The maximum area in use as a *home office* is 300 square feet or 15% of the *gross floor area* of the *dwelling unit*, whichever is less.

5.5.14.2.4 The *home office* involves no business-related visits by patients, students, clients or others.

5.5.14.2.5 The *home office* does not involve merchandising, storage of materials or equipment or the exchanging of commodities by sale to *persons* who come to the premises or by shipment to or from the premises.

5.5.14.2.6 There is no *sign* or any other external evidence of the *home office*.

5.5.14.2.7 The use is strictly limited to typical *home office* functions only and there is no equipment other than light *office* equipment such as a typewriter, computer, fax machine, copier or postage meter.

5.5.14.2.8 There is no production of materials, other than written or computer-generated materials of a type and quantity typically associated with a residential hobby; and in no case shall there be any manufacturing, assembly or food preparation.

5.5.14.2.9 The *home office* does not generate significant demand for pick-ups and/or deliveries nor generate additional *solid waste* or sanitary sewage beyond that which would typically be expected from a *dwelling* without a *home office*.

5.5.14.3 *Home business*. Operation of a *home business* shall require special permit approval from the Zoning Board of Appeals and shall be approved only if the *applicant* demonstrates compliance with all of the following standards:

5.5.14.3.1 The *home business* shall be operated by a *person* residing on the premises who is a properly certified physician; psychologist; physical, occupational or speech therapist; chiropractor; dentist; licensed social worker; engineer; architect; lawyer; accountant; teacher; or who is conducting a similar type of professional activity.

5.5.14.3.2 No more than one nonresident employee shall be allowed.

5.5.14.3.3 All activity shall be conducted fully within the *dwelling*. Additionally, there shall be no display of the *home business* visible outside of the *dwelling* other than permitted signage and there shall be no outside storage of materials or equipment associated with the *home business*.

5.5.14.3.4 The maximum area in use as a *home business* shall not exceed 500 square feet or 30% of the *gross floor area* of the *dwelling unit*, whichever is less.

5.5.14.3.5 The maximum number of visits by patients, students, clients or other visitors shall be two per hour.

5.5.14.3.6 At least two additional off-street parking spaces shall be provided in addition to those required for the residence use. The off-street parking shall be buffered from neighboring properties and *streets with fences* and/or landscaping.

5.5.14.3.7 The *home business* shall not involve merchandising, storage of materials or equipment or the exchanging of commodities by sale to *persons* who come to the premises or by shipment to or from the premises.

5.5.14.3.8 A maximum of one *sign* not more than two square feet in area shall be permitted.

5.5.14.3.9 The creation of the *home business* shall not interfere with maintaining the character of the *dwelling* as a residence. The exterior of the *dwelling* shall not be modified to accommodate the *home business* in a manner that is inconsistent with the residential character of the neighborhood.

5.5.14.3.10 No production of materials other than written materials, computer-generated materials or a type and quantity of materials that might typically be created as part of a residential hobby shall be permitted; in no case shall any manufacturing, assembly or food preparation be permitted.

5.5.14.3.11 The nature and intensity of the *home business* shall not create hazardous or detrimental conditions or generate any objectionable noise, odors, fumes, lighting, glare or other adverse impacts.

5.5.15 Keeping of domestic animals. A maximum of six customary household pets above the age of six months shall be permitted per single-family residence and two per other permitted type of *dwelling unit*.

5.5.16 Keeping of farm animals. No *building, structure* or premises shall be erected, altered or used in any residence district for the housing, feeding or harboring of pigeons, fowl, swine, goats, horses, rabbits, foxes, mink and bees, except when authorized by special use permit from the Board of Appeals. No *accessory building* or *structure* or part thereof used for the housing of such farm animals shall be located less than 50 feet from any *lot line*. **[Amended 6-15-2021 by L.L. No. 6-2021]**

5.5.17 Motor vehicle fuel sales and service, motor vehicle repair, auto body, tow car operations, car washing establishments, and *public garages*.

5.5.17.1 All repairs and or servicing shall be performed indoors.

5.5.17.2 In addition to the buffer and landscaping requirements of the site design standards¹³ of this chapter, a buffer screening area of not less than 10 feet in

13. Editor's Note: See § 246-7.

width shall be provided along all abutting *streets*. Said buffer shall consist of planting of such type, height, spacing and arrangement as, in the judgment of the reviewing agency, will provide an attractive appearance from neighboring *streets*.

5.5.17.3 All fuel, oil or similar substances shall be stored at least 35 feet from any *street* or *lot line* unless stored in underground tanks. Underground tanks shall be buried at least three feet from any *street* or *lot line*, and the top of said tank shall be at least two feet below the surface of the ground. Tanks buried adjacent to *buildings* having *basements* shall be set back at least 10 feet from the foundations of those *buildings*. All such uses and setbacks shall comply with applicable rules and regulations of governmental agencies and the National Fire Protection Association Standards.

5.5.17.4 No automobile parts, dismantled vehicles or similar items shall be stored in the open.

5.5.17.5 Between the hours of 8:00 a.m. and 6:00 p.m., all motor vehicle fuel sales establishments shall provide at least one clearly identified full-service location for handicapped drivers.

5.5.17.6 Hours of operation. The reviewing authority may restrict hours of operation of motor vehicle fuel sales and service establishments because of proximity to residential areas. In any event, only those establishments with *frontage* on the following *streets* may operate between the hours of 10:30 p.m. and 6:30 a.m.:

- Glen Cove Road.
- Hempstead Turnpike.
- Hicksville Road (between South Oyster Bay Road and Central Avenue).
- Jericho Turnpike.
- Merrick Road.
- Newbridge Road (south of Old Country Road).
- North Broadway (between Jericho Turnpike and West John Street).
- North Hempstead Turnpike (west of Cedar Swamp Road).
- Old Country Road (west of Manetto Hill Road).
- South Oyster Bay Road (between Woodbury Road and Stewart Avenue).
- Sunrise Highway.

5.5.17.7 Gasoline filling stations providing an air compressor for inflating tires to do so without charge. All gasoline filling stations which provide an air compressor capable of inflating automobile tires for the use of motorists shall do so at no charge to the user thereof.

5.5.18 *Parent-child residences.* It is the specific purpose and intent of the Town Board to provide the opportunity for the development of small *dwelling units* designed to meet the special housing needs of a member of the immediate *family* of a resident/owner. It is understood that a member of the immediate *family* of a resident/owner shall be deemed to be a resident/owner's spouse, child, mother, father, brother, sister, grandparents, step-parents, step-child, mother-in-law, father-in-law, brother-in-law, sister-in-law, daughter-in-law, son-in-law, grandchild, aunt (limited to a sister, natural-born or adopted, of the resident/owner's father or mother) or uncle (limited to a brother, natural-born or adopted, of the resident/owner's father or mother), living in the Town of Oyster Bay. It is also the Town Board's intent to allow the more efficient use of the Town's existing housing stock, to protect property values and to maintain the one-family character of R-1 Residence Districts. **[Amended 10-16-2012 by L.L. No. 3-2012; 6-26-2018 by L.L. No. 6-2018]**

5.5.18.1 The owner of the property upon which the *parent-child residence* is located shall occupy either the principal or accessory *dwelling unit* on the premises as the owner's primary residence.

5.5.18.2 A maximum of one *parent-child residence* shall be permitted on any *lot*.

5.5.18.3 The accessory residence shall be subordinate in area to the principal unit and shall contain a maximum of two bedrooms.

5.5.18.4 The *principal use* on the *lot* shall be a *one-family dwelling*.

5.5.18.5 A *lot* which contains a *home office* or *home business* shall not also contain a *parent-child residence*. **[Amended 6-26-2018 by L.L. No. 6-2018]**

5.5.18.6 The *principal building* on the *lot* must continue to maintain the outward appearance of a *one-family dwelling*. Both units shall share a common *building entranceway*, doorbell, mailbox and electric meter.

5.5.18.7 A minimum of three off-street parking spaces shall be provided on the site to serve both units.

5.5.18.8 In making its determination, the reviewing agency shall give consideration to the character of the area, including the exterior appearance, the number of *parent-child residences* in the neighborhood in relation to *one-family dwellings* and traffic and parking conditions.

5.5.18.9 Approval of the Nassau County Department of Health shall be obtained prior to or as a condition of the issuance of the special use permit, unless the *dwelling* is connected to public sewerage.

5.5.19 Places of worship. The minimum *lot area* shall be one acre. Temporary *structures*, such as tents which are accessory to places of worship, shall be permitted to extend into required yards, provided that such placement of temporary *structures* is limited to two weeks' duration during any calendar year. Customary *accessory uses* associated with a place of worship shall include a carnival, subject to the approval

by the Department of Planning and Development and provided such carnival is limited to two weeks' duration during any calendar year. Full-curriculum religious schools shall be subject to the same requirements as *private schools*. [Amended 7-22-2003 by L.L. No. 7-2003]

5.5.20 *Private garages, carports and storage sheds.* [Amended 7-22-2003 by L.L. No. 7-2003]

5.5.20.1 Detached *private garages and storage sheds* on certain *lots*. On any *corner lot* in an R1-6, R1-7, R1-10, R1-10/OHG, NB, or GB District, a detached garage may be erected on the innermost corner but not nearer to any *street line* than the projection of the building line of the main *dwelling*, and must meet accessory *side* and *rear yard* setbacks for the district in which it is located. [Amended 8-9-2011 by L.L. No. 2-2011; 2-23-2021 by L.L. No. 1-2021]

5.5.20.2 Attached garages or carport. On any *lot* with a *lot width* of not greater than 65 feet, an attached garage may be erected with a total *side yard* of not less than 12 feet. Neither *side yard* shall be less than four feet.

5.5.20.3 Conversion of garages to habitable space. In any Residence District or NB or GB Business District, an existing attached garage not erected pursuant to a variance from the Zoning Board of Appeals which has a *side yard* of not less than four feet, may be converted to habitable space three years subsequent to issuance of a certificate of occupancy for garage, provided the required amount of off-street parking is provided on the site. [Amended 2-23-2021 by L.L. No. 1-2021]

5.5.20.4 Small *storage sheds*. On any *lot* in an R1-6, R1-7, R1-10, R1-10/OHG, HD-III, NB, or GB District, a *storage shed* of 100 square feet or less may be erected in the *rear yard* but must be set back at least three feet from any *lot line* and must not be closer to any *street* than the setback of the principal *dwelling*. [Amended 8-9-2011 by L.L. No. 2-2011; 2-23-2021 by L.L. No. 1-2021]

5.5.21 *Private membership clubs.* Where a *private membership club* is adjacent to any residence district, the minimum required setbacks shall be twice that otherwise required in the district in which the property is located.

5.5.22 *Public markets.*

5.5.22.1 The minimum *lot size* used for the operation of a *public market* shall be no less than 20 acres.

5.5.22.2 No vending or selling of any produce, merchandise or other material shall be permitted outside of any *structure* or *building* used or intended to be used as a *public market* and under permit from the Department of Planning and Development and any other body having jurisdiction thereof.

5.5.22.3 No floodlighting or string of lights shall be permitted beyond the hours of 8:30 p.m. during the months of October through March and 10:00 p.m. during

the months of April through September.

5.5.22.4 The use of a public address system for the purposes of vending any wares, merchandise or materials is prohibited.

5.5.23 *Rooming or boarding houses.*

5.5.23.1 The minimum *lot area* shall be 12,000 square feet.

5.5.23.2 The minimum *habitable area* shall be 2,000 square feet.

5.5.23.3 The maximum *building coverage* shall be 25%.

5.5.23.4 At least one of the occupants shall reside on the premises and shall be the agent for the rental or lease of the rooms.

5.5.23.5 There shall be at least one annual inspection of each *rooming and boarding house* in the Town by duly authorized inspectors of the Department of Planning and Development.

5.5.24 Storage of vehicles. The parking or storage of vehicles on property in residence districts shall be restricted, as follows: **[Amended 7-22-2003 by L.L. No. 7-2003; 1-18-2005 by L.L. No. 1-2005]**

5.5.24.1 *Commercial vehicles.* A maximum of one *commercial vehicle*, as defined herein, may be parked on any premises in addition to *commercial vehicles* parked during the act of loading or off-loading merchandise or during the act of performance of a commercial service or duty undertaken by the operator of such vehicle in connection with said premises. The permitted *commercial vehicle* must be used by a resident of the premises, must have a current registration, must have a maximum of two axles and must not exceed 20 feet in length and eight feet in height, nor be designed to refrigerate, cook or sell food or to carry a cargo of flammable or other *hazardous materials*. Any vehicle not conforming to the above requirements shall be removed within 60 days of the effective date of this local law. **[Amended 10-16-2012 by L.L. No. 3-2012]**

5.5.24.2 Unregistered vehicles. It shall be unlawful for any *person* to store or park more than one unregistered motor vehicle on a property in a residence district at any time. Such vehicle shall be stored or parked either in a garage or on a paved surface which complies with the locational requirements as set forth in § 8.2.6 of this chapter. A special permit may be issued by the Zoning Board of Appeals to park an additional unregistered vehicle(s), provided said vehicle(s) are parked within an approved garage. **[Amended 4-25-2006 by L.L. No. 5-2006]**

5.5.24.3 Agricultural use vehicles. A *commercial vehicle* used for agricultural or horticultural purposes on the same premises as its storage shall be exempt from this section, provided it is not stored or parked outside, within 100 feet of any property line.

5.5.25 Security barriers.

5.5.25.1 Purpose. In order to better facilitate fire and police protection, preserve property values and enhance both the safety and attractiveness of commercial areas, the Town Board has determined that it is necessary to provide reasonable regulations for the installation and maintenance of security barriers.

5.5.25.2 A security barrier shall include any device intended to limit or block access to individual doors or windows on a *building* facade, or to an entire *building* facade. This term shall include, but not be limited to, window bars, fixed metal grilles and side-mounted or overhead-mounted retractable metal security gates or grilles, regardless of whether such devices are solid or semi-transparent. It shall not include strengthened vision glass, child safety gates, non-glass transparent materials, electronic alarms or security cameras.

5.5.25.3 Exterior security barriers prohibited. No new security barrier shall be placed on the exterior of any portion of a *building* facade visible from a *street*.

5.5.25.4 Preexisting exterior security barriers. Any exterior security barrier existing prior to the adoption date of this chapter is permitted to remain until such time as a new certificate of occupancy is issued for the premises on which said barrier is located.

5.5.25.5 Interior security barriers. Security barriers placed on the interiors of *building* facades shall be permitted, provided that such barrier be solid or impermeable in nature. Barriers shall be of a type commonly referred to as the "grate" or "lattice" type, with a minimum of 80% of the gate area being of see-through composition. Barriers shall be fully retracted and out of view while a business is in operation.

5.5.26 Swimming pools.

5.5.26.1 No property owner shall commence construction of any in-ground *swimming pool* or aboveground *swimming pool* with a capacity of over 5,000 gallons on any property before obtaining a permit from the Department of Planning and Development. Said permit application shall be accompanied by plans indicating the width, length and depth of such *swimming pool*. In addition, a survey of the property upon which the *swimming pool* is to be located shall be filed with the application, and said survey shall specifically indicate the location of the proposed *swimming pool*, including all related deck area, fencing, landscaping, lighting and mechanical equipment. The *applicant* may be required to furnish complete plans, data and specifications regarding the pool if necessary to enable the Department of Planning and Development to evaluate the *structure*.

5.5.26.2 No portion of any *swimming pool* permitted by this chapter shall be located closer than five feet to any *lot line* or the minimum *accessory building* setback, whichever is greater. On a *corner lot* or a *double frontage lot*, the *swimming pool* shall comply with the *front yard setback* along all *street frontages*. The

Department of Planning and Development may increase the setback requirements for a pool installed to serve a multifamily or nonresidence use.

5.5.26.3 Spill-offs and drainage from any *swimming pool* shall be controlled in a method approved by the Department of Planning and Development. Spill-offs and drainage shall not be permitted to flow onto adjacent property or roadways. Pool water shall be directed to flow into a drainage system designed to prevent erosion and to properly dissipate pool chemicals.

5.5.26.4 *Fencing* and screening. Adequate *fencing* shall be provided to completely enclose the outer perimeter of any pool or the perimeter of the *yard* in which the pool is situated, in accordance with applicable law. A *building* may serve as part of the *fence* enclosure, provided that such *building* complies with state and Town *swimming pool* enclosure regulations (including, but not necessarily limited to, self-closing, self-latching, lockable devices on any doors providing access to the pool enclosure). The *fencing* shall be located at least five feet from the pool edge, unless attached to any aboveground pool. *Fences* shall be constructed of metal, wood or other similar durable material, and shall contain no openings or projections which would be sufficient for climbing, as determined by the Department of Planning and Development. *Fences* shall be at least four feet but not more six feet above grade, shall be no more than one inch from the ground at the bottom at any location and shall be supported by posts that are no more than eight feet on center. All gates must be equipped with a self-closing, self-latching device located on the inside of the gate or door. Removable and/or hinged lockable ladders may be a sufficient substitute for fencing for aboveground circular pools only. **[Amended 7-22-2003 by L.L. No. 7-2003]**

5.5.26.5 Any lights illuminating *swimming pools* shall be directed so as to eliminate direct rays of light on neighboring *streets* and properties. The filter pump and electrical switch, and other mechanical equipment, shall be in a vented enclosure or screened with dense evergreen planting, and shall comply with required setbacks for *accessory buildings* or required pool setback, whichever is greater.

5.5.27 Tennis courts. No property owner shall commence construction of a tennis court on any property before obtaining a permit therefor from the Department of Planning and Development. Said permit application shall be accompanied by plans indicating the width, length and precise location of said tennis court on a survey of the property. The *applicant* may also be required to provide information regarding materials and maintenance. No portion of any tennis court, including the *fence* immediately surrounding the court, shall be located closer than 10 feet from any *lot line* or the minimum setback for an *accessory building*, whichever is greater. The Department of Planning and Development may require an increased setback for a tennis court serving a multifamily or nonresidence use. The Department may also require evergreen screening, as it deems appropriate for screening purposes. Any lights illuminating a tennis court shall be directed so as to eliminate direct rays of light on neighboring *streets* and properties. All *fencing* shall comply with the

provision governing *fences* as set forth in this chapter.¹⁴

5.5.28 Two-family dwellings. [Amended 7-22-2003 by L.L. No. 7-2003]

5.5.28.1 The minimum *lot area* for a *two-family dwelling* shall be 12,000 square feet.

5.5.28.2 The minimum *habitable area* of a *two-family dwelling*, not including garages, shall be 2,000 square feet.

5.5.28.3 At least one of the two *dwelling units* shall be owner-occupied.

5.5.28.4 A *two-family dwelling* shall only be permitted where it results from the conversion of a lawfully existing *one-family dwelling* which was constructed at least three years immediately prior to the filing of such application for a *two-family dwelling*; a certificate of occupancy for such *one-family dwelling* shall have been issued at least three years prior to the filing of such application for a *two-family dwelling*, unless such *one-family dwelling* was erected prior to May 4, 1943; and, no variances shall have been granted for the erection of the *one-family dwelling*.

5.5.29 Undertaking establishments. Sufficient driveway aisle width and length shall be provided on-site to permit the queuing of a minimum of eight vehicles forming a funeral procession. The *applicant* shall demonstrate that sufficient on-site loading area will be provided. An accessory *dwelling unit* for the manager or on-site custodian may be allowed.

5.5.30 Discotheques, dance halls, cabarets and nightclubs.

5.5.30.1 *Discotheques, dance halls, cabarets and nightclubs* in any LI Light Industry District shall not be permitted to be located within 500 feet of any *lot* on which is located a school, public park, place of worship, community center or other *discotheque, dance hall, cabaret* or *nightclub*, or within 1,000 feet of any residence district.

5.5.30.2 All *discotheques, dance halls, cabarets and nightclubs* shall be required to comply with all applicable laws, regulations and requirements of federal, state, county and Town agencies.

5.5.30.3 No *discotheque, dance hall, cabaret* or *nightclub* shall be permitted in any *building* used in whole or in part for residential purposes.

5.5.30.4 There shall be no outdoor display or advertising of any kind, other than signage as permitted in § 246-11 of this chapter.

5.5.31 *Accessory uses* in *office buildings*. For the purpose of minimizing traffic generation and maximizing convenience for *office* employees, the following uses shall be permitted as *accessory uses* in *office buildings*, subject to such uses being designed and operated for the exclusive use of employees within said *building*:

14. Editor's Note: See § 246-4.7, Provisions Governing Fences and Walls.

fitness center and food service facilities. In addition, personal and business services, retail stores and banks shall be permitted, provided they do not occupy a total of more than 4% of the *gross floor area* of the *office building*. [Added 4-25-2006 by L.L. No. 5-2006]

5.5.32 *Collateral loan brokers.* *Collateral loan brokers* shall only be permitted to operate within the Town of Oyster Bay if such operation is conducted fully in accordance with Article 5 of the General Business Law of the State of New York, Chapter 94 of the Code of the Town of Oyster Bay and all other applicable requirements of law. [Added 3-31-2009 by L.L. No. 3-2009]

5.5.33 *Commercial Uses Abutting or Within one-hundred-foot radius of Residential Districts.* The hours of operation of any establishment located in a nonresidence district which either abuts a residence district or is located within a one-hundred-foot radius of any residence district, excluding places of worship, shall be limited to the hours of 6:00 a.m. to 11:00 p.m., and deliveries to said establishment and operation of property maintenance and any other potential sources of noise disturbance shall also be limited to those hours. Uses that are lawfully existing prior to the effective date of this section shall be allowed to continue to operate between the hours of 11:00 p.m. and 6:00 a.m. [Added 6-26-2018 by L.L. No. 6-2018]

5.5.34 Restrictions on sale of vaping and marijuana products, vape shops, hookah lounges, marijuana dispensaries and marijuana shops. [Added 3-30-2021 by L.L. No. 3-2021]

5.5.34.1 Legislative intent. The Town Board finds that it is in the best interest of the Town of Oyster Bay and its residents to restrict the sale of vaping products and marijuana products and the location of *vape shops*, *hookah lounges*, *marijuana dispensaries*, and *marijuana shops* to particular areas. In addition, all establishments that sell vape products, e-cigarettes, hookahs and accessories, and *marijuana* and *marijuana* products will be required to display signage that explains the potential dangers in using such products.

5.5.34.2 Definitions. As used in this local law, unless the context clearly requires otherwise:

CBD — Cannabidiol, a naturally occurring compound found in the resinous flower of cannabis.

ELECTRONIC CIGARETTES — Also known as "e-cigarettes," "e-vaporizers," or "electronic nicotine delivery systems," are battery-operated devices that people use to inhale an aerosol, which typically contains nicotine, flavorings, and other chemicals.

HOOKAH LOUNGES AND VAPE LOUNGES — Any facility or location whose business operation includes the on-site indoor smoking of *electronic cigarettes*, vape pens, vapors, and pipes, as defined herein, e-liquids, or marijuana derivatives, including only CBD, as defined herein, or other substances, but not including THC, as defined herein. "Smoking" includes the inhalation of the smoke/e-liquid nicotine/vapors waterpipe tobacco and

other substances encased in *electronic cigarettes*, vape pens, vapors, and pipes commonly known as "hookah," "waterpipe," "shisha" and "narghile" or any similar device.

HOOKAH PIPE — A single or multi-stemmed instrument used by one or more persons to smoke tobacco or other substance, which hookah pipe is also commonly referred to as a "hookah," "waterpipe," "shisha" or "narghile."

MARIJUANA — Same definition ascribed to "marijuana" in NY Public Health Law § 3302: all parts of the plant of the genus Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant, which seed is incapable of germination.

MARIJUANA DISPENSARY — A dispensary is a location (whether business or nonprofit) where patients or consumers can access prescribed *marijuana* (cannabis) in a legal and safe manner. Users get assistance from experts (bud tenders) who find an optimal dosage and recommend the delivery method to achieve optimal results when using medical cannabis.

MARIJUANA SHOP — Any establishment which offers for sale or consideration, for on-premises or off-premises consumption, if allowed by law, *marijuana* or *marijuana* derivatives, which contain *THC*, in any form, including cigarettes, *electronic cigarettes*, pipes, vape pens, vapors, e-liquid, or any other product. This shall include recreational marijuana products, but shall exclude any nonprescription *marijuana* product or derivative that only contains *CBD* but not *THC*.

SUBSTANTIAL OR SIGNIFICANT PORTION —

(1) "Substantial or significant portion" shall be determined using the following considerations:

- (a) Amount of floor area and *basement* space accessible to customers and allotted to the sale or consideration of cigarettes, *electronic cigarettes*, pipes, vape pens, vapors, e-liquids, other *marijuana* derivatives or like substances of any type, generally, or as compared to the total floor area and *basement* space accessible to customers; and/or
- (b) Amount of cigarettes, *electronic cigarettes*, pipes, vape pens, vapors, e-liquids, other *marijuana* derivatives or like substances stock-in-trade of any type accessible to customers, generally, or as compared to total stock accessible to customers; and/or
- (c) Revenues derived from cigarettes, *electronic cigarettes*, pipes, vape pens, vapors, e-liquids, other *marijuana* derivatives or like

- substances of any type, general, or compared to total revenues; and/or
- (d) Advertising devoted to cigarettes, *electronic cigarettes*, pipes, vape pens, vapors, e-liquids, other *marijuana* derivatives or like substances of any type, general, or compared to total advertising; and/or
- (e) Use of the establishment for cigarettes, *electronic cigarettes*, pipes, vape pens, vapors, e-liquids, other *marijuana* derivatives or like substances of any type, general, or compared to total use thereof; and/or
- (2) Notwithstanding the above considerations, the following shall be conclusive in determining substantial or significant portion:
- (a) Twenty-five percent or more of floor area and *basement* space accessible to customers allotted to cigarettes, *electronic cigarettes*, pipes, vape pens, vapors, e-liquids, other *marijuana* derivatives or like substances of any type; and/or
- (b) Twenty-five percent or more of its stock-in-trade in cigarettes, *electronic cigarettes*, pipes, vape pens, vapors, e-liquids, other *marijuana* derivatives or like substances of any type; and/or
- (c) Twenty-five percent or more of its gross income derived from cigarettes, *electronic cigarettes*, pipes, vape pens, vapors, e-liquids, other *marijuana* derivatives or like substances of any type; and/or
- (d) Twenty-five percent or more of its advertising devoted to cigarettes, *electronic cigarettes*, pipes, vape pens, vapors, e-liquids, other *marijuana* derivatives or like substances of any type.

THC — Tetrahydrocannabinol, is the main psychoactive compound in cannabis that produces the high sensation.

VAPE SHOP — Any establishment which offers for sale or consideration, *electronic cigarettes*, electronic pipes, vape pens, vapors, e-liquid, *marijuana* derivatives, including *CBD* or other substances, but not *THC*, as a *substantial or significant portion* of its business, merchandise and/or stock-in- trade.

5.5.34.3 Restrictions on location of *hookah lounges*, *vape lounges*, smoke shops, *vape shops*, *marijuana dispensaries* and *marijuana shops*.

- (a) *Hookah lounges*, *vape lounges*, smoke shop, *vape shop*, *marijuana dispensary* or *marijuana shop* uses shall be allowable only in a Light Industry (LI) Zoning District subject to issuance of a special use permit by the Town of Oyster Bay Zoning Board of Appeals, and subject to the regulations set forth in this section. (See Section 246-5.2 schedule annexed.¹⁵⁾

- (b) The *lot line* of any property whereupon exists a *hookah lounge, vape lounge*, smoke shop, *vape shop, marijuana dispensary* or *marijuana shop* shall not be located within a one-thousand-foot radius of the *lot line* of any lot zoned for residential use, any school, park, playground, library or church or other place of worship.

5.5.34.4 Posting of *signs*.

- (a) No person shall sell or continue to sell or distribute or continue to distribute *electronic cigarettes, vape pens, vapors, e-liquids, hookah pipes, marijuana or marijuana products* in the Town of Oyster Bay unless a *sign* is posted at the point of sale in a conspicuous place, that warns of the dangers of e-cigarettes, vape pens, vapors, e-liquids, *hookah pipes, marijuana or marijuana products* including, at a minimum, the following statement: WARNING: electronic cigarettes, vape pens, vapors, e-liquids, and marijuana contain nicotine. Nicotine is an addictive chemical.
- (b) Such *sign* shall be printed with letters at least one-half inch in height. *Signs* shall be protected from tampering, damage, removal or concealment.

5.6. Planned Unit Development (PUD) District.¹⁶

5.6.1 Legislative intent. The Planned Unit Development District (PUD) is conceived and enacted to promote and protect the public health, safety, property values and general welfare of the Town of Oyster Bay. This legislation is also enacted for the following purposes, in addition to those goals stated above:

5.6.1.1 To provide the opportunity and flexibility for the coordinated development and/or redevelopment of large parcels of appropriately located, industrially zoned land to accommodate residential communities in the form of modern, well planned, compatibly designed and comprehensively planned units.

5.6.1.2 To encourage the creation of visually appealing developments of quality design that help to foster a sense of community.

5.6.1.3 To promote developments which include an integrated mix of diverse housing types and supporting *accessory uses* that are not found in typical suburban subdivisions.

5.6.1.4 To augment the economic development of the Town through an increase in assessed valuation by encouraging the conversion of inactive or underutilized industrial properties into productive residential communities that meet existing and/or future housing needs.

5.6.1.5 To promote the preservation of commonly owned *open space* and

15. Editor's Note: See Schedule of Use Regulations — Nonresidence Districts included as an attachment to this chapter.

16. Editor's Note: This section replaces existing L.L. No. 7-1999, adopted 12-14-1999.

recreational facilities for the benefit of all residents.

5.6.2 Interpretation and conflict with other provisions.

5.6.2.1 In applying the provisions of this section, the Town Board may make such interpretations as it determines to be consistent with the legislative intent of this section.

5.6.2.2 In the event of a conflict between the provisions of this section and other provisions of the Town Zoning Code, the provisions of this section shall govern.

5.6.3 Standards and requirements. All developments and site plans approved in this Planned Unit Development (PUD) District shall conform to the following standards and requirements: **[Amended 12-18-2012 by L.L. No. 4-2012]**

5.6.3.1 Minimum area. The minimum site area for a PUD shall be at least 50 acres of contiguous land, not separated by any public *street*, and under common ownership at the time of application.

5.6.3.2 Location. A PUD site shall have at least 2,000 feet of *frontage* along a state or county road and shall be located entirely or substantially entirely in the LI Light Industrial District at the time of application.

5.6.3.3 Permitted uses. Within a PUD, a *building* or *structure* may be erected, altered or used and a *lot* or premises may be used for only one or more of the following purposes:

5.6.3.3.1 Residential *dwelling units*, provided the gross density over the entire PUD site shall not exceed one unit per 6,500 square feet of site area.

5.6.3.3.2 Accessory recreational facilities, including a clubhouse, for the use of PUD residents and guests.

5.6.3.3.3 Other uses customarily incidental and accessory to a planned residential community.

5.6.3.3.4 Other uses which, in the opinion of the Town Board, after a public hearing, meet the standards set forth in § 246-18, and are of the same general character as those listed as permitted uses and which will not be detrimental to this district.

5.6.3.4 Building setbacks. No *building* shall be constructed within 25 feet of any perimeter property line of a PUD. No minimum *building* setback shall be required from property lines which are internal to the PUD.

5.6.3.5 *Building height*. No *building* within a PUD shall exceed three stories or 40 feet in height measured from the mean average grade of the ground to the highest elevation of the roof.

5.6.3.6 *Open space*. Not less than 20% of the total site area shall be set aside as

common *open space*, including a landscaped buffer area of not less than 25 feet along any adjacent public *street* or residential property line. *Open space* may include lands which are under water, but shall not include sites and *structures* which are designed and intended to be used for active recreational purposes.

5.6.3.7 **Parking.** Off-street parking shall be provided as required by § 246-8.2.1 of this chapter. Reasonable and appropriate off-street parking requirements for land uses which are not listed in § 246-8.2.1 of this chapter shall be determined by the Town Board at the time of review of the PUD plan. In establishing such parking requirements, the Town Board will consider the anticipated parking demands for each land use and the potential for the shared use of parking with other uses.

5.6.3.8 **Fencing.** No fencing shall be required in a PUD, except that required pursuant to the New York State building and fire code or that shown on an approved site plan.

5.6.3.9 **Ownership.** Any property proposed for PUD zoning and development may be owned by one or more *persons*, partnerships, limited partnerships, trusts or corporations, but must be presented as a single parcel at the time of application to the Town Board.

5.6.3.10 **Application.** Any petition for PUD zoning and application for related plan approvals shall comply with the application requirements and procedures as such may, from time to time, be established and/or amended by the Commissioner of the Town of Oyster Bay Department of Planning and Development.

5.6.3.11 **Review fees and deposits.** All PUD District applications shall be accompanied by an application processing fee in the amount of \$100 per acre. In addition, the *applicant* shall be required to fund the cost of outside consulting services to assist the Department of Planning and Development with the review of such applications, if the Commissioner determines that such assistance is necessary. Each *applicant* shall bear the actual cost of review and shall be required to provide a trust deposit therefor to be placed in a town trust account, payable as follows:

5.6.3.11.1 An initial deposit of \$15,000 at the time of the filing of the application.

5.6.3.11.2 Upon said amount being reduced to \$3,000 or less, the account shall be replenished to the original \$15,000 upon notification by the town.

5.6.3.11.3 Each additional deposit shall be made within seven days after notice from the town that said deposit is due. If such account is not replenished within 30 days after the *applicant* is notified in writing of such requirement, the Town Board may suspend its review of the application. In the event any funds remain in the trust fund, same shall be returned to

the *applicant*. These fees shall be in lieu of all fees set forth in § 246-6.4 of this chapter.

5.6.4 Decision.

5.6.4.1 Legislative review considerations. The Town Board, without limiting its legislative discretion, shall consider at least the following matters in determining the suitability of any proposed PUD District zone change petition and PUD plan:

5.6.4.1.1 The extent to which the application serves to implement the legislative intent, purposes and goals of PUD zoning as set forth in this section.

5.6.4.1.2 The proposed mix of *dwelling* types and their planned design and arrangement on the site, including compatibility with site environmental conditions, and with neighboring *streets* and land uses.

5.6.4.1.3 The potential impact of the proposed development upon the area in which it is located, as well as upon the town and the region as a whole.

5.6.4.1.4 The adequacy of the *phasing* plan, if any, to ensure that development in each phase will be self-sufficient, should future phases be delayed or abandoned.

5.6.4.2 Town Board action. The Town Board shall either approve, or disapprove, the proposed PUD District zone change and approve, approve with modifications or disapprove the proposed PUD plan. Approval or approval with modifications of the PUD plan shall not be deemed to waive the town's and county's rights with respect to subsequent detailed reviews of any specific aspect of the proposed development as may be required pursuant to the subdivision and/or site plan review process.

A PUD District change of zone petition shall be granted only in conjunction with the simultaneous approval or approval with modifications of a PUD plan. The PUD plan, as modified by any conditions which may be established by the Town Board in its approval and/or in notations required to be placed upon said PUD plan maps and accompanying documents, will establish the zoning density and land use limitations thereafter applicable within said District.

5.6.4.3 Approval conditions. Any resolution of PUD plan approval or approval with modifications issued by the Town Board shall be subject to the *applicant* obtaining all necessary approvals, licenses and/or permits as may be required from other governmental agencies having jurisdiction thereof. As a condition of approval, each *applicant* shall be required to file such legal documentation as the Town Board determines necessary to provide for and ensure the proper future maintenance, use and ownership responsibility for all lands, common areas, facilities, utilities and services both within each section of the PUD, if

more than one, and in relation to the PUD as a whole. Such documentation shall be in form and substance acceptable to the Town Attorney.

5.6.4.4 Amendments. Any proposed amendment to an approved PUD plan may be made only subject to the approval of the Town Board. Appropriate review of any such proposed amendment shall be required.

5.6.4.5 Site plan and subdivision approval.

5.6.4.5.1 Approval. The approval of a PUD District change of zone petition, and approval or approval with modifications of a PUD plan application by the Town Board, shall formally authorize the *applicant* to proceed with the detailed design, planning and engineering of the PUD and to submit an application to the Town Board for site plan approval, as appropriate and in accordance with the procedures and requirements for such applications as set forth in §§ 246-6 and 246-7. Notwithstanding the foregoing, a PUD *applicant* may proceed with the site plan preparation and approval process prior to the PUD zone change and PUD plan approval.

Applications for subdivision approval, where required, shall be submitted to the Nassau County Planning Commission. All such applications must conform with the requirements of the PUD District, the approved PUD plan and any findings or conditions issued by the Town Board in connection therewith.

Subdivision and/or site plan approvals, as appropriate, shall be required prior to the issuance of any *building* permit within a PUD District.

5.6.4.5.2 Improvements and performance bond. As a condition of site plan approval, the *applicant* shall be required to construct all necessary site and, where required, off-site improvements. In lieu thereof, the Town Board may allow the posting of a performance bond or other guarantees as may be determined necessary and appropriate to assure the timely and proper installation of said improvements in accordance with all applicable standards and requirements.

5.6.4.5.3 Expiration. Any approval, or approval with modifications, of a site plan within a PUD shall expire at the end of one year unless the *applicant* has initiated substantial construction and continues to diligently pursue such construction, or such time limit has been extended by resolution of the Town Board.

5.7. Recreation (REC) District. [Added 9-21-2004 by L.L. No. 11-2004]

5.7.1 Legislative intent. The Recreation (REC) District is conceived and enacted for the general purpose of promoting and protecting the public health, safety, property values and general welfare of the Town of Oyster Bay and its present and future residents. It is also enacted for the following specific purposes:

- 5.7.1.1 To protect the quality and quantity of groundwater *recharge* into the sole source aquifers which provide drinking water for all present and future residents, businesses and other uses in the Town of Oyster Bay and in Nassau and Suffolk Counties.
- 5.7.1.2 To help assure the preservation and protection of the limited remaining quantities of existing *open space* amidst the Town's pattern of primarily suburban development in such a way as to maintain the scenic beauty and visual appeal of the Town of Oyster Bay.
- 5.7.1.3 To prevent or reduce flooding through the preservation of *wetlands* and drainageways, and by the minimization of impervious surface coverage.
- 5.7.1.4 To protect visually and environmentally important natural features of the land, including, but not limited to, trees, ridgelines, *steep slopes*, rock outcroppings, *wetlands*, waterbodies, streams and habitat for rare, unique, threatened, endangered or protected species of plants or animals, as defined by state or federal law, consistent with the other purposes of this district.
- 5.7.1.5 To encourage the establishment of new, and the continuation of existing, facilities which serve the recreational needs of Town residents, employees and visitors.
- 5.7.1.6 For those Recreation Districts, or portions thereof, located within the Oyster Bay Special Groundwater Protection Area as designated by the Nassau County Public Health Code (Article X) and by the New York State Environmental Conservation Law (Article 55), to further the specific purposes of said laws.

5.8. Planned Unit Development/Residence-30 (PUD/R-30) District. [Added 12-18-2012 by L.L. No. 4-2012]

- 5.8.1 Legislative intent. It is the legislative intent of the Town Board of the Town of Oyster Bay to promote the public health, safety and general welfare, to facilitate flexibility in the planning, design and implementation of multifamily residential site plans, to promote the efficient use of land, to encourage the establishment of multifamily residential communities to meet current and/or future housing needs in a manner that advances the economic development of the Town — and particularly, to encourage the productive reuse of deteriorated industrial properties, and to eliminate uses that are intrusive or incompatible with neighboring uses, especially with respect to nearby residential uses — by providing for a Planned Unit Development/Residence-30 (PUD/R-30) District.
- 5.8.2 Approval by the Town Board. The Town Board of the Town of Oyster Bay shall have approval authority in regard to any proposal for development of property in the PUD/R-30 zoning district, which authority shall include approval of the site plan in accordance with the standards set forth in § 5.8.4 herein. This authority shall be in addition to any other approval for which the Town Board has authority with respect to the proposed development.

5.8.3 Discretion of the Town Board. The standards set forth in § 5.8.4, below, are intended to provide the maximum amount of discretion to the Town Board in deciding whether a given proposal for development in the PUD/R-30 zoning district is in the best interests of the Town. This discretion shall include, but not be limited to, decisions regarding the number of housing units, layout and dimensional aspects of the proposed site plan, and proposed mix of residence types. In implementing the provisions of this section, the Town Board may make such interpretations as it determines to be consistent with the legislative intent set forth herein, in addition to any other authority conferred upon the Town Board by applicable laws, regulations, procedures and requirements.

5.8.4 Standards.

5.8.4.1 The following standards shall apply to the PUD/R-30 zoning district:

- (a) A property proposed for rezoning to PUD/R-30 shall have a minimum size of 15 contiguous acres.
- (b) Only properties which at the time of application are situated entirely in the LI Light Industrial zoning district shall be eligible for rezoning to PUD/R-30.
- (c) The PUD/R-30 zoning district shall only be applied to a property which at the time of application contains a use or uses that are deemed by the Town Board to be intrusive or incompatible with neighboring uses, particularly with respect to nearby residential uses. Intrusiveness and incompatibility shall be evaluated in terms of adverse impacts to the surrounding area, including noise, airborne dust, odors, fumes, noxious emissions, heavy truck traffic, aesthetics, and similar parameters.
- (d) Development of properties in the PUD/R-30 zoning district shall be limited to residential uses and related accessory uses, as set forth in § 5.8.4.2, below.
- (e) The maximum dwelling unit density in the PUD/R-30 zoning district shall be 30 units per acre.
- (f) Any site plan for development in the PUD/R-30 district shall also comply with the standards set forth in § 5.8.4.2, below.

5.8.4.2 The following standards shall be applicable to all development in the PUD/R-30 zoning district:

- (a) Any application for rezoning to PUD/R-30 shall be accompanied by a proposed site plan for development pursuant to the standards for site plans set forth in § 246-6 of this chapter.
- (b) The proposed site plan for development in the PUD/R-30 District shall be compatible with the existing land uses in the surrounding area in terms of community character, development density, building height, and other

factors as deemed appropriate by the Town Board.

- (c) In evaluating a proposed site plan for development in the PUD/R-30 district, due consideration shall be given to constraints that are present on the parcel proposed for development and any impacts with respect to these constraints that potentially would result from development under the proposed site plan. The evaluation of such constraints and potential impacts may include the physical characteristics of the land (e.g., *steep slopes*, significant vegetation and ecological habitat, surface water and groundwater resources, flood hazard areas, etc.), the adequacy of community services (e.g., water supply, sanitary waste disposal, emergency services, solid waste management, access to major roadways, etc.), and any other factors which the Town Board in its discretion may deem appropriate for inclusion in the analysis.
- (d) All dwelling units within any development in the PUD/R-30 zoning district shall be occupied by the respective owners or co-owners of said units. Unit ownership shall be via cooperative corporation, condominium association, or other form as permitted under applicable law and acceptable to the Town Board. The respective *family* of the owner or coowners may also reside in each unit.
- (e) The site plan for development within the PUD/R-30 zoning district may include any mix of multifamily housing types, including units that are restricted to occupancy by senior citizens and/or *first-time home buyers*, and units that have no age or prior ownership restrictions, as well price-controlled and market-rate units, as deemed appropriate by the Town Board.
- (f) The site plan for development within the PUD/R-30 zoning district may include accessory recreational facilities, including a clubhouse, for the use of residents of the subject facility and their guests, and other uses customarily incidental and accessory to multifamily housing communities in the Town of Oyster Bay.
- (g) As a condition to approval of any site plan granted pursuant to this section, the Town Board may impose any restrictive covenants it deems appropriate to ensure conformance with the legislative intent set forth herein and consistency with the Town's land use planning goals.
- (h) The Town Board, in its discretion, may give due consideration to other factors in regard to the benefit that would be rendered to the Town by any given site plan for development in the PUD/R-30 zoning district, including, but not limited to, encouraging the positive redevelopment of other nearby properties so as to facilitate the broader goals of economic enhancement and community revitalization or other land use planning goal promulgated by the Town.

5.8.5 Procedures.

5.8.5.1 Application for site plan approval. Review of the proposed site plan for development in the PUD/R-30 zoning district shall be in accordance with the provisions of § 246-6 of this chapter and other applicable laws, regulations, procedures and requirements.

5.8.5.2 Town Board hearing required. Upon receipt of the recommendation of the Department of Planning and Development, and consistent with the timing requirements of the Town Environmental Quality Review Law¹⁷ and other applicable laws, regulations, procedures and requirements, a public hearing shall be convened by the Town Board as part of the Town Board's deliberation on any proposed rezoning to PUD/R-30, as well as any associated site plan.

5.8.5.3 Town Board action. Town Board action on the site plan for development in the PUD/R-30 district shall be incorporated into the Town Board's decision regarding the proposed rezoning to PUD/R-30.

5.9. Zoning for Hicksville Downtown District (HD). [Added 2-23-2021 by L.L. No. 1-2021]

5.9.1 Background, purposes and legislative intent.

5.9.1.1 Background and purpose.

Downtown Hicksville is home to one of the busiest train stations on Long Island, utilized by nearly 22,000 commuters a day. The area surrounding the train station has an opportunity for economic investment. Most LIRR passengers that access the Hicksville station come through the area without contributing to the economy of Downtown Hicksville.

In 2017, the Town of Oyster Bay was the recipient of \$10 million in Downtown Revitalization Initiative (DRI) funding to improve the vitality of Downtown Hicksville. The funding supported a community planning process where the community developed the key ingredients needed for successful downtown revitalization which were finalized in the Hicksville Downtown Revitalization Initiative Strategic Investment Plan (the "DRI Plan"). These ingredients included a clear vision for the downtown; goals and strategies to accomplish the vision; and a strategic plan to implement catalytic projects identified in the plan. Part of the implementation is the adoption of the Hicksville Downtown Zoning District regulations. The plan noted that the type of mixed-use development desired can be achieved with zoning that permits residential above ground-level commercial use, applies shared parking strategies and places parking in the rear of *buildings*. The Hicksville Downtown zoning provisions will allow the type of land uses desired and provides bulk regulations to achieve a uniform public realm. The affiliated Hicksville Downtown Design Guidelines and Development Standards ("HD Design Guidelines") is a document which is available from the Town Department of Planning and Development and which will be updated

17. Editor's Note: See Ch. 110, Environmental Quality Review.

periodically at the direction of the Commissioner of the Department of Planning and Development and authorization by the Town Board. This document provides guidance on building styles, features, and site design that will result in development that maximizes livability through good design.¹⁸

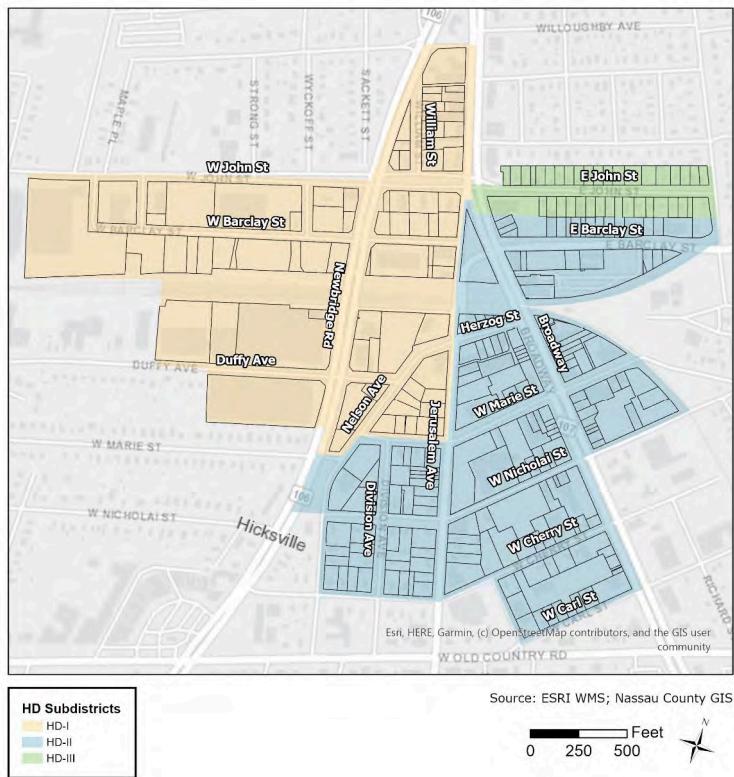
5.9.1.2 Legislative intent. It is the intention that through the leadership of the Town of Oyster Bay and involvement of the Hicksville community and with public and private investment, that Downtown Hicksville will become a vibrant community where people will want to live, work, shop, dine, and enjoy leisure time. The majority of the downtown was formerly zoned Central Business (CB), a district that has been eliminated entirely. The establishment of the Hicksville Downtown (HD) District establishes development rules and procedures for three subdistricts that will result in a walkable transit-oriented mixed-use area in the vicinity of the Hicksville Train Station.

5.9.2 Establishment of the Hicksville Downtown Subdistricts.

5.9.2.1 HD Subdistrict boundaries are shown on the Town of Oyster Bay Zoning Map (Attachment 29) and in the image below. The Town of Oyster Bay Town Board, Zoning Board of Appeals, Planning Advisory Board and the Department of Planning and Development shall be guided by the provisions of this Code and the HD Design Guidelines on file with the Department of Planning and Development in the review and approval of land use applications within the Hicksville Downtown.

The HD Subdistricts provide the foundation for redevelopment as identified in the DRI Strategic Investment Plan. These zoning provisions together with the Hicksville Downtown Design Guidelines and Development Standards provide the required framework and standards to encourage investment to achieve the type of mixed-use development in the form desired for Downtown Hicksville consistent with the vision to create "a vibrant downtown that returns to its 'main street' character while improving opportunities for local business owners and incorporating new housing markets to create a model community; with an emphasis on walkability, open space, places to congregate and engaging commuters to view Hicksville as a destination - Not merely a transit hub."

18. Editor's Note: The Hicksville Downtown Design Guidelines and Development Standards are included as an attachment to this chapter.



5.9.3 Interpretation, conflicts and amendments.

5.9.3.1 Interpretation. Wherever there is a variation or conflict between these standards and other sections of Chapter 246, Zoning, these standards shall prevail. For development standards not regulated herein, the applicable sections of Chapter 246 and other development regulated by the Town Code shall apply. All development must comply with federal, state or other local regulations and laws.

5.9.3.2 Amendments to the Hicksville Downtown Design Guidelines and Development Standards. The Town of Oyster Bay Town Board may amend the Design Guidelines and Development Standards by local law as set forth in Article I of the Town Code of the Town of Oyster Bay.

5.9.3.3 Area variances. Any building permit, site plan, subdivision or special use permit application that does not meet the bulk and dimensional standards set forth in these standards shall require an area variance from the Zoning Board of Appeals.

5.9.4 Applicability.

5.9.4.1 Hicksville Downtown Subdistricts. The Hicksville Downtown District is comprised of the following three HD Subdistricts as plotted on the Official Zoning Map of the Town of Oyster Bay:

- HD-I Hicksville Downtown Core Subdistrict;
- HD-II Hicksville Downtown Gateway Transition Subdistrict; and
- HD-III Hicksville Downtown Residential Subdistrict.

5.9.4.2 Descriptions of subdistricts and intent.

Subdistrict	Intent
Hicksville Downtown - I Downtown Core Subdistrict (HD-I)	The HD-I Subdistrict is the Downtown Core District and is the most active area in the downtown closest to the train station that allows up to four <i>stories</i> , depending on the size of the property. The intent of the HD-I Subdistrict is to allow transit-oriented development along primary roadways with a mix of residential and nonresidential uses and an active pedestrian environment around the Hicksville Train Station. Overall design objectives include: creating a dynamic downtown area with numerous <i>restaurants</i> , shops, and services to support the residents, commuters and visitors; strengthening the pedestrian sidewalk environment; minimizing gaps in <i>building</i> walls created by parking lots and <i>buildings</i> that do not extend to both <i>side lot lines</i> ; encouraging active sidewalk environments through ground-floor transparency and access; and encouraging civic spaces and outdoor seating areas for public use.
Hicksville Downtown - II Downtown Gateway Transition Subdistrict (HD-II)	The HD-II Subdistrict is the Downtown Gateway Transition District and allows up to three-story <i>buildings</i> and a mix of uses. The intent of the subdistrict is to provide an active pedestrian environment with commercial and mixed-use along primary roadways while also preserving the existing neighborhood character along side <i>streets</i> in this subdistrict. The HD-II Subdistrict will act as a transitional area between the surrounding community and the HD-I Downtown Core Subdistrict. This subdistrict includes prominent entry corridors from surrounding neighborhoods to create attractive entry points to the Downtown Core. Development on these corridors will be less intensive than what is proposed in the HD-I Subdistrict, with a maximum of three <i>stories</i> . <i>Townhouses</i> are permitted on certain <i>street types</i> within this subdistrict.

Subdistrict	Intent
Hicksville Downtown - III Downtown Residential Subdistrict (HD-III)	This subdistrict is the Downtown Residential Subdistrict. The intent is to promote investment in the existing residential neighborhood along East John Street by permitting <i>townhouse</i> development. This subdistrict will provide an appropriate transition between the residential neighborhoods outside of Downtown Hicksville and the future mix of uses in the HD-1 and HD-II Subdistricts.

5.9.4.3 Definitions. The following definitions apply to the Hicksville Downtown District. For terms that are not defined in this article, then the definition in § 246-2 shall apply. In the event that a definition in this article conflicts with a definition in another part of the Town Code, the definitions in this article shall control.

BREWPUB/DISTILLERY — A *bar* and/or eating establishment that produces beverages and sells its product to consumers on-site.

BUILD-TO-LINE — A line that is closest to the sidewalk at which construction of a *building* facade can occur on a lot. The build-to-line runs parallel to the existing front property line with the setback from the *curbline* determined by *public frontage* standards based upon the *street type*. See Section 246-5.9.8.3, Table of *Public Frontage Requirements by Street Type*.

COMMUNITY GARDEN — A piece of land or area that is gardened collectively by a group of people utilizing either individual or shared plots on public or private land. A community garden can produce fruit, vegetables, and/or plants grown for their attractiveness, and when located on *building* rooftops, must comply with applicable municipal building codes.

CURBLINE — A line at the face of the curb nearest to the street.

LINER BUILDING — A *building* designed to screen another *building* or use of less active *frontage* from a public view.

OUTDOOR DINING — An *accessory use* to a *restaurant*, *brewpub*, or other food establishment. See provisions in Section 246-5.9.5.4.

PUBLIC FRONTAGE — An area located between the *curbline* and the *build-to-line*. See Section 246-5.9.6 Public frontage requirements.

SHOPFRONT — Facade located on the street level of a *building*, creating an inviting pedestrian street environment by providing great transparency and visual attention to an activity inside of the *building*.

STREET TYPE — A classification assigned to a street denoting the standards of *public frontage* zones. See Section 246-5.9.8.2 Diagram of Street Types Locations for a map designating street types in the HD Subdistricts. The street

types in Downtown Hicksville are as follows:

- A Street Types: Downtown Mixed-Use
- B Street Types: Downtown Commercial
- C Street Types: Boulevard
- D Street Types: Neighborhood Connector
- N/S Street Types: Neighborhood Residential and Secondary Access Streets

ZONE, BUILD-TO — An area between the *build-to-line* and the maximum *building* setback, determined by *public frontage* standards based upon the *street type*. See Section 249-5.9.6.2.1.

ZONE, LANDSCAPE, UTILITY, AND INFRASTRUCTURE — An area between the *curbline* and the *sidewalk zone*, as determined by the *public frontage* standards. See Section 246-5.9.6.2.2.

ZONE, SIDEWALK — An area designed to accommodate for minimum unobstructed pedestrian passage. See Section 246-5.9.6.2.3.

ZONE, TRANSITION — An area of the *public frontage* that abuts the *build-to-line* and provides a transition between the *building* and public realm. See Section 246-5.9.6.2.4.

5.9.5 Permitted uses.

5.9.5.1 Permitted uses. Permitted uses within the Hicksville Downtown Subdistricts are provided in Table 246-5.9.5.1.

Table 246-5.9.5.1
Schedule of Use Regulations - Hicksville Downtown Subdistricts

Uses	HD-I	HD-II	HD-III
Residential			
<i>One-family dwellings</i>			PP
<i>Two-family dwellings</i> (§ 246-5.5.28)			SP (ZBA)
<i>Multifamily dwellings</i>	PP	PP	
<i>Townhouses</i>		PP ¹	PP
<i>Rooming or boarding houses</i> (§ 246-5.5.23)			
<i>Congregate-care assisted living facilities</i>		PP	

Table 246-5.9.5.1 Schedule of Use Regulations - Hicksville Downtown Subdistricts			
Uses	HD-I	HD-II	HD-III
<i>Parent-child residences</i> (§ 246-5.5.18)			
<i>Accessory apartments</i>			
<i>Apartments over restaurants or personal services</i>	PP	PP	
<i>Apartments over stores or offices</i>	PP	PP	
<i>Domestic employees' residences</i> (§ 246-5.5.12)			
<i>Conversion of garage</i> (§ 246-5.5.20.3)			
<i>Keeping of domestic animals</i> (§ 246-5.5.15)	PA	PA	PA
<i>Private garages and carports</i> (§ 246-5.5.20)			
<i>Home businesses</i> (§ 246-5.5.14.3)			
<i>Home offices</i> (§ 246-5.5.14.2)	PA	PA	PA
Recreation			
<i>Country clubs</i> (§ 246-5.5.10)			
<i>Game rooms</i>	SP(TB)	SP(TB)	
Active recreation uses, including bowling, tennis, golf driving ranges, miniature golf, batting ranges, skating and similar uses	SP (TB)	SP (TB)	
<i>Fitness centers</i> , 3,001 square feet and larger	SP (TB)	SP (TB)	
<i>Fitness centers</i> , 3,000 square feet or less	PP	PP	
<i>Marinas</i>			
<i>Private membership clubs</i> (§ 246-5.5.21)	SP (TB)	SP (TB)	
<i>Public parks</i>	PP	PP	PP
<i>Swimming pools</i> (§ 246-5.5.26)	PA	PA	PA
<i>Tennis courts</i> (§ 246-5.5.27)	PA	PA	PA

Table 246-5.9.5.1
Schedule of Use Regulations - Hicksville Downtown Subdistricts

Uses	HD-I	HD-II	HD-III
<i>Theaters</i>	SP (ZBA)	SP (ZBA)	
Public/Semi-Public			
Cemeteries			
Colleges or universities or <i>private schools</i> (§ 246-5.5.8)	PP	PP	
<i>Day-care</i> , play care, nursery schools and similar facilities (§ 246-5.5.11)	PP	PP	
Eleemosynary institutions	PP	PP	
Hospitals, convalescent or nursing homes	PP	PP	
<i>Marine educational institutions</i>			
Municipal uses of Town of Oyster Bay (§ 246-4.1.4.1)	PP	PP	PP
<i>Museums</i>	PP	PP	
Other governmental uses of federal, state or county agencies, or special purpose districts thereof (§ 246-4.1.4.2)	PP (TB)	PP (TB)	PP (TB)
Places of worship (§ 246-5.5.19)	PP	PP	
Public schools	PP	PP	
Technical or trade schools	PP	PP	
Business			
Accessory outdoor sales and display (§ 246-5.5.1)	SP (ZBA)	SP (ZBA)	
<i>Agriculture</i> (§ 246-5.5.2)			
<i>Animal boarding facility</i>			
<i>Animal hospitals</i> (§ 246-5.5.3)			
Banks	PP	PP	
<i>Bars</i> (§ 246-5.5.6)	SP (ZBA)	SP (ZBA)	
<i>Boatyards</i>			
<i>Brewpub/distillery</i>	SP (ZBA)	SP (ZBA)	

Uses	HD-I	HD-II	HD-III
Business services	PP	PP	
<i>Catering services</i> (§ 246-5.5.7)	SP (TB)	SP (TB)	
<i>Collateral loan brokers</i> (§ 246-5.5.32)			
Commercial greenhouses			
<i>Community garden</i>	PP	PP	PP
<i>Cabarets, discotheques, dance halls, nightclubs</i> (§ 246-5.5.30)	SP (TB)	SP (TB)	
Drive-through services, fast-food (§ 246-5.5.13)		SP (TB)	
Drive-through services, other (§ 246-5.5.13)		PA	
Landscape nursery, garden center			
<i>Public markets</i> (§ 246-5.5.22)			
<i>Fast-food restaurants</i> (in multiple-use building)	PP	PP	
<i>Fast-food restaurants</i> (in freestanding building)	SP (TB)	SP (TB)	
<i>Fishing stations</i>			
<i>Fish markets</i>			
Keeping of farm animals (§ 246-5.5.16)			
<i>Lodging places</i>	SP (TB)	SP (TB)	
<i>Mariculture</i>			
<i>Mariculture research and development facilities</i>			
<i>Marine-retail business complexes</i>			
<i>Office</i>	PP	PP	
Personal services	PP	PP	
<i>Professional, real estate and insurance offices</i>	PP	PP	

Table 246-5.9.5.1
Schedule of Use Regulations - Hicksville Downtown Subdistricts

Uses	HD-I	HD-II	HD-III
<i>Restaurants</i> (maximum permitted occupancy of 75 persons)	PP	PP	
<i>Restaurants</i> (maximum occupancy of 76 or more persons)	PP	SP (TB)	
Restaurants, sidewalk seating	PA ²	PA ²	
Retail stores	PP	PP	
<i>Self-service storage facility</i>			
Undertaking establishments (§ 246-5.5.29)	PP	PP	
<i>Veterinary offices</i>		PP	
<i>Water-dependent uses</i> found to be beneficial and harmonious with the special permit requirements of the Waterfront-A District			
Automotive			
Motor vehicle fuel sales and service, motor vehicle repair, auto body, tow car operations, car washing establishments and public garages (§ 246-5.5.17)			
<i>Motor vehicle</i> rental facilities		PP	
<i>Motor vehicle dealership</i>			
Parking structures (§ 246-7.5.3)	PA	PA	
<i>Outdoor motor vehicle sales</i>			
Storage of registered commercial vehicles			
Storage of unregistered vehicles (§ 246-5.5.24)			
Taxi or limousine service ³	PP	PP	
Industrial			
<i>Helipads</i>			
<i>Light manufacturing uses</i>			
Lumberyards			

Table 246-5.9.5.1 Schedule of Use Regulations - Hicksville Downtown Subdistricts			
Uses	HD-I	HD-II	HD-III
<i>Research and development uses</i>			
Warehouse, distribution and storage uses			
Utility			
<i>Antennas</i> (§ 246-5.5.4)	SP (ZBA)	SP (ZBA)	SP (ZBA)
Electric substations			
<i>Public utility buildings or structures</i>			
Radio and television broadcasting studios			
<i>Solid waste management facilities</i>			
<i>Wireless telecommunications facilities</i>	SP (ZBA)	SP (ZBA)	SP (ZBA)

Key: PP: Permitted Principal Use; PA: Permitted Accessory Use; SP: Special Permit Use; (TB): Town Board Approval; (ZBA): Zoning Board of Appeals

Notes:

- ¹ *Townhouses* permitted on *Street Types* "D" Neighborhood Connector and "N" Neighborhood Residential (See Subsection 5.9.8 for *street types* and Subsection 5.9.6.5 for *townhouse* development standards/bulk regulation requirements in the HD-II Subdistrict).
- ² See Subsection 5.9.5.4 for locations where sidewalk dining is permitted and for provisions.
- ³ Taxi or limousine service shall not include storage or maintenance of vehicles. *Offices* related to a taxi or limousine services and a drop-off/pick-up area or booth are permitted.

5.9.5.2 Permitted rooftop uses in the HD-I and HD-II Subdistricts. For commercial/mixed use or *apartments*, the following rooftop uses are permitted *accessory uses* in the HD-I and HD-II Subdistricts:

- a. Gardens, *community gardens*, green roofs or vegetated roofs.
- b. Outdoor swimming pools.
- c. Rooftop decks and seating areas.

- d. Enclosed rooms, including restrooms on the roof will be considered an additional *story* if exceeding the maximum encroachment limits established in Subsection 5.9.6.1.2.
- e. Rooftop uses that would result in an active use of the rooftop by residents or the public will require a public assembly license.

5.9.5.3 *Shopfronts* required. *Shopfronts* are required along the following streets within the Hicksville Subdistricts:

- a. Broadway.
- b. Herzog Place (with the exception of *townhouse* developments).
- c. Nelson Avenue (north of West Marie Street).
- d. West Barclay Street.

Design standards for *shopfronts* are provided in the HD Design Guidelines.¹⁹

5.9.5.4 *Outdoor dining*.

- a. *Outdoor dining* is permitted on the following roadways:
 - Division Avenue (between West Nicholai Street and West Marie Street)
 - East Barclay Street
 - East John Street (Only on B Street section)
 - East Marie Street
 - East Nicholai Street
 - Frederick Place (Only on D Street section)
 - Herzog Place
 - Jerusalem Avenue
 - Nelson Avenue (north of West Nicholai Street)
 - West Barclay Street
 - West Carl Street (Only on D Street section)
 - West Cherry Street (between Jerusalem Avenue and Broadway) (Only on D Street section)
 - West John Street
 - West Marie Street (between Jerusalem Avenue and Broadway)
 - West Marie Street (between Nelson Avenue and Jerusalem Avenue)

19. Editor's Note: The HD Design Guidelines are included as an attachment to this chapter.

- West Nicholai Street (between Jerusalem Avenue and Broadway)
 - West Nicholai Street (between Nelson Avenue and Jerusalem Avenue)
- b. *Outdoor dining* shall meet the following requirements:
- Maximum occupancy shall be per NYS Building Code
 - Any *outdoor dining* shall be limited in area to 20% or less of the indoor dining seats
 - Any *outdoor dining* shall not require additional parking spaces over what is required for the indoor uses
 - Any *outdoor dining* must provide a sidewalk clearway of six feet
 - *Outdoor dining* requires Planning and Development Department approval
 - *Outdoor dining* shall be approved for a period from May 1 to October 31 each year, subject to renewal by the Department of Planning and Development
 - All tables and chairs utilized for *outdoor dining* shall be removed nightly and seasonally when not in active and continuous use on private property
 - Hours of operation of an *outdoor dining* area shall not be later than 11:00 p.m.
 - Any outdoor congregational area accessory use other than *outdoor dining* (i.e., *brewpub/distillery* or *bar*) shall be clearly defined. Any outdoor congregational area shall be subject to specific conditions determined by the Planning Advisory Board and will require Planning and Development Department approval during site plan review.
 - No private trash or refuse bins permitted in any outdoor dining area or outdoor congregation area

5.9.6 Bulk requirements and other development standards.

5.9.6.1 Height. Maximum *building* height within the HD Subdistricts. Table 246-5.9.6.1 identifies maximum *building* heights by HD Subdistrict based upon *lot width*. No *building* or *structure* shall exceed the maximum height permitted in the HD Subdistricts prescribed for the property size. Additional flexibility in height at the reviewing agency's discretion is permitted for rooftop uses and decorative architectural details as described in Sections 246-5.9.6.2, 246-5.9.6.3 and 246-5.9.6.4 and in the HD Design Guidelines.²⁰ The permitted encroachments described herein supplement permitted

encroachments included in Section 246-4.5 of Town Code.

Table 246-5.9.6.1
Hicksville Downtown Subdistrict
Maximum Building Heights by Lot Frontage

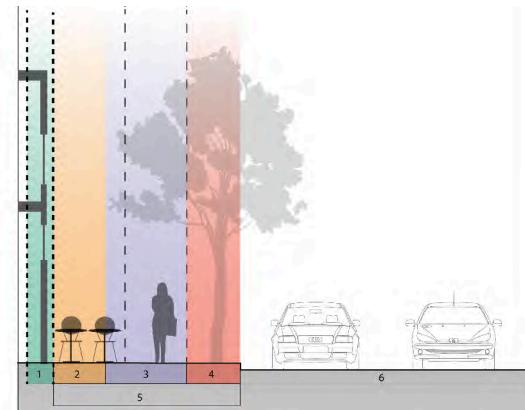
		Building Height (Maximum Permitted) by Lot Frontage		
		Up to 60 Feet	Greater than 60 Feet and less than 100 feet	100 Feet and greater
HD Subdistrict	HD-I	2 stories/30 feet maximum	3 stories/40 feet maximum	4 stories/50 feet maximum
	HD-II	3 stories/40 feet maximum		
HD-III		2 stories/30 feet maximum		

- i. Exception for permitted encroachment for rooftop use.
 - a. For mixed use and *apartment buildings*, the reviewing agency has discretion to permit an enclosed space to supplement outdoor rooftop uses that may exceed the maximum height by up to 15 feet as long as the enclosed portion is no more than 10% of the horizontal roof area, to a maximum of 600 square feet (excluding stairwells, elevator shafts, but including restrooms and elevator lobby areas) and be limited to passive gathering space; no cooking facilities or wet bar fixtures permitted in this space.
 - b. For mixed use and *apartment buildings*, the reviewing agency has discretion to permit pergolas or sunshades for outdoor patio use as long as they are set back a minimum of 10 feet from all roof edges, except a minimum of 20 feet is required when adjacent to a single-family residence district, or the HD-III Subdistrict. The sides of any pergola or sunshade must remain open and the total area of the rooftop pergolas and sunshades may not exceed 10% of the horizontal roof area, to a maximum of 600 square feet.
- ii. Exception for significant architectural features. The reviewing agency has discretion to permit additional height up to 15 feet for no more than 10% of the horizontal roof area for an architectural feature, including but not limited to, clock towers and cupolas.
- iii. Maximum rooftop encroachment. The total area of all rooftop encroachments, including encroachments permitted in Section 246-5.9.6.1.2 and 246-5.9.6.1.3 shall not exceed 30% of the horizontal

20. Editor's Note: The HD Design Guidelines are included as an attachment to this chapter.

rooftop encroachments permitted in Section 246-5.9.6.1.2a, not exceeding 10% of the horizontal roof area, to a maximum of 600 square feet, and not exceeding a maximum height of 15 feet shall not be considered a story.

5.9.6.2 Public frontage requirements.



4. *Sidewalk Zone*
5. *Landscape, Utility, and Infrastructure Zone*
6. *Public Frontage*
7. Travel and Parking Lanes
8. *Build-to-Line*
9. *Curbline*
 - i. *Build-to-zone.*
 - a. An area between the *build-to-line* and the maximum *building* setback, determined by *public frontage* standards based upon the *street type*. See Section 246-5.9.8.
 - b. The location of a *building's* facade can vary within this zone in order to allow design flexibility.
 - c. A partial or full front *building* facade can be located outside of the *build-to-zone* only to allow for public open spaces, plazas with *outdoor dining* or landscaping areas, while maintaining a strong visual and pedestrian connection with adjoining public *frontage*.
 - ii. *Transition zone.*
 - a. An area of the *public frontage* that abuts the *build-to-line*. See Section 246-5.9.8.
 - b. Provides transition between the *building* and public realm, and

allows for typical encroachments including awnings, balconies on upper floors, planters, and outdoor seating (where permitted).

- c. The surface of the sidewalk constructed within this zone shall seamlessly join the sidewalk within the *sidewalk zone*.

iii. *Sidewalk zone.*

- a. An area designed to accommodate for minimum unobstructed pedestrian passage. See Section 246-5.9.8.
- b. In areas where outdoor seating is permitted, seating may encroach into the *sidewalk zone* as long as there is at least six feet of unobstructed clear width for pedestrians.

iv. *Landscape, utility, and infrastructure zone.*

- a. An area between the *curbline* and the *sidewalk zone*, as determined by the *public frontage* standards. See Section 246-5.9.8.
- b. Allows placement of lighting, street and *outdoor dining* furniture and pedestrian amenities.
- c. When located along roadways with vehicle traffic that frequently travels at faster speeds, this zone provides for additional separation and protection for pedestrians.

5.9.6.3 Yard requirements.

- a. *Rear yard* requirements. Properties in the HD-I and HD-II that are adjacent to residential zoning districts are required to provide a *rear yard* of 20 feet.
- b. *Side yard* requirements. The minimum *side yard* within the HD Districts is zero feet, except for when a *side yard* is provided in which case the minimum shall be five feet. For *townhouse* units, see Subsection 5.9.6.6 for yard requirements.

5.9.6.4 Maximum *building* width. The maximum *building* uninterrupted *building facade*, regardless of ownership, shall be 60 feet.

5.9.6.5 Minimum *apartment* unit size. Minimum size of residential units constructed in the HD Subdistrict shall be 500 square feet.

5.9.6.6 Standards for *townhouses*.

i. *Townhouse* standards for the HD-II Subdistrict:

- a. In order to permit the construction of *townhouses* in HD-II a minimum of four *townhouses* must be proposed in any development scenario.

- b. The minimum width for a *townhouse* shall be 25 feet.
 - c. For *townhouse* end units, the minimum *side yard* shall be 10 feet.
 - d. Any property or properties developed with *townhouses* shall have a minimum of 125 feet of *frontage* along a roadway.
 - e. *Townhouses* shall be oriented towards the street with the front facade (including porches, if proposed) within the build-to-zone of the corresponding *street type* with a narrow area in front of the *townhouse* for landscaping, i.e., the facade of *townhouses* should be located at the maximum setback from the *curbline* within the *build-to-zone* to allow for an area of landscaping.
 - f. Parking for the *townhouses* shall be shared, located behind the units, and accessible via alleyways or side streets.
- ii. *Townhouse* standards within the HD-III Subdistrict.
 - a. *Townhouses* in HD-III Subdistrict must contain a minimum of four attached *townhouses* and up to a maximum of eight attached units.
 - b. The minimum width for a *townhouse* shall be 25 feet.
 - c. For *townhouse* end units, the minimum side yard shall be 10 feet.
 - d. Any property or properties developed with *townhouses* shall have a minimum of 125 feet of *frontage* along a roadway.
 - e. *Townhouses* should be set back from the *curbline* at 20 feet with landscaped *front yards* and individual driveways. However, the placement of *townhouses* should not result in a *front yard* setback that is significantly larger than the surrounding properties. In instances where inconsistent setbacks would result due to existing developments, as determined by the Department of Planning and Development, the average setback may be utilized to determine the *building* placement as per § 246-4.4.2.3.
 - f. Parking is permitted in driveways in the *front yard* (or *side yards* for end units).
 - g. Shared driveways between adjacent units are permitted to maximize efficiency and reduce the number of curb cuts.
 - h. The maximum impervious coverage permitted for *townhouse* development in HD-III shall be 65%.
 - i. *Townhouse* developments shall provide a *rear yard* of 25 feet.

5.9.7 Parking standards.

5.9.7.1 Minimum off-street parking requirements. Within the HD Subdistricts, all

structures and uses shall be provided with a sufficient amount of off-street parking and loading spaces for employees, residents, visitors, clients, patrons and other *persons* who are likely or expected to be at such *structures* or uses, but not less than the minimum requirements provided in Table 246-5.9.7.1. Where the use is not provided in Table 246-5.9.7.1, see Section 246-8.2.1, Schedule of Off-Street Parking and Loading Requirements.

Table 246-5.9.7.1
Hicksville Downtown District Parking Requirements

Parking Requirements by Land Use	Parking Requirements
Townhouses	2 spaces/dwelling
Multifamily housing ⁴	
Efficiency unit (studio)	1.25 space/unit ¹
1-bedroom	1.25 space/unit ¹
2-bedroom	1.5 space/unit ¹
3-bedroom	2.0 space/unit ¹
4+ bedrooms	2.5 space/unit
Retail and personal service establishment	1 space/300 square feet of GFA
Mixed use with residential	1.25 space/residential unit; 25% reduction of required commercial spaces for restaurant, office and retail uses with parking provisions ²
Restaurant	
HD-I	1 space/4 persons occupancy or 1 space/300 square feet of GFA, whichever is greater
HD-II	1 space/3 persons occupancy or 1 space/200 square feet of GFA, whichever is greater
Office	1 space/200 square feet of GFA
Hotel	1 space/guest room and 1 space/employee
Theater	
HD-I	1 space/50 persons and 1 space/employee ³
HD-II	1 space/3 seats

NOTES:

- ¹ At least one residential parking space must be dedicated for each unit. Where additional rooms are proposed in addition to a living room that may be used as bedrooms (i.e., as studies, dens, offices, playrooms), these will be treated as bedrooms for the purpose of calculating required parking.
- ² See Section 246-5.9.7.3 for eligibility criteria for the 25% reduction in required commercial parking.
- ³ Required unless it can be demonstrated that adequate available parking is located within 1/4 mile of the theater during peak hours.

5.9.7.2 Loading spaces. Loading spaces to be provided based upon the requirements contained in § 246-8.2.1.

5.9.7.3 Regulations for shared parking areas. Certain mixed uses may qualify for a reduction in required parking stalls. When such reductions are granted, the following requirements shall apply:

- a. In order for a mixed-use development to qualify for a 25% reduction in the required commercial parking stalls, and the reduced parking requirements for residential units with two or more bedrooms, at least 10% of the gross floor area of the development must be utilized for commercial uses.
- b. Signage denoting the shared parking area and any parking stalls reserved for residential uses must be installed on the property.
- c. Alleyways and access to the shared parking area shall contain appropriate lighting for the safety and security of pedestrians.

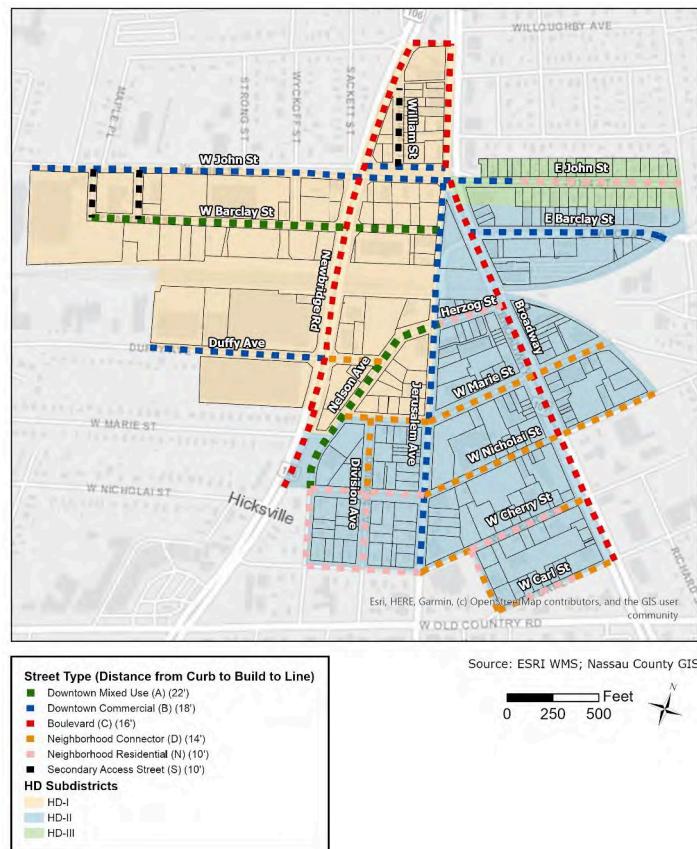
5.9.7.4 Screening for ground level parking.

- a. *Liner buildings*, green walls, false facades or other appropriate screening, as approved by the reviewing agency, is required for ground level parking to ensure that the parking areas are not visible from the street.
- b. Parking standards are provided in the HD Design Guidelines.²¹

5.9.8 *Street types*. The intent of designating *street types* is to create uniformity in the public realm. Whereas in other districts (outside of the HD Districts), *building* setbacks are measured from the property line, in the HD District, to create this uniform pedestrian zone - a *build-to-line* is established which is measured from the existing *curbline* at the edge of the street. The *street types* within the HD Subdistricts identify standards for the required *public frontage*, including setbacks from the *curbline* and various zone widths within the pedestrian realm.

5.9.8.1 Diagram of *Street Types* Locations.

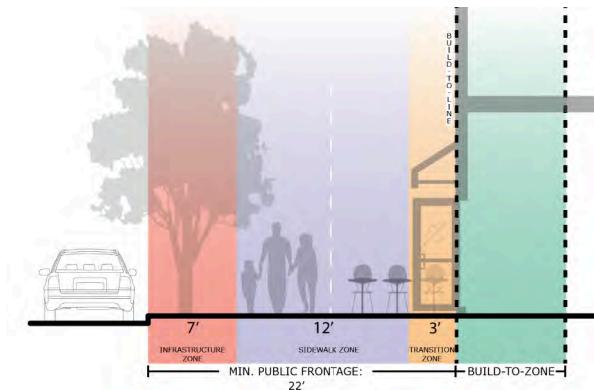
21. Editor's Note: The HD Design Guidelines are included as an attachment to this chapter.



5.9.8.2 Street types regulations.

Downtown Mixed Use (A-Street)

a. Downtown Commercial Frontage Diagram

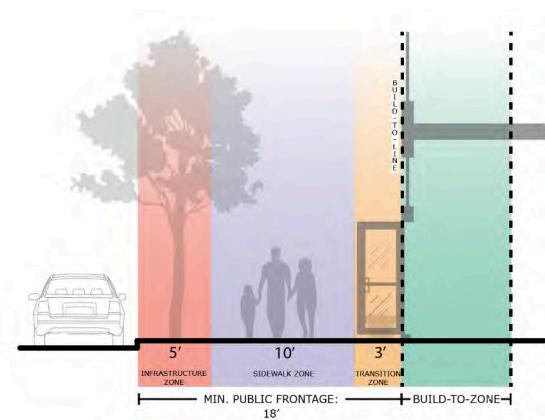


- b. Downtown Mixed Use, A- Streets, are characterized by high pedestrian volumes which benefit from vibrant *shopfronts* and wide sidewalks intended to encourage pedestrians to linger and interact, while still providing ample room for pedestrian traffic.

- c. *Transition zone* character varies based on use (chairs and tables at *restaurants* or cafes, planted areas or stoops at residential entrances and sidewalk retail for stores).
- d. The amenities provided in the transition zone are permitted to encroach into the *sidewalk zone*, as long as an unobstructed pedestrian clearway of at least six feet is provided.

Downtown Commercial (B-Street)

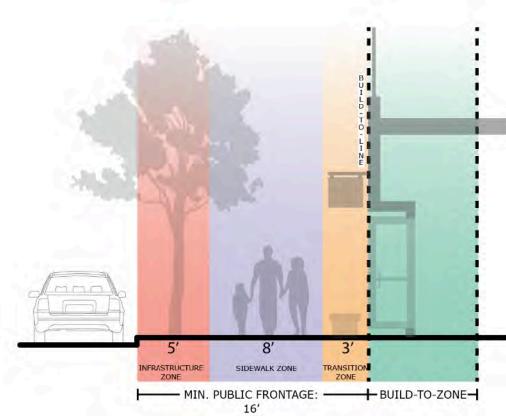
- a. Downtown Commercial Frontage Diagram



- b. Downtown Commercial, B- Streets, are categorized by high volumes of pedestrian activity, and a mix of commercial uses with *shopfront frontages*.
- c. The overall scale of these streets is slightly smaller than Downtown Mixed-Use, A- Streets, and have somewhat narrower sidewalks.
- d. The focus is on providing active *frontages* and many entrances to *shopfronts* featuring small businesses lining the street.
- e. Amenities provided in the *transition zone* are permitted to encroach into the *sidewalk zone* as long as an unobstructed pedestrian clearway of at least six feet is provided.

Boulevard (C-Street)

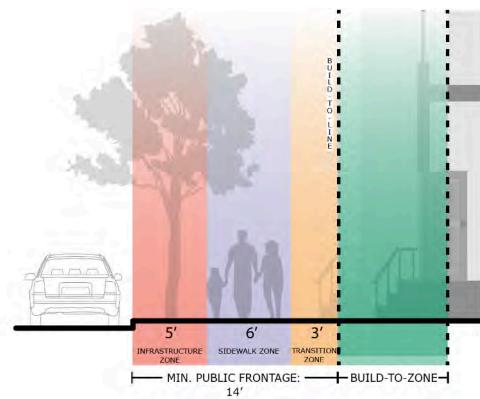
- a. Boulevard Frontage Diagram



- b. Boulevards, C-Streets, (Newbridge Road and Broadway) are New York State roadways (NY SR 106 and NY SR 107), are characterized by a strong building edge and continuous rows of trees to provide a buffer between pedestrians and high-speed traffic.
- c. Along boulevards, the *landscape, utility and infrastructure zone* provides an area where green infrastructure may be appropriate to reduce stress on the existing stormwater infrastructure

Neighborhood Connector (D-Street)

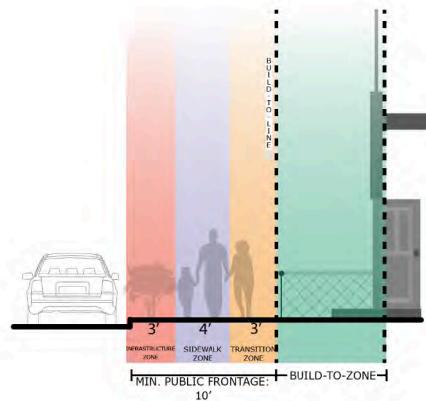
- a. Neighborhood Connector Frontage Diagram



- b. Neighborhood Connector, D-Street, balances the needs of visitors passing through the area with residents who live and work along the street.
- c. Regularly spaced trees and lighting in the *landscape, utility and infrastructure zone* provide unifying elements on streets.

Neighborhood Residential/Secondary Access (N & S Streets)

a. Neighborhood Residential/Secondary Access Frontage Diagram



- b. Neighborhood Residential/Secondary Access, N&S Streets, are intended for slower speeds, less frequented/activated sidewalks and narrow *public frontage*.
- c. The *landscape, utility and infrastructure zone* can accommodate street trees, utilities, and a relatively narrow, but unobstructed sidewalk.

5.9.8.3 Table of Public Frontage Requirements by Street Type.

Street Type		Public Frontage				Build-to-Zone (feet)
		Total Width Minimum/Maximum (feet)	Landscape, Utility, and Infrastructure Zone Minimum (feet)	Sidewalk Zone Minimum (feet)	Transition Zone Minimum (feet)	
A	Downtown Mixed Use (A-Street)	22/23	6 to 8	10 minimum (12 preferred)	3	5
B	Downtown Commercial (B-Street)	18/21	5 to 8	8 minimum (10 preferred)	3	5
C	Boulevard (C-Street)	16/19	5 to 8	6 minimum (8 preferred)	3	5
D	Neighborhood Connector (D-Street)	13/14	5	5 minimum (6 preferred)	3	8
N	Neighborhood Residential (N-Street)	10/10	3	4	3	8
S	Secondary Access Street (S-Street)	10/10	3	4	3	8

5.9.9 Additional development requirements.

5.9.9.1 Hicksville Downtown Design Guidelines and Development Standards. New development and redevelopments shall follow the Hicksville Downtown Design Guidelines and Development Standards which are provided as a supplement to this article.²²

5.9.9.2 Signage. *Signs* shall be consistent with see § 246-11, with the following clarification and guidelines.

- A. For development within the HD-I and HD-II (other than for *townhouses*), *signs* may be permitted to encroach within the *transition zone* as designated by its *street type*.
- B. Lettering on awnings are treated as *signs*. The lettering shall be less than or equal to 12 inches in height and not cover more than 10 square feet. Only the name/logo and address/phone number of the business may be printed on the awning.

5.9.9.3 Landscaping. On-site irrigation systems, including watering systems and timers, are required to ensure proper maintenance and upkeep of landscaped areas.

22. Editor's Note: The HD Design Guidelines are included as an attachment to this chapter.

§ 246-6.
SITE PLAN REVIEW

6.1. Purposes.

It is hereby determined that there should be a formal public process of site plan review in the Town of Oyster Bay in order to help ensure that the future use, reuse, development and redevelopment of multifamily, senior citizen, conservation subdivisions and nonresidential properties will be planned and designed in such a way as to further the public health, safety and general welfare of the population. It is hereby further determined that there should be specific standards established in this chapter for such review and that such review should be incorporated in existing approval processes, wherever appropriate.

6.2. Approval required and approving agency.

6.2.1 Town Board approval. Site plan approval by the Town Board, after review and recommendation by the Department of Planning and Development, shall be required prior to the issuance of a *building* permit or certificate of occupancy, as follows:

6.2.1.1 All *structures* or uses that require special use permit approval by the Town Board.

6.2.1.2 All *structures* or uses that require change of zone approval by the Town Board.

6.2.2 Planning Advisory Board approval. Site Plan approval by the Planning Advisory Board, after review and recommendation by the Department of Planning and Development, shall be required prior to the issuance of a *building* permit or certificate of occupancy, as follows:

6.2.2.1 All *structures* or uses that do not require Town Board approval and are required to provide 50 or more additional parking spaces. **[Amended 7-22-2003 by L.L. No. 7-2003]**

6.2.2.2 All *structures* or uses that do not require Town Board approval, abut a residence district and are required to provide more than 15 additional parking spaces. **[Amended 7-22-2003 by L.L. No. 7-2003]**

6.2.2.3 Review by the Planning Advisory Board shall be required, prior to Town Board approval, for all *structures* or uses in RMF-6, RMF-10, RO and OB Districts, as well as places of worship, colleges and universities, customary agricultural operations and *country clubs* in all residence districts. **[Amended 7-22-2003 by L.L. No. 7-2003]**

6.2.3 Department of Planning and Development approval. Proposed *structures* or uses that do not meet the requirements of § 246-6.2.1 or 246-6.2.2 above shall require review and approval by the Department of Planning and Development using the standards of this section as a guide.

6.3. Application.

All site plan applications shall be submitted to the Department of Planning and Development on forms provided by that Department. They shall be accompanied by an affidavit prepared in accordance with § 246-14.9 of this chapter, fees or trust account deposits as required by § 246-6.4 of this chapter and 12 prints of a detailed site plan prepared by a legally qualified individual or firm, including but not limited to a registered architect, landscape architect or professional engineer. Additional sets of prints may subsequently be required if Town Board and/or Planning Advisory Board review, the quantity of which shall be determined by the Department of Planning and Development. The site plan shall demonstrate that, insofar as practicable, all standards of this chapter have been met. All site plan applications shall include at least the following information, as applicable and appropriate:

6.3.1 General. Site plans shall be drawn on sheets not exceeding a size of 36 inches by 48 inches and to a convenient scale, but not less than one inch equals 20 feet unless otherwise approved by the Department of Planning and Development.

6.3.2 Legal data.

6.3.2.1 Name and address of *applicant*, and authorization by owner if different from *applicant*.

6.3.2.2 Name, address, signature and seal of the professional preparing the site plan.

6.3.2.3 Title of the development, date prepared and date of revisions, if any.

6.3.2.4 North arrow, scale and site vicinity map drawn to a scale of not less than one inch equals 600 feet.

6.3.2.5 Section, block and *lot* number(s).

6.3.2.6 Description of all existing and proposed deed restrictions or covenants.

6.3.2.7 Location, width and purpose of all existing and proposed easements, setbacks, reservations and areas dedicated to public use within or adjacent to the property.

6.3.2.8 Existing zoning of the property and all adjoining properties.

6.3.2.9 Zoning Information Chart, including an indication of any necessary variances. The chart shall include the following items and illustrate what is the minimum or maximum as required by this chapter and what is proposed to be provided for each, as applicable:

- Proposed use of *structure*.
- *Lot area* (square feet).
- *Lot width* and *frontage*.
- *Lot area per dwelling unit* (square feet).

- *Gross floor area per dwelling unit* (square feet).
- *Building coverage*.
- *Gross floor area by use*.
- *Floor area ratio*.
- *Front, side and rear yards*.
- *Building height* (stories and feet).
- Building dimensions.
- Area of usable *open space*.
- Off-street parking and loading spaces.
- Area of landscaped islands within parking *lot* perimeter.
- Yards, *building height* and *building coverage* of required *rear yard* for *accessory buildings*.

6.3.3 Natural features.

6.3.3.1 Topographic data at a maximum contour interval of two feet, showing existing and proposed contours, extended at least 10 feet onto adjoining properties.

6.3.3.2 Surface features, such as the location of rock outcrops.

6.3.3.3 Boundaries of any area subject to flooding or *stormwater* overflows, including flood hazard areas as established by the federal government.

6.3.3.4 Location of all existing *watercourses*, waterbodies, intermittent streams, *wetlands* and springs.

6.3.3.5 Description of vegetation on site, including existing landscaping, the location of existing wooded areas and all individual trees with a diameter of eight inches or more measured three feet above the base of the trunk.

6.3.3.6 Any other significant existing natural features.

6.3.4 Existing *structures* and utilities.

6.3.4.1 Location of all *structures* on the premises and approximate location of all neighboring *structures* within 100 feet of the *lot lines* of the premises.

6.3.4.2 Location of all existing public and private roads and rights-of-way, paved areas and sidewalks adjoining the property, including the names and paved widths of roads.

6.3.4.3 Locations, dimensions, grades and flow direction of existing sewers, culverts, water lines and other underground utilities within the property and within adjacent *street*, to the extent known or relevant.

6.3.4.4 Location of existing *fences* and screening.

6.3.4.5 All other existing improvements.

6.3.5 Proposed development.

6.3.5.1 Location and dimensions of all proposed *structures* (including length, width, floor elevations and height), with floor plans showing all proposed floor space by type of use and floor level.

6.3.5.2 Preliminary architectural plans showing at least three exterior elevations of the proposed *structure*, including dimensions, materials and colors to be used.

6.3.5.3 Location, width and finished grades of proposed public and private *streets*, driveways, roads and sidewalks, including pavement type and center line profiles. All slopes shall be indicated by percentage of grade. Elevations at center line of *street*, top of curb and at the *lot line* shall also be indicated on the profile. Where there is no curb, the curb elevation shall be assumed to be equal to the elevation at the center line of the *street* and shall be so indicated.

6.3.5.4 Location, layout, finished grade, pavement specifications and curbing proposed for parking and loading spaces, including access drives.

6.3.5.5 Location, design and proposed screening of any outdoor storage areas, including proposed provisions for recycling and refuse storage and collection.

6.3.5.6 Approximate location of proposed utilities. Note: The submission of plans showing the location, size and design of all proposed water supply, sanitary sewerage, valves, hydrants and other such utility facilities, including connections to any existing such facilities, with profiles, may be required prior to the issuance of a *building* permit.

6.3.5.7 Approximate location of proposed *stormwater* drainage system. Note: The submission of plans showing the details of catch basins, dry wells, *recharge* basins and other related facilities and the calculation of expected storm drain loads and *stormwater* runoff to be accommodated by the proposed drainage system in accordance with all requirements of the Nassau County Department of Public Works may be required prior to the issuance of a *building* permit.

6.3.5.8 Landscaping plan, to include type, size, quantity and location of all plants and other landscaping materials to be used, with common and scientific names. Included in the plan shall be an indication of all existing vegetation to be retained, a line indicating the limit of the area of *disturbance* and the methods to be used to protect existing vegetation during the course of construction. Cross-sections shall be provided, as appropriate.

6.3.5.9 Snow removal management plan.

6.3.5.10 Type, location, design, shielding, illumination levels in footcandles and hours of operation of exterior lighting.

- 6.3.5.11 Location, type, size, typography, design, color and illumination of all *signs*.
 - 6.3.5.12 Illustration of the ultimate potential development of the site, if the site plan application represents only a portion or phase of a larger possible development.
 - 6.3.5.13 Estimate of earthwork, showing the quantity of any material to be imported to or removed from the site.
 - 6.3.5.14 Description of measures planned to assure proper erosion and sedimentation control both during and after construction.
 - 6.3.5.15 Statement from the *applicant's* engineer indicating the estimated cost of construction of all proposed site improvements.
- 6.3.6 Master signage plan required. For every project required to provide 50 or more parking spaces, a master signage plan shall be prepared. Such plan shall include at least the following:
- 6.3.6.1 The location of all existing and proposed signage.
 - 6.3.6.2 Elevations of all existing *signs* identifying whether each *sign* is to remain.
 - 6.3.6.3 Elevations of all proposed *signs* identifying the type, the vertical, horizontal and depth dimensions, color scheme, lettering or graphic style, the signage materials, the height, whether the *sign* is to be illuminated and, if so, details of the proposed illumination.

6.4. Application fees. [Amended 2-10-2004 by L.L. No. 4-2004; 10-16-2012 by L.L. No. 3-2012]

Each application for site plan approval shall be accompanied by a base application fee in an amount as determined by the Commissioner of the Department of Planning and Development. Where Planning Advisory Board or Town Board review is required, an additional fee in an amount as determined by the Commissioner of the Department of Planning and Development shall be paid. In addition, the *applicant* shall be required to fund the cost of outside consulting services to assist the approving agency with the review of applications, if such assistance is determined necessary by said agency. In such cases, the *applicant* shall provide additional funds to the Town for deposit into a trust account in an amount as determined by the Commissioner of the Department of Planning and Development.

- 6.4.1 When the balance in an *applicant's* trust account is reduced to 1/3 of the required initial deposit amount, the *applicant* shall deposit sufficient additional funds to restore the account up to at least the originally required balance, or such lesser amount as may be agreed to by the Department of Planning and Development. If such account is not replenished within 30 days after the *applicant* is notified, in writing, of such requirement, the approving agency shall immediately suspend its review of the application.

6.5. Public hearing/meeting.

6.5.1 Town Board. Where Town Board approval is required, upon receipt of the recommendation of the Department of Planning and Development or the Planning Advisory Board, as the case may be, and consistent with the timing requirements of the Town Environmental Quality Review Law,²³ the Town Board shall consider the proposed site plan at the same public hearing as required for the special use permit or zoning change application. Town Board action with respect to the site plan shall be incorporated into its decision with respect to the special use permit or zoning change.

6.5.2 Planning Advisory Board. Where Planning Advisory Board approval is required, the matter shall be considered at a regular meeting of said Board, open to the public.

6.6. Notification of Town Board public hearing or Planning Advisory Board meeting.

6.6.1 Notification of Town Board public hearing shall be as required for the related special permit or zoning change application, as the case may be.

6.6.2 Notification of PAB meeting shall be by the posting of a *notification sign* in accordance with the provisions below along each *street frontage* of the subject property at least seven calendar days prior to the Planning Advisory Board meeting, where said Board is the approving agency.

6.6.2.1 *Notification signs* shall be at least six square feet in area, and shall consist of sturdy weatherproof material containing a white background and black legible letters at least two inches in height. The *sign* shall be placed in a location plainly visible from each *street* upon which the property fronts, but in no case more than 20 feet back from the *street*. If the property fronts on two or more *streets*, one such *sign* shall be placed along each of the most commonly traveled *street frontages* but, in any event, no more than two *signs* shall be required.

6.6.2.2 The *notification sign* shall read as follows:

ON THIS PROPERTY A (DESCRIBE PROPOSED ACTION) IS
PROPOSED. THIS MATTER WILL BE DISCUSSED AT A (IDENTIFY
APPROVING AGENCY) PUBLIC (HEARING OR MEETING) ON (FILL
IN DATE) AT (FILL IN TIME) AT (FILL IN LOCATION).

6.6.2.3 The *applicant* shall update the *notification sign(s)* at least seven days prior to each public meeting or hearing at which it is to be heard.

6.6.2.4 The *applicant* shall submit an affidavit to the Town Attorney or secretary of the Planning Advisory Board, as appropriate, at the public hearing/meeting attesting to the installation of the *notification sign*, as required herein.

23. Editor's Note: See Ch. 110, Environmental Quality Review.

6.6.2.5 The *applicant* shall remove the *notification sign(s)* within seven days after the close of the public meeting or hearing at which the application has been heard.

6.7. Conformity required.

No site improvements or change of use may be implemented, no construction shall commence and no permits shall be issued by applicable enforcement agents or officers of the town until after approval for said improvements or change of use is granted by the approving agency where such approval is required, and all modifications and conditions as set forth in said approval are certified as having been met, as evidenced by the signature of the Town Superintendent of Planning of the Department of Planning and Development, on the site plan, except as may be otherwise specifically provided for in the resolution of site plan approval. Continued compliance with all such conditions shall be a requirement of the continued validity of any *building* permit or certificate of occupancy issued pursuant thereto.

6.8. Expiration.

6.8.1 The approval of a signed site plan shall expire in the event that:

6.8.1.1 An application has not been made for a *building* permit or a certificate of occupancy within one year after the date the site plan was signed.

6.8.1.2 All construction in accordance with the approved site plan has not been completed within three years after the date the site plan was signed.

6.8.1.3 Construction in accordance with the site plan substantially ceases, prior to completion, for a period of one year or more after commencement.

6.8.2 Any application for extension, on an annual basis, shall be made by the *applicant* to the Department of Planning and Development prior to the expiration of the specific time period sought to be extended, and with the permission of and upon the recommendation of the Commissioner of Planning and Development, may be sought after the expiration of the specific time period sought to be extended, but in no event shall any extension extend the period beyond four years from the date the site plan was approved, or an amended site plan was reviewed, unless a new SEQRA determination has been made. Any application for extension shall be accompanied by a fee as determined in accordance with the fee schedule established by the Commissioner of the Department of Planning and Development. The approving agency may extend all time limits for good cause shown, if said agency deems such extension warranted. **[Amended 6-26-2018 by L.L. No. 6-2018]**

6.9. Amendments.

6.9.1 Minor amendments. During the course of construction, the Department of Planning and Development, or any duly authorized designee, may approve minor adjustments to the approved site plan where such adjustments are deemed to be necessary or appropriate. Such minor adjustments must be consistent with the basic

concepts of the approved site plan.

6.9.2 Substantial amendments. Where unforeseen conditions are encountered which require any change to an approved site plan which the Department of Planning and Development, or any duly authorized designee, considers substantial, or where the *applicant* wishes to modify the approved site plan for other reasons, an amended site plan shall be filed for review and approval submitted in accordance with the same procedures and fees as required for the original application.

6.10. General standards.

In considering proposed site plans, the reviewing agency will be guided by the purposes of this chapter, including the purposes of the applicable zoning district or districts, the specific off-street parking and site design standards as set forth in this chapter and the following general standards:

6.10.1 The opportunity for safe, adequate and convenient vehicular and pedestrian traffic circulation both within and without the site. At least the following aspects of the site plan shall be evaluated to determine conformity to this standard:

6.10.1.1 The effect of the proposed development on traffic conditions on existing *streets*.

6.10.1.2 The number, locations and dimensions of vehicular and pedestrian entrances, exits, drives and walkways.

6.10.1.3 The adequacy of safe visibility at all exit points of the site. The driver of an automobile should have an unobstructed view of the *street* for the distance necessary to allow safe entrance into the traffic stream.

6.10.1.4 The location, arrangement and adequacy of off-street parking and loading facilities.

6.10.1.5 Interconnection of parking facilities via access drives between adjacent *lots*, designed to provide maximum safety, convenience and efficiency of traffic circulation, and to minimize curb cuts on neighboring *streets*.

6.10.1.6 Patterns of vehicular and pedestrian circulation both within the boundaries of the development and in relation to the adjoining road and sidewalk system.

6.10.1.7 The location, arrangement and adequacy of facilities for the physically handicapped, such as ramps, depressed curbs and reserved parking spaces.

6.10.1.8 The location, arrangement and adequacy of landscaping within and bordering parking facilities and loading spaces.

6.10.1.9 The adequacy of fire lanes and other emergency facilities and services. The *applicant* shall be required to allow enforcement of parking and traffic circulation restrictions by local police, fire and town officials, as determined appropriate.

6.10.2 The protection of environmental quality and the preservation and enhancement of property values. At least the following aspects of the site plan shall be evaluated to determine conformity to this standard:

6.10.2.1 The location, height and materials of walls, *fences*, hedges and plantings so as to ensure harmony with adjacent development, screen parking facilities and loading spaces and to conceal storage areas, refuse areas, utility installations and other such features.

6.10.2.2 The prevention of *dust*, erosion and drainage onto adjacent properties both during and after construction, through the planting of ground cover or the installation of other appropriate protective devices and/or ground surfaces.

6.10.2.3 The preservation of natural features such as *wetlands*, unique wildlife habitats, historic *structures*, major trees and scenic views both to and from the site.

6.10.2.4 The arrangement, type and design of signage and exterior lighting.

6.10.2.5 The design and arrangement of *buildings*, *structures* and accessory facilities (such as air conditioning systems, public address systems, etc.) so as to achieve minimum and acceptable noise levels at the property boundaries.

6.10.2.6 The provision of adequate storm and surface water drainage facilities so as to properly drain the site while maximizing groundwater *recharge*, minimizing downstream flooding and preventing the degradation of water quality.

6.10.2.7 Access to sunlight as related to *building* siting, orientation and landscaping, as well as present and potential future solar energy systems.

6.10.2.8 The design and arrangement of facilities to accommodate both refuse and recycling storage containers.

6.11. Site plan review required for demolition permits in Oyster Bay Hamlet Residence Design District. [Added 2-13-2007 by L.L. No. 4-2007]

In addition to the previously described site plan reviews as required by this section, it is hereby also determined that there should be a public process of site plan review required prior to the issuance of demolition permits for existing *dwellings* when such *dwellings* are located in the Oyster Bay Hamlet Residence Design District. This review process is limited to *dwellings* which are more than 50 years old at the time of application for the demolition permit. The specific purpose of this process is to assure that the historic and/or architectural character of the site and the neighborhood in which it is located will not be adversely impacted by the demolition of a *dwelling* and the planned redevelopment of the site on which it is located.

6.11.1 Planning Advisory Board approval. Except where the Commissioner of the Department of Planning and Development determines that an emergency exists which requires immediate action (pursuant to § 96-20 of the Town Code), site plan approval by the Planning Advisory Board shall be required prior to the issuance of

a demolition permit for any *dwelling* located in the Oyster Bay Hamlet Residence Design District which was originally occupied and/or was issued its original certificate of occupancy more than 50 years prior to the date of application for the demolition permit.

6.11.2 Public meeting and notification requirements. All requirements for the conduct of a Planning Advisory Board public meeting, including the notification requirements for such a meeting, as set forth in §§ 246-6.5 and 246-6.2 of this chapter, shall be complied with.

6.11.3 Application fees. Each application for Planning Advisory Board approval of a demolition permit shall be accompanied by an application fee in an amount as determined by the Commissioner of the Department of Planning and Development. **[Amended 10-16-2012 by L.L. No. 3-2012]**

6.11.4 Application. All applications for site plan approval of a demolition permit shall, in addition to all other administrative requirements for demolition permits of the Department of Planning and Development, be accompanied by plans for the proposed redevelopment of the site if the demolition permit is granted. Such plans shall indicate whether any subdivision or resubdivision of the property will be proposed and whether variances therefor will be required. The application shall also include site plans, floor plans and *building* elevations of any proposed new *dwelling(s)* which will replace the *dwelling* to be demolished. The site redevelopment plan shall demonstrate that, insofar as practical, all standards of this chapter have been met. Such site redevelopment plan shall also, as appropriate, comply with the requirements of Subsection 6.3 above. The application shall be accompanied by an affidavit prepared in accordance with § 246-14.9 of this Chapter and 12 prints of the proposed redevelopment plans prepared by a legally qualified individual or firm, including but not limited to a registered architect, landscaped architect or professional engineer. Additional sets of prints may subsequently be required for Town Board and/or Planning Advisory Board review, the quantity of which shall be determined by the Department of Planning and Development.

6.11.5 General standards. In considering the proposed site redevelopment plans prepared in connection with the requested demolition permit, the Planning Advisory Board shall be guided by the general purposes of this chapter as well as the specific purposes of: protecting historic or potentially historic (over 50 years old) *structures*; assuring that the redevelopment of the site will be planned and designed in a manner which will be consistent with the architectural character and scale of the neighborhood in which the property is located; preserving property values; and where appropriate, furthering the objectives of the Town's Landmarks Preservation Ordinance.²⁴

24. Editor's Note: See Ch. 143, Landmarks Preservation.

§ 246-7.
SITE DESIGN STANDARDS

7.1. Landscaping.

All portions of *lots* subject to site plan and/or special use permit review which are not covered by *buildings*, *structures*, parking and loading areas, sidewalks or similar impervious surfaces shall be permanently maintained as natural *open space* or suitably landscaped, in accordance with specifications approved as a part of the site plan, so that the site development will present an attractive appearance, provide cooling shade, promote groundwater *recharge*, preserve and enhance property values, buffer neighboring *streets* and properties and complement the character of surrounding development.

7.1.1 The selection, amount and location of all landscaped materials shall be based upon considerations of its intended purpose, taking into consideration the need for minimal maintenance, minimal water usage and general compatibility with pedestrians and motor vehicles.

7.1.2 Maintenance required. All landscaping as shown on approved plans shall be maintained in a vigorous growing condition. Any plants not so maintained shall be replaced with healthy new plants of comparable size, type and quality at the beginning of the next immediately following growing season. Satisfactory assurance of such maintenance shall be a condition of development approval and of continued conformity with this Code.

7.2. Buffer screening areas. [Amended 7-22-2003 by L.L. No. 7-2003]

Notwithstanding the requirements of § 246-7.2.1 of this section, a buffer screening area of not less than 10 feet in width and five feet in height shall be provided along all *lot lines* where properties containing *principal* nonresidential uses abut residence districts and where properties containing *principal* multifamily residence uses abut single-family residence districts. In addition, a buffer screening area shall be required where such uses are separated by a road with a right-of-way width of 50 feet or less. Within such buffer area shall be located evergreen planting and/or fencing of such type, height, spacing and arrangement as will screen the activity on the site from the neighboring residential area. Non-evergreen planting may be used to seasonally supplement evergreen planting but shall not take its place. The plan and specifications for such planting shall be filed with the proposed plans for the use of the *lot*. The buffer area shall only be interrupted by approved access driveways and pedestrian walkways, including any related area required to provide safe sight distance. Any significant physical changes, including regrading, removal of existing and/or approved trees and vegetation or *disturbance* of existing and/or approved walls and *fences* within the buffer area, shall require the permission of the Department of Planning and Development. The buffer screening requirements may be modified or waived by the reviewing agency in situations where it determines that adjoining land uses, topographic features or existing vegetation already satisfy the intended purpose. A landscaped berm, wall or *fence* of location, height, design and materials determined suitable by such agency to be substituted for or to supplement the

required buffer planting. In the case of a *fence*, the good side shall face the neighboring property.

7.2.1 In the ORD and LI Nonresidence Districts, the regulations shall be the same as in the previous section, except that a ten-foot planting strip of evergreen growth at least eight feet in height shall be required along any *rear or side lot line* which is contiguous to or across the *street* from any residence district. No such screening shall, however, be permitted within 20 feet of a front property line. In the event that the width of any ORD and LI property shall exceed 300 feet at the *building* line, and it is adjacent and contiguous to any residence district, no *principal building* shall be erected thereon within 60 feet of any residential property line. So much of the setback which is not required for the above-described planting strip may be used for driveway or parking purposes.

7.2.2 Where a property in an RMF, RNG, RPH or RSC Residence District or in a nonresidence district or containing any nonresidence use is located within or abuts a residence district and a *fence*, hedge or other screen is required by the reviewing agency, such planting screen or other *fence* shall be so designed as to prevent debris from being windblown or transported to the neighboring residential premises, and shall also be so designed and installed as to prevent any and all reflection of lights, whether permanently installed on such nonresidence property or from automobiles or other sources, from being cast upon adjacent or neighboring residentially zoned property. Where a planting screen is required by the reviewing agency to be installed in compliance with this section, the agency may determine that it is also necessary to install and maintain a woven wire *fence* to prevent paper and debris from being carried or blown through or under such planting screen. [Amended 11-9-2004 by L.L. No. 16-2004]

7.3. Exterior lighting.

All exterior lighting accessory to multifamily or nonresidence uses, and all exterior lighting of recreation facilities accessory to a residence use, including pole- and *building*-mounted area lighting and the lighting of *signs*, shall be of such type and location and shall have such shielding as will prevent the source of light from being visible from any adjoining *streets*, public areas and neighboring properties and prevent objectionable glare observable from such *streets* or properties. The height and lighting intensity of exterior lighting fixtures shall be determined on a case-by-case basis by the site plan reviewing authority, which shall consider the size, nature and location of the proposed use, and the site's relationship to neighboring properties and uses. In general, the height and lighting intensity of exterior lighting fixtures shall not exceed 24 feet and/or 400 watts, respectively. The maximum height for freestanding lighting or building mounted lighting on nonresidential properties which abut a residential property shall be 14 feet. Lighting levels for nonresidential uses shall generally not exceed an average intensity of three footcandles, nor be an average of less than 0.5 footcandle at pavement level. Exterior lighting shall be extinguished within one hour of the closing of the business or nonresidence use, except for such illumination as may be permitted by the reviewing agency for property protection and security purposes. No neon or other such lighting outlining a *building*, *structure* or other architectural feature is permitted.

7.4. Pedestrian circulation.

Overall site design shall take into consideration pedestrian safety and scale through the inclusion of walkways, landscaping, awnings, covered arcades and *open spaces*, plazas and other gathering places, as well as enhance the pedestrian experience by presenting a varied appearance at *street* level of *building* facades and limiting blank wall exposure, as appropriate to the proposed use and its location. The use of covered outdoor spaces such as loggias, arcades and colonnades shall be encouraged, as appropriate, in order to provide weather protection, transition between indoors and outdoors and to add visual interest, shadow and depth to *building* elevations. Walkways and pedestrian plazas shall offer a variety of pigments and textures which are in harmony with the planned character of the area, and are safe for pedestrian traffic, including the handicapped. Walkways shall be planted with regularly spaced, salt-tolerant shade trees, selected with regard to the scale of the area in which they are located, as well as the height and spacing of exterior lighting, and the need to maintain visibility of storefront displays, *signs* and other features.

7.5. Design and layout of off-street parking and loading.

7.5.1 Dimensional requirements. All off-street parking and loading facilities shall comply with at least the following minimum dimensional requirements:

7.5.1.1 Standard parking spaces. Except as set forth below, all off-street parking spaces shall be at least nine feet in width and 18 feet in length, except as follows:

7.5.1.1.1 Senior citizen parking. A width of 9.5 feet shall be required for parking spaces in senior citizen housing developments.

7.5.1.1.2 Employee parking. Employee and commuter parking spaces, which are intended for long-term use with low turnover, may be a minimum of 8.5 feet in width where permitted. For retail or service businesses, or other similar types of uses designed to attract the general public, such reduced-width employee parking spaces shall not exceed 10% of the total required or provided parking, whichever is less. All employee parking spaces shall be clearly identified and limited in their use by appropriate location, signage and/or pavement markings.

7.5.1.1.3 Handicapped-accessible parking spaces. Parking spaces for the handicapped shall be at least eight feet in width and shall have an adjacent access aisle at least eight feet in width, or as otherwise required by the New York State Uniform Fire Prevention and *Building* Code. The minimum number of accessible spaces shall also be as required by state code. An eight-foot-wide access aisle may be shared by two adjacent handicap parking spaces and shall be part of an accessible route to the *building* or use which it is designed to serve. The minimum vertical clearance for handicapped-accessible spaces and vehicular access routes to and from such spaces shall be nine feet six inches on the entry level of any parking *structure* and eight feet two inches on all other levels. Such

spaces shall be appropriately located and clearly identified and limited in their use by appropriate signage and pavement markings.

7.5.1.2 Loading spaces. All off-street loading spaces shall be at least 14 feet in width, 40 feet in length and 14 feet in height, except 12 feet for adjacent spaces or as may be reduced by the reviewing agency due to the unique nature of the proposed use.

7.5.1.3 Angled and parallel parking. All parking spaces shall be designed at a ninety-degree angle with a twenty-four-foot wide two-way maneuvering aisle unless a different width or angle is permitted or required based upon the unique size, shape and/or function of the parking facility. In those circumstances where permit parking at an angle other than 90° is permitted, circulation in each maneuvering aisle shall be limited to one-way only. The following is a table of minimum parking space and maneuvering aisle dimensions (see also Figures 7-1, 7-2 and 7-3 at the end of this chapter, which graphically illustrate these requirements):

Minimum Parking Space and Maneuvering Aisle Dimensions					
Parking Angle (Degrees)	Parking Space Dimension to Wall (Feet)	Parking Space Dimension to Interlock (Feet)	Maneuvering Aisle Width (Feet)	Wall to Wall Double Parking Bay Dimension (Feet)	Interlock to Interlock Double Parking Bay Dimension (Feet)
90	18.0	18.0	24.0	60.0	60.0
75	19.5	18.5	21.0	60.0	58.0
60	20.0	17.75	17.5	57.5	53.0
45	19.0	15.75	15.0	53.0	46.5
0	9.0	22.00	15.0	33.0	NA

NA: Not Applicable

7.5.2 Access. Access to all off-street parking and loading facilities shall be designed in accordance with the following requirements:

7.5.2.1 Access driveways. All off-street parking and loading spaces shall be provided with unobstructed access. They shall be designed to prevent the backing of any vehicle across the sidewalk or into a *street*, except at locations specifically designed for such purposes where no reasonable alternative is available and approval has been granted by the approving agency. Access driveways connecting off-street parking and loading facilities to the *street* or *streets* from which they derive access shall be designed in accordance with the following requirements:

7.5.2.1.1 *One- and two-family dwellings* shall be connected to the *street* with a driveway having a radius return at each intersection corner of not less than five feet. Such driveways shall not exceed a grade of 10% where graded away from the *structure* and 8% where graded towards the *structure*, except that a grade of up to 12% may be allowed by the reviewing agency for a driveway serving a *one-family dwelling*, provided

said agency determines that such grade would be appropriate for the purpose of reducing environmental impact. The driveways shall also not exceed a grade of 5% within 25 feet of the curbline of the *street*.

7.5.2.1.2 Access driveways serving multifamily and nonresidence uses shall be not less than 20 feet in width and shall be connected to the *street* with a radius return at each corner of not less than 10 feet. The driveways shall not exceed a grade of 5%, except that a seven-percent grade may be allowed where determined appropriate for the purpose of reducing environmental impact. The driveways shall also not exceed a grade of 3% within 40 feet of the curbline of the *street*. Notwithstanding the above, lesser dimensions may be allowed for a driveway providing access to fewer than 20 parking spaces. Similarly, greater dimensions may be required where determined necessary based upon the number of spaces served and/or the nature of the intended use.

7.5.2.1.3 All areas designed for parking and/or loading shall have a grade of not more than 5%.

7.5.2.2 Interconnection of off-street parking facilities. In order to provide maximum safety and efficiency, minimize curb cuts and encourage convenient traffic flow, the interconnection of parking facilities via access drives within and between adjacent *lots* may be required. To help assure the accomplishment of this, the reviewing agency may require written assurance, such as deed restrictions, in a form satisfactory to the Town Attorney, binding the owner and the owner's heirs and assigns to provide and/or permit, and to maintain, such interconnections.

7.5.3 Parking *structures*. Parking *structures* shall comply with the dimensional requirements for *principal buildings* in the district in which they are located. Parking *structures* shall not be included as part of the maximum *floor area* ratio on a property.

7.5.4 Landscaping and screening. Except for off-street parking facilities and spaces accessory to a *one- or two-family dwelling*, all off-street parking and loading facilities shall be curbed, screened and landscaped with appropriate trees, shrubs, ground cover and other plant materials to assure the establishment of a safe, convenient and attractive facility. Such landscaping and screening shall be planted and maintained in accordance with the following guidelines (except as such may be modified or waived by the site plan approving agency): **[Amended 7-22-2003 by L.L. No. 7-2003]**

7.5.4.1 Landscaping. In all off-street parking areas which contain 50 or more parking spaces, excluding parking *structures*, at least 10% of the total parking facility within the parking perimeter shall consist of raised landscaped islands, as follows:

7.5.4.1.1 Raised landscaped islands shall be located at the ends of each parking bay which contains 10 or more spaces, and separating adjacent rows of

parking spaces at least every second parking bay, as determined necessary by the reviewing agency to properly guide vehicle movement, to provide adequate space for plant growth and vehicle overhang, to provide adequate space for pedestrian circulation where appropriate and to otherwise provide for improved traffic circulation, pedestrian safety and aesthetics. Such raised landscaped islands and the plantings within them shall be designed and arranged so as to provide vertical definition to major traffic circulation aisles, entrances and exits, to channel internal traffic flow, to prevent indiscriminate diagonal movement of vehicles and to provide cooling shade and relief from the visual impact, monotony and heat of large expanses of paved areas.

7.5.4.1.2 The minimum width of landscaped islands shall be six feet where located at the ends of parking bays and eight feet where separating opposing rows of parking spaces or adjacent to circulation aisles. All corners shall be rounded with a curb radius of not less than three feet but otherwise as required.

7.5.4.1.3 The landscaping of off-street parking areas shall include at least one shade tree of not less than four inches' caliper for each six parking spaces. Main traffic circulation aisles shall be emphasized with such shade trees. Other landscaped islands may be planted with flowering trees and/or other plantings, as appropriate. This is in addition to ground cover, shrubs and hedges which are to be provided where appropriate to serve their intended function but not interfere with safe sight distance for pedestrians and vehicles. The selection of shade trees shall take into consideration the Town Street Tree List.²⁵

7.5.4.1.4 Non-landscaped islands may also be permitted, if appropriate for pedestrian circulation, snow storage and similar purposes. Such islands shall not be less than four feet in usable width.

7.5.4.1.5 Where curbs are kept to a maximum height of six inches, 1.5 feet of the required parking space depth may be allowed to overhang islands, provided there is no interference with sidewalks or landscaping. Such bumper overhang area shall be considered part of the parking space and shall not be counted toward meeting minimum yard setbacks or buffer area requirements.

7.5.4.2 *Parking structures.* Planters or other forms of landscaping to be provided on the top level of a parking *structure*, in addition to landscape screening of the *structure* itself.

7.5.4.3 *Screening.* In addition to buffer areas required pursuant to § 246-7.1 and 7.2 above, all off-street parking and loading facilities shall also be attractively landscaped along their periphery. Such landscaped screening shall be a minimum of six feet in width, excluding permitted vehicle overhang areas. It

²⁵. Editor's Note: See Ch. 225, Trees.

shall consist of evergreen planting of such type, height, spacing and arrangement as, in the judgment of the approving agency, will serve the intended function. The approving agency may allow or require a landscaped berm, wall or *fence* of location, height, design and materials determined suitable by such agency to be substituted for or to supplement the required screen planting.

7.5.5 Waiver of improvement. Where the agency reviewing a site plan determines, in connection with its review of such site plan, that less than the required number of parking or loading spaces will satisfy the intent of this chapter because of the unique nature of the proposed use, variations in the probable time of maximum use by joint users or for any other reason, the reviewing agency may waive or "landbank" the improvement of not more than 1/3 of the total number of spaces as required by this chapter. In all cases, it shall be expressly demonstrated on the site plan that sufficient area remains for the future provision of the total number of spaces required. Such unimproved or "landbanked" spaces shall be maintained as additional landscaped area until and unless required for parking or loading use. Written guarantees, satisfactory to the Town Attorney, shall be submitted by the *applicant*, insuring the improvement of such spaces within six months of the date of written notice to the property owner by the agency stating that all or a portion of such spaces have been determined to be necessary and shall be constructed.

7.6. Refuse and recyclables storage. [Amended 7-22-2003 by L.L. No. 7-2003]

Adequate facilities for the storage and disposal of refuse and recyclables shall be provided in all districts in accordance with § 182-9 of the Code of the Town of Oyster Bay. All multifamily and nonresidence uses shall temporarily store refuse and recyclables in containers kept in a screened and/or enclosed location and designed in such fashion as to be fireproof, and to prevent access by rodents, insect breeding, fire or other hazards and the blowing away of refuse. Where feasible and appropriate, a masonry refuse enclosure with a finished architectural appearance shall be provided. The Department of Planning and Development may require that *restaurants*, *catering establishments* and similar uses remove waste material from the premises daily, with the exception of Sundays and holidays.

7.7. Outdoor storage.

Except where otherwise specifically permitted by this chapter or by any other code or regulation of the Town of Oyster Bay, no outdoor storage of any kind, nor outdoor display of goods for sale, shall be permitted in any district.

7.8. Hours of operation.

In order to promote the public health, safety and welfare, or as necessary to otherwise implement the intent of this chapter, the reviewing agency may establish reasonable limitations on the hours of operation of any nonresidence use when such use is of a nature or location that could reasonably be expected to have a significant impact on neighboring residences at unreasonable hours of the day. Any such limitations imposed

shall also include limits on hours of delivery, the operation of property maintenance equipment and any other potential sources of noise disturbance.

7.9. Pavement. [Amended 4-25-2006 by L.L. No. 5-2006]

In R1 Residence Districts, there shall not be any paving designed for driveway or parking purposes located within the required *side* or *rear yards*, excluding a driveway necessary in order to provide safe access to a parking space or garage in the rear of the *lot*. Sidewalks not exceeding three feet in width are also permitted within the required *side* or *rear yards*.

7.10. Property maintenance.

The owner shall keep the exterior part of all *building(s)* and *structure(s)*, as well as landscaping and paved areas, in good repair and free from deterioration which would make such *building*, *structure* or other feature hazardous or unsightly, as determined by the Department of Planning and Development. All property owners shall comply with the requirements of Chapter 182 (Property Maintenance) of the Code of the Town of Oyster Bay.

§ 246-8.
OFF-STREET PARKING AND LOADING

8.1. Purposes.

All *structures* and uses shall be provided with a sufficient amount of off-street parking and loading spaces for employees, residents, visitors, clients, patrons and other *persons* who are likely or expected to be at such *structures* or uses, but not less than the minimum requirements of this chapter. No certificate of occupancy shall be issued for any *structure* or use, whether new or changed, until all required off-street parking and loading spaces have been established in accordance with this chapter. The continued operation of such spaces in accordance with the requirements of this chapter shall be required as a condition of the continued validity of the certificate of occupancy.

8.2. Spaces required.

8.2.1 Schedule of Off-Street Parking and Loading Space Requirements. The Schedule of Off-Street Parking and Loading Space Requirements (located at the end of this section) presents the minimum parking and loading space requirements of this chapter. The Hicksville Downtown Subdistricts Schedule of Off-Street Parking and Loading Space Requirements is provided in § 246-5.9. Where there is more than one use, the minimum requirements shall be cumulative, except where shared use of parking or loading spaces is permitted herein. For uses that do not fall within the categories listed, or for uses where no minimum number of spaces is specified, the Department of Planning and Development shall recommend to the approving agency the minimum parking and loading space requirements based upon the specific nature of the proposed facility or use, and the approving agency shall establish the requirements in each case on that basis. Required off-street parking spaces shall be provided on the same *lot* with the *structure* or use they serve, except as provided in § 246-8.2.4 below, and may be located within a *building* or *structure*, or in a *side* or *rear yard*. [Amended 2-23-2021 by L.L. No. 1-2021]

8.2.2 Shared use. Where an *applicant* satisfactorily demonstrates that the capacity of its proposed parking and/or loading facilities will satisfy the purpose of this chapter by reason of variation in the probable time of maximum use, the approving agency may approve the shared use of such reduced-size facilities pursuant to § 246-7.5.5.

8.2.3 Attendant parking. Attendant or valet parking may be permitted by the approving agency to satisfy the off-street requirements of this chapter, provided the following conditions are met:

8.2.3.1 Such attendant parking is customary and appropriate for the use it is intended to serve.

8.2.3.2 A sufficient number of valets are to be made available at all hours of the day and night and all days of the week.

8.2.3.3 Queuing areas are to be provided as determined necessary by the reviewing agency, but in no case are they to have a capacity of less than 5% of the total

number of approved attendant parking spaces.

8.2.3.4 Deed restrictions, in form satisfactory to the Town Attorney, shall be prepared and filed by the property owner guaranteeing continued use of parking attendants or valets for as long as the uses or *structures* they serve shall be continued.

8.2.4 Off-site parking. Required off-street parking facilities shall be provided on the same *lot* with the *structure* or use which they serve, except as follows: [Amended 7-22-2003 by L.L. No. 7-2003]

8.2.4.1 The site plan approving agency may allow all or part of the required parking spaces to be located entirely within 300 feet of the perimeter of the *lot* containing the *structures* or uses to be served, provided such parking is a lawful use in the district in which it is to be located and further provided that the site plan approving agency determines that it is impractical to provide parking on the same *lot* with the *structures* or uses being served.

8.2.4.2 Where the site plan approving agency approves the location of such parking spaces on a *lot* different from the *lot* occupied by the *structures* or uses to be served, a legal instrument, satisfactory to the Town Attorney, shall be required to assure the continued use of said parking spaces in connection with the *structures* or uses served.

8.2.5 Parking for existing *structures* and uses. *Structures* and uses in existence or for which *building* permits have been issued prior to the effective date of this chapter shall not be subject to the parking or loading space requirements of this chapter, provided that any parking and loading facilities existing or approved to serve such *structures* or uses shall not in the future be reduced or redesignated to serve other *structures* or uses, except to the extent that they exceed such requirements. At the time of any enlargement or expansion of existing *structures* or uses in the future, the following requirements shall apply:

8.2.5.1 Required parking and loading facilities for that part of the *structure* or use which constitutes an enlargement or expansion shall be provided in accordance with all requirements of this chapter.

8.2.5.2 Parking and loading facilities shall be provided to serve the existing portion of such *structure* or use in accordance with all currently applicable standards and requirements of this chapter.

8.2.5.3 Reduction or elimination of any parking or loading spaces which may already exist to serve an existing *structure* or use shall not be permitted except to the extent that they exceed the requirements of this chapter for such *structure* or use.

8.2.5.4 At the time of any change of use in an existing *structure* which would result in an increased off-street parking or loading space requirement, the additional parking or loading spaces so required shall be provided in accordance with all applicable requirements of this chapter.

8.2.6 Off-street parking in residence districts. Other than as specified elsewhere in this chapter, off-street parking in residence districts shall be permitted only for private passenger vehicles, currently registered and in active use, and only on paved surfaces. Such parking may only be located within: (a) a *side* or *rear yard* so long as such spaces are located outside of the minimum required *side yard* or *rear yard*; (b) that portion of the required *front yard* immediately contiguous to the extension of either required *side yard*, (c) that portion of the required *front yard* immediately contiguous to and an extension of a garage which is integral with the residence *structure* and has its entrance door within the front wall thereof; or (d) in front of a *building* but beyond the minimum required *front yard* in the case of circular driveways with two curb cuts. [Amended 7-22-2003 by L.L. No. 7-2003; 4-25-2006 by L.L. No. 5-2006]

8.2.6.1 Driveways. A private driveway for a one- or *two-family dwelling* shall be a minimum of nine feet in width.

8.2.6.2 Common driveways. A common driveway that is intended to serve two, three or four *one-family dwellings* shall be a minimum of 12 feet in width.

8.2.6.3 Pass-by areas. Any driveway that is in excess of 300 feet in length shall have a pass-by area where the driveway is at least 16 feet in width for a distance of at least 25 feet at approximately its halfway point.

8.2.6.4 Tandem parking for no more than two parking spaces is permitted without approval from the Zoning Board of Appeals for all single-family, two-family, parent/child residences and *home offices*. Tandem parking is not permitted to be counted toward meeting the minimum parking requirements in the RNG District. [Added 11-9-2004 by L.L. No. 16-2004]

8.2.7 In all nonresidence districts other than the OB District, required off-street parking spaces may be located in a required *front yard*, but not less than six feet from the *front lot line* nor less than 10 feet from the curb or sidewalk line, whichever requirement is more restrictive. Off-street parking in the OB District is subject to the standards of § 246-5.4.5.2 of this chapter. Required off-street parking spaces may be located in a required *side* or *rear yard*, but not less than six feet from the *side* or *rear lot line*, except where a coordinated parking plan with adjacent nonresidential use is shown on a Town-approved site plan. Below grade parking and on grade parking located directly below a building are not permitted in any nonresidence district unless specifically authorized by another provision in this Code. [Amended 6-14-2022 by L.L. No. 6-2022]

8.2.8 Loading facilities. Off-street loading spaces may be located within a *building*, within a required *side* or *rear yard* or within a required off-street parking facility, provided such spaces do not interfere with traffic or pedestrian circulation, emergency access or access to any parking space.

8.3. Setbacks. [Amended 9-21-2004 by L.L. No. 11-2004]

In RMF, RNG, RPH and RSC and nonresidence districts, and on any property containing

a principal nonresidence use in an RI Residence District, off-street parking and loading spaces shall be set back from *front, side* and *rear lot lines* to the extent necessary to provide landscaped buffer areas in accordance with the requirements of the site design standards of this chapter.²⁶ Except where located within or adjacent to an RI Residence District, enclosed off-street parking and loading spaces which are below existing grade and covered with grade level landscaping shall not be required to comply with the *building* setback requirements of this chapter, provided that their location and design is approved by the Town Board.

8.4. Improvement. [Amended 7-22-2003 by L.L. No. 7-2003]

All off-street parking and loading facilities shall be improved and maintained in accordance with plans and specifications approved by the reviewing agency or official.

8.4.1 Pavement. All off-street parking and loading facilities, including turnaround areas, in RMF, RNG, RPH, RSC and nonresidence districts, and on any property containing a principal nonresidence use in an R1 Residence District, shall be surfaced with asphaltic concrete or stone concrete, or as otherwise permitted in the "Individual Building Site Plan Rules and Regulations" of the Department of Planning and Development. **[Amended 9-21-2004 by L.L. No. 11-2004]**

8.4.2 *Grading* and drainage. All off-street parking and loading facilities shall be provided with a drainage system designed to direct all runoff to an appropriately designed and approved *stormwater recharge* facility. The reviewing agency may also require the installation of oil separators. No area shall be pitched so as to drain across a sidewalk, into a *street* or onto any neighboring premises. **[Amended 7-22-2003 by L.L. No. 7-2003]**

8.4.3 Space delineation. In RMF, RNG, RPH, RSC and nonresidence districts, and on any property containing a principal nonresidence use in an R1 Residence District, all required parking and loading spaces shall be individually identified by means of pavement marking with double striped lines. (See Typical Parting Space Details 1 at the end of this section which graphically illustrates this requirement.) **[Amended 11-9-2004 by L.L. No. 16-2004]**

8.4.4 Signage. Appropriate *signs* and pavement markings shall be provided in all off-street parking and loading facilities to direct internal traffic flow in accordance with approved plans. All *signs* and pavement markings shall conform to the "Manual of Uniform Traffic Control Devices" (latest edition) from the New York State Department of Transportation.

8.4.5 Lighting. Illumination of all off-street parking and loading facilities, including those located in residence districts, shall be provided pursuant to § 246-7.3.

8.5. Use and operation.

The operation of off-street parking and loading facilities shall be conducted in such

26. Editor's Note: See § 246-7, Site Design Standards.

manner as to limit their use to licensed motor vehicles on a transient basis. The servicing, repair, fueling or storage of motor vehicles or trailers shall not be permitted in such areas.

8.6. Maintenance.

Required off-street parking and loading facilities shall be maintained so long as the use or *structure* exists which the facilities are designed to serve. Required spaces developed for specific *structures* and uses shall be reserved at all times to *persons* who are employed at or make use of such *structures* and uses, except where such parking spaces are dedicated to and accepted by the Town of Oyster Bay for public parking purposes, or where arrangements for shared use are made as permitted herein.

§ 246-9.

SPECIAL USE PERMIT REVIEW

[Amended 7-22-2003 by L.L. No. 7-2003; 9-13-2005 by L.L. No. 6-2005²⁷]

9.1. General provisions.

Special permit uses are listed in the Schedule of Use Regulations.²⁸ The special permit uses for which conformance to additional standards is required by this chapter are considered to be permitted uses in their respective districts, subject to compliance with the additional standards as set forth herein and, where the Town Board is the approval authority, any other requirements as deemed appropriate by said Board. All such uses are declared to possess such unique, special and/or individual characteristics that each specific use must be considered on its own merits as an individual case.

9.2. Approving agencies. [Amended 10-16-2012 by L.L. No. 3-2012; 6-14-2022 by L.L. No. 6-2022]

The Town Board shall be the approving agency for all special permit uses, except where the Zoning Board of Appeals is the approving agency as noted in the Schedule of Use Regulations.²⁹

9.3. Procedure.

9.3.1 Application. Formal application for a special use permit shall be made to the Office of the Town Attorney — Legislative Affairs, if Town Board approval is required, and to the Zoning Board of Appeals, if their approval is required, who shall be responsible for forwarding such application to the appropriate Town department(s). Each department shall review the application and forward it with a recommendation to the approving agency. The formal application shall be submitted in the number of copies as specified on the application form and shall include at least the following items:

9.3.1.1 A completed special use permit application form for Zoning Board of Appeals applications, which form is available at the Zoning Board of Appeals office. For Town Board applications, the *applicant* must obtain a copy of "Requirements on Applications for Special Use Permits" available at the Office of the Town Attorney — Legislative Affairs.

9.3.1.2 A written statement describing the nature of the proposed use, how it conforms to the applicable special use permit standards as set forth in § 246-9.4 of this chapter, and how it will serve to implement the purposes of this chapter, as set forth in § 246-1.

27. Editor's Note: This local law provided that where its requirements impose a different restriction or requirement than imposed by other sections of the Town Code, the Town Law of New York State, or other applicable rules or regulations, the requirements of this local law would prevail.

28. Editor's Note: The Schedule of Use Regulations is included at the end of § 246-5.

29. Editor's Note: The Schedule of Use Regulations is included at the end of § 246-5.

9.3.1.3 A site plan and any other information as required by the site plan review standards, as set forth in § 246-6 of this chapter.³⁰

9.3.1.4 All other supporting documents as determined necessary or appropriate by the approving agency.

9.3.2 Concurrent site plan review. Site plan approval under this chapter shall be required for any site where a special use permit is applied for. With the exception of special use permits issued by the Zoning Board of Appeals, the special use permit and site plan approval procedures shall run concurrently and their approval shall be the responsibility of the Town Board. If site plan approval by the Planning Advisory Board or the Department of Planning and Development, as set forth in § 246-6.2 of this chapter, is required, it shall be completed prior to the issuance of any special permit by the Zoning Board of Appeals. If Town Board approval is required, the Department of Planning and Development and/or the Planning Advisory Board, as appropriate, shall prepare a single report to the Town Board containing their recommendations concerning the special use permit and site plan applications. The Town Board shall consider such recommendations and shall follow the application review procedure identified in § 246-6 of this chapter.

9.3.3 Public hearing. Where Town Board approval is required, a public hearing shall be held concurrently for both the special use permit and the site plan. Where Zoning Board of Appeals approval is required, a public hearing shall not be held until the site plan review procedure, if applicable, has been completed and the Department of Planning and Development and/or the Planning Advisory Board, as appropriate, has prepared a report to the Zoning Board of Appeals indicating their approval or conditional approval of the site plan and containing any recommendations which they may have concerning the requested special use permit. If, as a result of the Zoning Board of Appeals' review and decision, revisions to the approved site plan are required, said plan shall be sent back to the Planning Advisory Board or the Department of Planning and Development, as appropriate, for their further review and reapproval of the site plan. Notice of such hearing shall be the same as required by law for a zoning amendment. In addition, the posting of a *notification sign(s)* on the property shall be required in accordance with the standards as set forth in § 246.6.6.2 of this chapter, except that the required posting period shall be 14 days prior to the public hearing.

9.3.4 Decision. Subsequent to the close of the public hearing, the approving agency shall act either to approve, disapprove or approve the special use permit application with required conditions, modifications and safeguards, including appropriate limits on hours of operation. Such decision shall be based upon the standards as set forth in § 246-9.4 of this chapter except that, in the case of Town Board approval, the Town Board, acting as the Town's legislative body, may establish such additional standards for each individual application as it may determine appropriate, necessary or desirable to achieve the intent of this chapter, taking into consideration the circumstances of the specific case. If an interpretation of the meaning of any

30. Editor's Note: See § 246-6, Site Plan Review.

specific standard is required, the approving agency shall make such determination, guided by the purposes of this chapter as set forth in § 246-1.

9.3.4.1 The approving agency, as a condition of granting its approval of any special use permit application, may require the posting of a performance bond, in an amount as determined necessary by said agency, to restore the property to a safe, sanitary, stable and attractive condition in the event that construction is halted or delayed for any reason.

9.3.5 Expiration. A special use permit shall be deemed to authorize only the particular use or uses specified in the resolution of special use permit and site plan approval and will expire if the approved use and/or site development is not commenced within one year of the date of approval and is not diligently prosecuted to completion. The approving agency may, upon request of the *applicant*, grant additional time periods for the initiation of such action of up to six months each, subject to appropriate conditions, but in no event shall any extension extend the period beyond four years from the date the special use permit was originally granted. The approving agency may also establish a time limit for the completion of all required work necessary prior to the establishment of the special permit use. The special use permit shall expire if said use or uses shall cease for more than one year for any reason or if all required improvements are not maintained and all conditions and standards complied with throughout the duration of the use. For a use intended to be temporary, the approving agency may issue a special use permit for a specific period of time. [Amended 6-26-2018 by L.L. No. 6-2018]

9.3.6 Amendments. Any change in the type or intensity of an approved use, or reduction in *lot size*, shall require an amendment to the special use permit in accordance with all of the application and review requirements of this chapter.

9.4. Standards.

All special permit uses shall comply with the following standards, in addition to any other applicable requirements of this chapter and to all other applicable federal, state, county and local laws, ordinances, rules and regulations. The approving agency, if it acts to approve a special use permit application, shall attach such additional conditions, restrictions, safeguards and required modifications to the special use permit as are, in its sole discretion, necessary to ensure both initial and continued conformance to all applicable standards, requirements and purposes of this chapter. A special use permit shall also conform to the regulations of the zoning district in which the use is located.

9.4.1 The proposed location and size of the special permit use, the nature and intensity of the operations involved in it or conducted in connection with it, the height, bulk, density, architecture and orientation of proposed *structures*, the size of the site in relation to it, the character of the district in which it is located, the location of the site with respect to places of worship, schools, recreation areas or other places of public assembly and the location of the site with respect to *streets* giving access to it shall be such that it will be in harmony, both visually and otherwise, with the appropriate and orderly development of other properties in the area in which it is

located, consistent with any plan or plans which may have been duly adopted by the Town Board for the hamlet or other geographic area in which the use will be located, and consistent with the purposes and intent of this chapter.

9.4.2 The physical characteristics of the site, including its soils, vegetation, topography, *wetlands* and other environmental features and physical characteristics, shall be such that the land will be suitable and conducive to the orderly, safe and appropriate development of the proposed special permit use, including its proposed design and location on the site, its proper buffering from surrounding properties and land uses, and the protection provided for environmental features, including *wetlands*, *steep slopes*, and important vegetation, especially mature woodlands and specimen trees.

9.4.3 The proposed special permit use, including its design and location on the site, will not create a hazard to life, limb or property because of fire, flood, erosion or panic, or by its inaccessibility for the safe and convenient entry and operation of fire and other emergency apparatus, or by the overcrowding of land or undue concentration or assemblage of *persons* within such or upon such property.

9.4.4 The proposed special permit use, including its design and location on the site, will be compatible with the protection of groundwater resources, especially if such site is located within the Oyster Bay Special Groundwater Protection Area as designated by the State of New York and Nassau County.

9.4.5 The location, nature and height of *buildings*, walls and *fences* and the nature and extent of existing or proposed plantings, including buffer screening, on the site shall be such that the special permit use will not hinder or discourage the appropriate development and use of adjacent land and *buildings* nor will it impair the value thereof.

9.4.6 Operations in connection with any special permit use shall not be more objectionable to nearby properties by reason of noise, traffic, fumes, vibration or other characteristics than would be the operations and impacts of permitted uses not requiring a special use permit in that zoning district.

9.4.7 Facilities for the treatment, removal or discharge of sewage, refuse or other effluent, whether liquid, solid, gaseous or otherwise, that will be generated by the proposed special permit use will be adequate for such purpose.

9.4.8 All performance standards, as set forth in § 246-10 of this chapter, shall be met by the proposed special permit use.

9.4.9 Traffic flow to and from the site and the operation of *street* intersections at peak weekday, weekend and appropriate seasonal traffic hours in the vicinity of the site, taking into consideration any proposed or required *street* improvements, shall be such that the special permit use shall not create nor increase any vehicular or pedestrian safety hazard or decrease the level of service at any such *street* intersection.

9.4.10 Roadway improvements which are necessary and/or proposed to mitigate project related traffic impacts shall be such that they do not negatively impact the character

of the community in which they are located.

9.4.11 Traffic access shall be designed so that local roadways through residential neighborhoods are not impacted by the diversion of traffic from more congested main roadways as a result of the proposed access design and the additional traffic volume generated by the proposed special permit use, including trips generated during off-peak nighttime and/or weekend hours.

9.4.12 Proposed off-street parking and loading facilities shall be of adequate size for the particular special permit use, properly and safely located and designed, and suitably/screened from adjoining residential and other uses, and the entrance and exit drive(s) shall be designed to achieve maximum convenience and safety.

9.4.13 The operation of the proposed special permit use shall not overburden or otherwise interfere with the orderly enjoyment of neighboring parks, recreational facilities or other public facilities.

9.4.14 The safety, health, welfare, comfort, convenience and order of the Town will not be adversely affected by the proposed special permit use and its proposed location on the site.

9.4.15 As an additional factor in arriving at its determination, the approving authority may also consider, if and as applicable, whether the proposed special permit use will provide economic benefits to the Town and its residents and, at the same time, will avoid adverse economic impacts to other existing uses.

9.5. Violations.

In addition to all other remedies for violations of this chapter, as specifically set forth in § 246-14 hereof, any violation of the conditions as set forth in this section, and/or those imposed by the Town Board or Zoning Board of Appeals in connection with the grant of a special use permit, shall be cause for revocation of the special use permit by the approving agency and the revocation of the certificate of occupancy by the Department of Planning and Development if such violation is not cured within 30 days of the notice of violation being issued. If the special use permit is revoked, the use, and its *accessory uses*, shall not be reestablished until all violation(s) are corrected. Reestablishment of the use will require an application to, and approval by, the Town Board or Zoning Board of Appeals, as appropriate, and, at the discretion of the appropriate Board, a public hearing with notice as required for the initial special use permit hearing. Prior to permitting the reestablishment of the use, the property owner or *applicant*, as appropriate, shall reimburse the Town for the cost of any consultant services which may have been required in connection with the determination of violations and the review of the application.

§ 246-10.
PERFORMANCE STANDARDS

10.1. Purposes.

Consistent with the general purposes of this chapter, performance standards are established herein to set specific controls on potentially objectionable external aspects of business and industrial uses so as to:

- 10.1.1 Reduce to a reasonable minimum the dissemination of *smoke*, *gas*, *dust* or other atmospheric pollutant outside the *building* in which the use is conducted.
- 10.1.2 Eliminate discernible odors outside any business or industrial use *building*.
- 10.1.3 Control noise above ambient levels beyond the site boundaries.
- 10.1.4 Prevent the discharge of untreated or insufficiently treated wastes.
- 10.1.5 Prevent the dissemination of vibration, heat or electromagnetic interference beyond the site boundaries.
- 10.1.6 Prevent physical hazard by reason of fire, explosion, radiation or any other similar cause.
- 10.1.7 Regulate and control the generation and flow of vehicular traffic so as to prevent hazardous conditions, traffic congestion and excessive noise.

10.2. Conformance required.

No business or industrial use shall hereafter be maintained, established, altered, moved or expanded unless it complies with the performance standards set forth in this section. Central utility systems serving three or more *dwelling units*, including but not limited to systems providing heat, water, air conditioning and electric power, shall be deemed to be nonresidential uses for the purposes of this section. Continued conformance with such standards shall be a requirement for the continuance of any certificate of occupancy. The Town Board may require the *applicant*, at the *applicant's* expense, to provide such evidence as it deems necessary to determine whether the proposed use will conform to said standards.

10.3. Standards.

10.3.1 Noise.

- 10.3.1.1 Method of measurement. For the purpose of measuring the intensity and frequencies of sound, *sound level meters* and *octave band filters* shall be employed. *Octave band* analyzers calibrated with pre-1960 *octave bands* shall be used. Sounds of short duration which cannot be measured accurately with the *sound level meter* shall be measured with an impact noise filter in order to determine the peak value of the impact.

- 10.3.1.2 Maximum permitted sound pressure level. The *decibels* resulting from any

activity, whether open or enclosed, shall not exceed, at any point on or beyond any *lot line*, the maximum *decibel* level for the designated *octave band* as set forth in the following table, except that where the *lot* lies within 200 feet of a residence district, whether within or without the town, the maximum permitted *decibel* level at any point on or beyond the district boundary shall be reduced by six *decibels* from the maximum permitted level set forth in the table below and, further, except that such reduction shall also apply to any sound emitted between the hours of 9:00 p.m. and 7:00 a.m., and all day on Sundays.

Octave Band (Cycles per Second)	Maximum Permitted Sound Pressure Level (Decibels)
0 — 74	66
75 — 149	58
150 — 299	55
300 — 599	50
600 — 1,199	45
1,200 — 2,399	42
2,400 — 4,799	38
4,800 — 20,000	35

10.3.1.3 Exemptions. The following uses and activities shall be exempt from the noise level regulations:

10.3.1.3.1 Noises not directly under the control of the property user.

10.3.1.3.2 Reasonable and customary noises emanating from construction and construction maintenance activities between 8:00 a.m. and sunset.

10.3.1.3.3 The noises of safety signals, warning devices, emergency pressure relief valves or other emergency warning signals.

10.3.1.3.4 Transient noises of moving sources such as automobiles, trucks, airplanes and railroads.

10.3.2 Vibration.

10.3.2.1 Method of measurement. For the purpose of measuring vibration, a *three-component measuring system* approved by the Department of Planning and Development shall be employed.

10.3.2.2 Maximum permitted *steady-state* and *impact vibration* displacement. No activity shall cause or create a *steady-state* or *impact vibration* on any *lot line* with a vibration displacement by frequency bands in excess of that indicated in the following table:

Frequency (cycles per second)	Vibration Displacement (inches)	
	Steady-State	Impact
Under 10	0.0005	0.0010
10 — 19	0.0004	0.0008
20 — 29	0.0003	0.0006
30 — 39	0.0002	0.0004
40 and Over	0.0001	0.0002

10.3.3 *Smoke, dust and other atmospheric pollutants.*

10.3.3.1 General control. The emission of *smoke* and other *particulate matter*, shall not be permitted, regardless of quantity, if it will be in any way detrimental to the public health, safety, welfare or comfort, or a source of potential damage to property.

10.3.3.2 Method of measurement of *smoke*. For the purpose of *grading* the density of *smoke*, the *Ringelmann Smoke Chart* shall be used to determine the total *smoke units* emitted. A reading shall be taken every minute for an hour, or if less than an hour until the total *smoke units* emitted exceed the number allowed by these regulations. Each reading shall be multiplied by the number of minutes during which it was observed and the product added.

10.3.3.3 Maximum permitted emission of *smoke*. There shall be no measurable emission of *smoke*, gas or other atmospheric pollutant. The emission of one *smoke unit* per hour and *smoke* with discernible density of Number 1 on the *Ringelmann Smoke Chart* shall be prohibited.

10.3.3.4 Maximum permitted emission of *dust*.

10.3.3.4.1 The emission of *dust* related to combustion for indirect heating from any source shall not exceed 0.30 pounds of *dust* per thousand pounds of flue gas adjusted to 50% excess air for combustion.

10.3.3.4.2 There shall be no measurable emission of *dust* or other *particulate matter* not related to combustion for indirect heating.

10.3.3.4.3 All properties shall be suitably improved and maintained with appropriate landscaping and paving, or other type of improvement, so that there will be no measurable wind-blown *dust* or other similar types of air pollution created.

10.3.4 Odorous matter. No land use shall be permitted which emits any discernible odor at ground level outside the *building* in which the use is conducted.

10.3.5 *Toxic or noxious matter*. No use shall be permitted which will cause any dissemination whatsoever of *toxic or noxious matter* outside the *building* in which

the use is conducted.

10.3.6 Radiation. The handling, storage or disposal of radioactive materials or waste by-products, whether or not licensed by the Atomic Energy Commission, shall be conducted only in accordance with the standards established in Title 10, chapter 1, Part 20, Code of Federal Regulations, Standards for Protection Against Radiation, as amended, and in accordance with any other applicable laws or regulations.

10.3.7 Electromagnetic interference. No operation shall be permitted which produces any perceptible electromagnetic interference with normal radio or television reception in any area within or without the town.

10.3.8 Fire and explosive hazard. No storage or manufacture of explosives, or solid materials or solid products which burn actively or which have a low ignition temperature, a high rate of burning, or create great heat, under ordinary temperature conditions, shall be permitted.

10.3.9 Heat. There shall be no emission of heat which would cause a temperature increase in excess of 1° F. along any adjoining *lot line*, whether such change be in the air, in the ground or in any *watercourse* or water body.

10.3.10 Liquid wastes. The discharge of any or all wastes shall be permitted only if in complete accordance with all standards, laws and regulations of the Nassau County Board of Health, New York State Department of Environmental Conservation and any other regulatory agency having jurisdiction thereof.

10.3.11 Vehicular traffic. No use shall be permitted where it is determined by the Town Board that the type and number of vehicle trips to be generated would be expected to produce unusual traffic hazards or congestion, or cause or induce emissions which may be expected to interfere with the maintenance of air quality standards established by the U.S. Environmental Protection Administration, the New York State Department of Environmental Conservation or any other regulatory agency having jurisdiction thereof, unless such impact is adequately mitigated.

§ 246-11.
SIGN REGULATIONS

11.1. Purpose.

The purpose of these regulations is to encourage the effective use of *signs* as a means of communication; to improve pedestrian and traffic safety; to maintain and enhance the aesthetic environment; to minimize the possible adverse effects of unattractive, excessive or improperly located signage on nearby public and private property; to create a more attractive economic business environment; and to enable the fair and consistent enforcement of *sign* restrictions.

11.2. Applicability and effect.

A *sign* may be erected, placed, established, painted, created or maintained in the town only in conformance with the standards, procedures, exemptions and other requirements of this section. All *signs* not expressly permitted by this section are prohibited. The effect of this section, as more specifically set forth herein, is:

- 11.2.1 To establish a permit system to allow a variety of types of *signs*, subject to the standards and the permit procedures of this chapter;
- 11.2.2 To allow certain *information signs* that are small, unobtrusive and incidental to the *principal use* of the respective *lots* on which they are located (subject to the substantive requirement for permits); and
- 11.2.3 To provide for the enforcement of the provisions of this section.

11.3. Schedules of permitted signage.

The following three Schedules are hereby adopted and declared to be a part of this chapter:

- 11.3.1 Permitted *sign* type. Regulations regarding the permitted *sign* types are as set forth in the annexed "Schedule of Permitted Sign Types."³¹ *Signs* that are not specifically permitted in the schedule or elsewhere in this chapter shall be deemed to be prohibited.
- 11.3.2 Permitted *sign* number, height and setback. Regulations regarding the number, height and setback of *signs* permitted are as set forth in the annexed "Schedule of Permitted Sign Number, Height and Setback."³²
- 11.3.3 Permitted *sign* area. Regulations regarding the permitted area of *signs* are as set forth in the annexed "Schedule of Permitted Sign Area."³³

11.4. Measurements.

31. Editor's Note: The Schedule of Permitted Sign Types is located at the end of this section.

32. Editor's Note: The Schedule of Permitted Sign Number, Height and Setback is located at the end of this section.

33. Editor's Note: The Schedule of Permitted Sign Area is located at the end of this section.

11.4.1 Measurement of area of individual *signs*. The area of a *sign* face (which is also the *sign* area of a *wall sign* or other *sign* with only one face) shall be computed by measuring of the smallest square, circle, rectangle or triangle that will encompass the extreme limits of the writing, representation, emblem or other display, together with any material or color forming an integral part of the background of the display or used to differentiate the *sign* from the backdrop or *structure* against which it is placed, but not including any supporting framework, bracing or decorative *fence* or wall when such *fence* or wall otherwise complies with this chapter and is not an integral part of the display itself.

11.4.2 Measurement of area of multi-faced *signs*. The *sign* area for a *sign* with more than one face shall be computed by adding the area of all *sign* faces visible from any one point. When two identical *sign* faces are placed back to back so that both faces cannot be viewed from any point at the same time and when such *sign* faces are part of the same *sign structure* and are not more than 24 inches apart, the *sign* area shall be computed by the measurement of one of the faces.

11.4.3 Computation of height. The height of a *freestanding sign* shall be computed as the distance from the base of the *sign* at average finished grade to the top of the highest attached component of the *freestanding sign*. "Average finished grade" shall be the newly established grade after construction, exclusive of any filling, berthing, mounding or excavating solely for the purpose of locating the *sign*.

11.5. Permanent *signs*.

11.5.1 Requirements and restrictions. *Signs* shall only be permitted in conformity with § 246-11.3.1.

11.5.1.1 The letter "P" indicates districts in which a certain *sign* type is permitted without prior permit approval.

11.5.1.2 The letters "SP" indicate districts in which a certain *sign* type is permitted only with prior permit approval.

11.5.1.3 The letters "NP" indicate districts in which a certain *sign* type is not permitted.

11.5.2 If a *sign* requiring a permit in accordance with § 246-11.3.1 is to be placed, constructed, erected or modified on a *lot*, the owner of the *lot* shall secure a *sign* permit prior to the construction, placement, erection or modification of such a *sign* in accordance with the requirements of § 246-11.11.

11.5.3 Although permitted under § 246-11.5.1, a *sign* designated by a "P" or "SP" in § 246-11.3.1 shall be allowed only if:

11.5.3.1 The *sign* area, size, location, height, setback and number of *signs* on the *lot* conform with the requirements of this section.

11.5.3.2 The *sign* does not cause a danger to either pedestrian or vehicular traffic by obscuring views or emitting light or glare which could impair vision or be

mistaken for a traffic signal.

11.5.4 No *sign* shall be erected in the public right-of-way except as follows:

11.5.4.1 Public *signs*, including *notification signs*, erected by or on behalf of a governmental body to post legal notices, to identify public property, to convey public information and to direct or regulate pedestrian or vehicular traffic.

11.5.4.2 Bus stop *signs* erected by a public transit company.

11.5.4.3 *Information signs* erected by a public utility regarding its poles, lines, pipes or facilities.

11.5.5 The permitted number, height and *sign* area for *information signs* on a *lot* shall be no more than is necessary to clearly communicate the directive indicated on said *sign* or *signs*.

11.5.6 Any suspended, projecting, *canopy* or *marquee sign* shall have a minimum vertical clearance of 10 feet above finished grade.

11.5.7 No *sign* permit shall be required for any *sign* in lawful existence on the date on which the provisions of this section become effective, unless a permit application for additional site signage is made.

11.6. *Temporary signs.*

11.6.1 The following *temporary signs* are permitted without a *sign* permit:

11.6.1.1 *Signs* containing the message that the real estate on which the *sign* is located (including *structures*) is for sale, lease or rent, together with information identifying the owner or agent, telephone number and, if desired, offering price. The minimum setback of such *sign* shall be 20 feet or 1/2 the distance from the *front lot line* to the front of the *building*, whichever is less. Such *signs* placed in a residential zoning district shall not exceed four square feet in area nor 30 inches in any dimension and shall be removed immediately after sale, lease or rental. Such *signs* placed in all other zoning districts shall not exceed 16 square feet in area nor five feet in any dimension.

11.6.1.2 Displays with no *commercial message*, including lighting, erected in connection with the observance of holidays.

11.6.1.3 *Temporary signs* containing expressive, noncommercial content, including but not limited to, political campaign *signs*, may be displayed for a period not to exceed 135 consecutive days. In the case of political campaign *signs* only, such *signs* may be displayed no sooner than 120 days prior to the election, and must be removed no later than 15 days following the election. No such temporary expressive *sign*, including any campaign *sign*, shall exceed 64 square feet in surface area or be located within a public road or right-of-way.
[Amended 12-13-2016 by L.L. No. 6-2016]

11.6.1.4 *Notification signs* as required by this chapter.

11.6.1.5 *Temporary signs* not covered in the foregoing categories, provided such *signs* conform with the following restrictions:

11.6.1.5.1 Not more than one such *sign* may be located on any *lot* or for any business.

11.6.1.5.2 No such *sign* shall exceed 10 square feet in surface area.

11.6.1.5.3 No such *sign* shall be displayed for longer than seven consecutive days, nor more than 10 days in any thirty-day period.

11.6.2 The following *temporary signs* are permitted, provided the *applicant* secures a *sign* permit in accordance with the requirements of this chapter:

11.6.2.1 *Signs* identifying *building* construction and/or residential subdivision sites. Such *signs* may identify the project, the owner or *developer*, architect, engineer, contractor and subcontractors and the funding sources and may contain related information, including but not limited to sale or leasing information. One such *sign* is permitted for each road *frontage*, provided that such *sign* does not exceed 24 square feet in area nor more than five feet in any dimension.

The minimum setback of such *sign* shall be 20 feet or 1/2 the minimum *front setback* distance, whichever is less. In no case shall such *signs* be erected prior to the issuance of a *building* permit, and such *signs* shall be removed immediately upon issuance of the certificate of occupancy for the *building* or *buildings* to be erected.

11.6.2.2 *Signs* indicating a special event sponsored by or for a not-for-profit or charitable organization that is to take place in a different location than where the *sign* is located. Such *signs* may be erected not sooner than two weeks before the event and must be removed not later than three days after the event's conclusion. In no case shall such signage be maintained for more than 30 days in any year or exceed 40 square feet in area. The location and setback of such *signs* shall be as determined appropriate by the Department of Planning and Development and any duly authorized assistants.

11.6.2.3 Other *signs* not listed herein shall be regarded and treated in all respects as permanent *signs*.

11.7. Exempt signs.

The following *signs* shall be exempt from regulation under this section:

11.7.1 Any public notice or warning required by a valid federal, state or local law or regulation, including *notification sign* posted in accordance with the requirements of this section.

11.7.2 Any *sign* inside a *building*, which is not attached to or within four feet of a window or door and is not legible more than three feet beyond the face of the

window.

11.7.3 Traffic control *signs* on private property, such as "STOP," "YIELD," "ONE-WAY" and similar *signs*, the face of which meets New York State Department of Transportation standards and which contains no *commercial message* of any sort.

11.7.4 Address numbers on property used only for residential purposes.

11.7.5 Any *sign* identifying a permitted *home office* not more than two feet in area.

11.8. Design, construction and maintenance.

All *signs* shall be designed, constructed and maintained in accordance with the following standards:

11.8.1 Except for *temporary* and *banner signs* conforming in all respects with the requirements of this section, all *signs* shall be constructed of permanent materials and shall be permanently attached to the ground, a *building* or a *structure*.

11.8.2 All *signs* shall be attractively designed and properly maintained in accordance with the property maintenance provisions of this chapter, and shall be kept in sound structural condition, in compliance with all applicable codes and laws.

11.9. Sign illumination.

The source of illumination of *signs* shall not be visible and shall comply with the site design standards of this chapter.

11.10. Permits to construct or modify *signs*.

11.10.1 Any *sign* identified as "SP' in § 246-11.3.1 shall be erected, installed, modified or created only in accordance with a duly issued and valid *sign* permit from the Department of Planning and Development. Such permits shall be issued only in accordance with the requirements and procedures as set forth by the Department of Planning and Development and shall expire one year from date of issue if said *sign* is not complete.

11.10.2 Permit for new *sign* or *sign* modification. An application for construction, creation or installation of a new *sign* or for modification of an existing *sign* shall be accompanied by detailed drawings showing the dimensions, design, *structure*, location and other related information with respect to each such *sign*.

11.10.3 Permit fee. No permit shall be issued until payment of a fee calculated at \$0.75 per square foot, when measuring the greatest height by the greatest width for each face of the *sign*, with a minimum fee of \$25.

11.11. General permit procedures.

All applications for *sign* permits under this section shall follow the procedures established by the Department of Planning and Development.

§ 246-12.
ZONING BOARD OF APPEALS

12.1. Organization.

The Zoning Board of Appeals, as heretofore established by the Town Board pursuant to § 267 of the Town Law of the State of New York, is hereby maintained.

12.1.1 Membership. The Zoning Board of Appeals shall consist of seven members who may serve with compensation. The Town Board, by resolution, shall appoint the members thereof and shall designate the Chairman. No *person* who is a member of the Town Board shall be eligible to serve simultaneously on the Board of Appeals.

12.1.2 Terms of *office*. The members of the Zoning Board of Appeals holding *office* on the effective date of this chapter shall continue to hold such *office* until the expiration of their respective terms and the appointment of their successors. Of the first of the successor members, upon the expiration of each of the aforesaid terms, two shall hold *office* for the term of one year, three for the term of two years and two for the term of three years from and after their respective appointments. Their successors shall be appointed for a term five years from and after the expiration of the terms of their predecessors in *office*. If a vacancy shall occur, otherwise than by expiration of term, it shall be filled with a successor appointed by the Town Board for the unexpired term.

12.1.3 Removal of members. The Town Board shall have the power to remove any member of the Zoning Board of Appeals for cause and after a public hearing.

12.2. Meetings and records.

The presence of four members of the Zoning Board of Appeals shall constitute a quorum. The concurring vote of four members shall be necessary to effect any variation or variance in this chapter, to reverse any order, requirement, decision or determination appealed from or to decide in favor of the *applicant* in any matter before the Board. The Board shall keep minutes of its proceedings, showing the vote of each member on every question and, if any member is absent or fails to vote, indication of such fact. The Board shall also keep records of its review and other official actions. Every rule, determination, regulation, amendment or appeal thereof, and every order, requirement and decision of the Zoning Board of Appeals, shall immediately be filed in the *office* of said Board.

12.3. Powers and duties.

12.3.1 General. The Zoning Board of Appeals shall have all of the powers and duties prescribed by Town Law and by this chapter, which powers and duties are summarized and more particularly specified in the following, provided that none of the following sections shall be deemed to limit any of the powers of the Board of Appeals that are conferred by the Town Law. In passing upon any matter before it, the Board shall take into specific consideration the goals of this chapter, which constitutes the comprehensive plan of the Town of Oyster Bay.

12.3.2 Rules and regulations. The Zoning Board of Appeals may adopt such rules and regulations as are necessary or proper to the performance of its powers and duties hereunder, and may amend or repeal the same.

12.3.3 Special use permits. The Zoning Board of Appeals is authorized to hear and decide applications for certain special use permits in accordance with the procedures and standards set forth in § 246-9 of this chapter.

12.3.4 Nonconforming uses. As more fully set out in § 246-4.2 of this chapter, the Board of Appeals is authorized to extend the permitted period for cessation of a nonconforming use; to review and approve, approve with modifications or disapprove a plan for the reconstruction (but not expansion) of a nonconforming *building*; to permit the change of a nonconforming use to another nonconforming use; and to review and approve, approve with modifications or disapprove a plan for the improvement of a nonconforming use.

12.3.5 Variances. On appeal from an order, requirement, decision or determination made by an administrative official charged with the enforcement of this chapter, or on referral of an *applicant* to the Zoning Board of Appeals by an approving agency acting pursuant to requirements of this chapter, the Zoning Board of Appeals is authorized to vary or modify the strict letter of this chapter, where its literal interpretation would cause unnecessary hardships, in such manner as to observe the spirit of the chapter, secure public safety and welfare and do substantial justice.

12.3.5.1 Use variances. Where an *applicant* demonstrates that applicable regulations and restrictions have caused unnecessary hardship and where the *applicant* desires to utilize land for a use not allowed in the district in which the land is located, the Zoning Board of Appeals may grant a variance in the application of the provisions of this chapter, in the specific case, provided that as a condition to the grant of any such variance, the Board shall make all of the following findings for each and every permitted use under this chapter for the particular district in which the property is located:

12.3.5.1.1 That the *applicant* cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence.

12.3.5.1.2 That the alleged hardship relating to the property in question is unique and does not apply to a substantial portion of the district or neighborhood in which the property in question is located.

12.3.5.1.3 That the use to be authorized by the variance will not alter the essential character of the neighborhood in which the property in question is located.

12.3.5.1.4 That the alleged hardship has not been created by the *applicant*, owner or by a predecessor in title.

12.3.5.1.5 That the use to be authorized by the variance, and any conditions imposed thereto, are consistent with the spirit and intent of this chapter.

12.3.5.1.6 That within the intent and purposes of this chapter the variance, if granted, is the minimum variance necessary to afford relief. To this end, the Board may permit a lesser variance than that for which an application was submitted.

12.3.5.2 Area variances. Where an *applicant* requests a variance of the *lot area* or other dimensional requirements of this chapter, the Zoning Board of Appeals may grant a variance in the application of the provisions of this chapter in the specific case, provided that as a condition to the grant of any such variance, the Board shall consider 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 this determination, the Board of Appeals shall consider the following:

12.3.5.2.1 How substantial the variance is in relation to the requirement.

12.3.5.2.2 Whether an adverse effect or impact will be created on the physical or environmental conditions in the neighborhood or district.

12.3.5.2.3 Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties created.

12.3.5.2.4 Whether the benefit sought by the *applicant* can be achieved by some method feasible for the *applicant* to pursue, other than a variance.

12.3.5.2.5 Whether the hardship or difficulty claimed as a ground for the variance has been created by the owner or by a predecessor in title. Mere purchase of the land subject to the restrictions sought to be varied shall not in itself constitute a self-created hardship.

12.3.5.2.6 The Zoning Board of Appeals shall grant the minimum variance it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

12.3.6 Interpretations. On appeal from an order, requirement, decision or determination made by an administrative official charged with the enforcement of this chapter, or on request from any official, agency or board of the town, the Zoning Board of Appeals is authorized to decide any question involving the interpretation of any provision of this chapter. Interpretations shall be made in accordance with the intent of the particular provision being interpreted.

12.3.7 Conditions and safeguards. In granting a use or area variance, the Zoning Board of Appeals may prescribe such reasonable conditions and restrictions as are directly related to and incidental to the proposed use of the property. Such conditions shall be consistent with the spirit and intent of this chapter, and shall be imposed for the purpose of minimizing any adverse impact the variance may have on the neighborhood or community and to protect the public health, safety and welfare. Such conditions or restrictions shall be incorporated in the *building* permit and certificate of occupancy. Failure to comply with such conditions or restrictions shall

constitute a violation of this chapter and may constitute the basis for denial or revocation of a *building* permit or certificate of occupancy and for all other applicable remedies.

12.4. Expiration of a variance.

A variance granted under this chapter shall automatically expire if substantial construction in accordance with the plans for which such variance was granted has not been completed within one year, or such other time limit as may be chosen by the Zoning Board of Appeals in connection with its decision, from the date of filing the resolution of approval of variance by the Board; or, if judicial proceedings to review the Board's decision shall be instituted, from the date of entry of the final order in such proceedings, including all appeals.

12.5. Fees. [Amended 10-16-2012 by L.L. No. 3-2012]

All fees charged by the Board of Appeals shall be in an amount as determined by the Commissioner of the Department of Planning and Development.

§ 246-13.
PLANNING ADVISORY BOARD

13.1. Purpose.

The purpose of this section is to establish rules and regulations regarding the organization and operation of the Planning Advisory Board, its requirements for meetings and the keeping of records and its powers and duties.

13.2. Organization.

13.2.1 Membership. The Planning Advisory Board shall consist of seven members, including the Department of the Department of Planning and Development, or the Commissioner's designee. The Town Board shall, by resolution, appoint the members thereof and shall designate a Chairman. Preferred members shall be those who are members of or who demonstrate an understanding of the practice of one or more design professions, e.g., municipal planning, engineering, architecture and landscape architecture. No *person* who is a member of the Town Board shall be eligible to serve simultaneously on the Planning Advisory Board.

13.2.2 Terms of *office*. The members of the Planning Advisory Board holding *office* on the effective date of this chapter shall continue to hold such *office* until the expiration of their respective terms and the appointment of their successors. Successor members shall be appointed for terms of five years, but initial terms shall be adjusted to a lesser number of years as necessary to establish a staggered term pattern whereby one term will expire each year. If a vacancy shall occur, otherwise than by expiration of term, it shall be filled with a successor appointed by the Town Board for the unexpired term.

13.2.3 Removal of members. The Town Board shall have the power to remove any member of the Planning Advisory Board for cause and after a public hearing.

13.3. Meetings and records.

All meetings of the Planning Advisory Board shall be held at the call of the Chairman and at such other times as such Board may determine. The presence of four members of the Board shall constitute a quorum. Such Board shall keep minutes of its proceedings showing the vote of each member upon every question and, if any member is absent or fails to vote, indication of such fact. The Board shall also keep records of its reviews and other official actions.

13.4. Powers and duties.

The Planning Advisory Board shall act only in an advisory capacity. In that capacity, the Board shall provide written recommendations to the Town Board regarding the review of any planning and zoning related matters referred to the Planning Advisory Board, including but not limited to applications for site plan and special permit approval. A recommendation for approval, conditional approval subject to specific modifications or disapproval of the proposed plan or permit shall be included in the Planning Advisory

Board's written report to the Town Board.

§ 246-14.
ENFORCEMENT AND ADMINISTRATION

14.1. Enforcement.

14.1.1 General. No board, agency, officer or employee of the town shall issue, grant or approve any permit, license, certificate or other authorization for any construction or alteration of any *building* or *structure*, or for any use of land, *building* or *structure* that would not be in full compliance with the provisions of this chapter, except as permitted under § 246-12.

14.1.2 Enforcing authority. The provisions of this chapter or any rules or regulations authorized hereunder shall be enforced by the Department of Planning and Development, or a designated member of said Department. The Department of Planning and Development and any duly authorized assistants shall have the right to enter any *building* or enter upon any land at any reasonable hour in the course of their duties. They shall maintain files of all applications for *building* permits and site plans submitted therewith and for certificates of occupancy, and records of all *building* permits and certificates of occupancy issued by them, which files and records shall be open to public inspection.

14.2. Building permits.

Except upon written authorization of the Zoning Board of Appeals as provided in § 246-12, no *building* permit shall be issued for any land, *building* or *structure* where said action would not be in conformance with any provision of this chapter. Every application for a *building* permit shall be prepared as required in chapter 93 (Building Construction) of the Code of the Town of Oyster Bay.

14.3. Inspection.

The Department of Planning and Development and any duly authorized assistants shall have the right to inspect any site undergoing construction activity to ensure compliance with the issued *building* permit and/or site plan or other zoning approval.

14.4. Site Work and construction activity.

No site clearing, excavation or other similar activity in preparation for construction shall be permitted until and unless a permit or approval for such activity has been duly issued by the appropriate town agency or official and any required bond has been posted therefor. Once construction has been started, it shall be diligently prosecuted to completion. In the event that construction is halted or unreasonably delayed and, in the opinion of the Department of Planning and Development, such halt or delay may create a safety or health hazard or an adverse impact on the environment or the neighborhood in which it is located, the Department may order a termination of construction activities on the site and the immediate restoration of the site to a safe, healthful and attractive condition.

14.5. Submission of as-built plan.

Certification of full completion of site improvements by the Department of Planning and Development shall not be made until an *as-built* plan, prepared and certified by a licensed architect, engineer or surveyor, is submitted. Said plan shall be based on a field survey and shall show the actual location of all site improvements as constructed. The Department of Planning and Development may also require the submission of an as-built plan in digital format for the purpose of integrating such plan information into the Town's Geographic Information System (GIS). The preferred digital file format and other technical specifications shall be specified by the town.

The as-built plan shall be reviewed by the Department of Planning and Development. If an as-built plan indicates that actual site development is not in compliance with any approvals, permits or other authorizations issued by the Town of Oyster Bay, its agencies and departments or other duly authorized governmental agencies, the property owner shall be required to correct such site improvements as necessary to bring them into conformity with all such approvals. As an alternative, the *applicant* may seek revised or modified approvals in accordance with the same procedures required for the initial application. The requirement for an as-built plan may be waived by the Department of Planning and Development.

14.6. Certificates of occupancy.

Except upon written authorization of the Zoning Board of Appeals as provided in § 246-12, or other specified authorization, no certificate of occupancy may be issued, pursuant to the provisions of Chapter 93 (Building Construction) of the Code of Town of Oyster Bay, unless such occupancy is in complete conformity with the provisions of this chapter. A certificate of occupancy may continue in effect as long as such occupancy is in full conformance with the provisions of this chapter and any requirements made in connection therewith at the time of issuance thereof and in full conformance with the provisions of Chapter 93. The details of any plan approved by the Town Board and/or the Department of Planning and Development, acting under the terms of this chapter, and any conditions attached to such approval, shall be deemed to be such requirements.

14.7. Violations and penalties. [Amended 9-13-2005 by L.L. No. 6-2005;³⁴ 3-7-2023 by L.L. No. 4-2023]

14.7.1 Penalties for offenses. Pursuant to § 268 of the New York State Town Law, as amended, a violation of this chapter or failure to comply with any requirement instituted pursuant thereto, or the use or alteration of any *building, structure* or land in violation of any statement or plan submitted and approved thereunder, is hereby declared to be an offense, punishable by a fine not to exceed \$350 or imprisonment for a period not to exceed six months, or both, for conviction of a first offense; for conviction of a second offense committed within a period of five years, the

34. Editor's Note: This local law provided that where its requirements impose a different restriction or requirement than imposed by other sections of the Town Code, the Town Law of New York State, or other applicable rules or regulations, the requirements of this local law would prevail.

punishment shall be a fine of not less than \$350 nor more than \$700 or imprisonment for a period not to exceed six months, or both; and, upon conviction for a third or subsequent offense committed within a period of five years, the punishment shall be a fine of not less than \$700 nor more than \$1,000 or imprisonment for a period not to exceed six months, or both. Violations of this chapter may be deemed misdemeanors and, for such purpose only, all provisions of law relating to misdemeanors shall apply to such violations. Each week's continued violation shall constitute a separate additional violation.

14.7.2 Violation of directives. In addition to, and notwithstanding any other remedy for an offense pursuant to the requirements of this chapter, any *person* violating a directive issued by the Commissioner of Planning and Development, or his or her duly authorized representative, which directive is duly issued pursuant to the provisions of this chapter or any approval or permit granted in relation thereto, shall be guilty of a violation punishable by a fine not to exceed \$900 or imprisonment for a period not to exceed 15 days, or both.

14.7.3 Violation of restrictive covenants. Whenever an application, including any plans related thereto, which is submitted to the Town Board, the Zoning Board of Appeals, the Planning Advisory Board or other Town agency, results in the imposition of conditions, covenants or other type of restrictions, whether by deed, by stipulation or by agreement, the owner, tenant and any other involved party shall be responsible for performing, fully and completely, all obligations created thereby. Failure to comply with the approved application, and with any and all conditions, covenants or restrictions, required by the approving agency in connection therewith, shall be deemed a violation of this chapter, subject to the penalties as provided above.

14.7.4 Injunctive relief. Pursuant to New York State Town Law, including, without limitation, §§ 65, 135 and 268, as amended, the Town of Oyster Bay hereby reserves the right to seek injunctive relief to enforce compliance with any provision of this chapter or of any permit or approval issued pursuant thereto.

14.7.5 Adjudication by the Bureau of Administrative Adjudication. Any person found by the Bureau of Administrative Adjudication to have violated any provision of this chapter shall be subject to a monetary penalty within the range of fines authorized herein. Any conduct deemed to be a misdemeanor, pursuant to § 246.14.7.1, shall be within the jurisdiction of the District Court of Nassau County or other court of competent jurisdiction.

14.8. Fees. [Amended 2-10-2004 by L.L. No. 5-2004; 10-16-2012 by L.L. No. 3-2012]

For the purpose of defraying professional and administrative costs involved in the review of applications and appeals, including any legal notices required by law, fees shall be paid to the Town of Oyster in an amount as determined by the Commissioner of the Department of Planning and Development. *Applicants* shall pay for the publication and mailing of notices as required.

14.8.1 Professional consultant review. The Town Board, the Zoning Board of Appeals, the Planning Advisory Board and the Department of Planning and Development, in connection with their review of any application or pre-application which may come before them, may refer such application or pre-application to such professional(s) as they deem necessary to enable them to properly administer their responsibilities. Fees charged by such professionals shall be in accord with fees usually charged for such services in the New York Metropolitan Region and pursuant to a contractual agreement between the Town and such professional. All such charges shall be paid by the Town upon submission of an invoice by the professional and upon approval by the Town Board. The *applicant* shall reimburse the Town for the cost of such professional review services in accordance with the procedures described below and subject to the deposit requirements as set forth in § 246-14.8.3, Schedule of Trust Account Deposits. Such fees shall be in addition to any and all other required fees.

14.8.2 Trust accounts. At such time as a reviewing agency determines that a professional(s) will be retained to assist in its review of an application, the *applicant* shall submit to the Department of Planning and Development a check payable to the "Town of Oyster Bay" in the amount as set forth in § 246-14.8.3. Such amount shall be deposited into a trust account, out of which the Town will reimburse the professional(s) which the reviewing agency has retained. No such application or pre-application shall be considered complete for review purposes until said trust account is funded in accordance with the Schedule of Trust Account Deposits. The *applicant* shall be provided with copies of any invoices and supporting documentation submitted to the Town for payment for such professional review services. When the balance in such trust account is reduced to 1/3 of its initial amount, the *applicant* shall be required to submit to the Department of Planning and Development additional funds as necessary to restore the balance in such account to the amount of the initial deposit. If such account is not so replenished within 30 days after the *applicant* is notified, in writing, of the requirement for such additional deposit, the reviewing agency may suspend all review of the application. A *building* permit or certificate of occupancy shall not be issued until and unless all professional review costs in connection with the *applicant's* project have been fully reimbursed to the Town. After all pertinent charges have been paid, the Town shall refund to the *applicant* any unused funds remaining on deposit in such account.

14.8.3 Schedule of Trust Account Deposits. The Schedule of Trust Account Deposits shall be maintained at the Department of Planning and Development. All trust account deposits shall be submitted to the Department of Planning and Development in the amount as determined by the Commissioner of the Department of Planning and Development. If a proposed action involves multiple approvals, a single trust account will be established. The total amount of the initial deposit shall be the sum of the individual amounts indicated.

14.9. Affidavits required.

In addition to other requirements that might be imposed by the Town Board, each application submitted to the Department of Planning and Development which requires

a Zoning Map or text amendment, site plan approval, special use permit, variance, modification of restrictive covenants or modifications of conditions imposed by resolution shall include an affidavit executed by all owners of record, contract vendees, lessors and lessees, contract lessors and contract lessees, holders of any interest and contract holders of any interest in the subject property, except as otherwise provided below. Said affidavit shall set forth the following:

- 14.9.1 If the affiant is an individual, the affiant's name, address of residence and age.
- 14.9.2 If the affiant is a partnership, joint venture or other business entity, except a corporation, it shall set forth:
 - 14.9.2.1 The name and business address of the business entity or partnership.
 - 14.9.2.2 The date created or established.
 - 14.9.2.3 The place created or established.
 - 14.9.2.4 The names and residence addresses of all parties in interest, and the nature and extent of such interest.
- 14.9.3 If the affiant is a corporation, it shall set forth:
 - 14.9.3.1 The name and business address of the corporation.
 - 14.9.3.2 The method of incorporation.
 - 14.9.3.3 The names and residence addresses of each officer, director and shareholder as of the date of filing of application.
 - 14.9.3.4 The names and mailing addresses of all *persons* to whom corporate stock has been pledged and with whom any agreement has been made to pledge said stock.
- 14.9.4 All affiants shall set forth the names and mailing addresses of all *persons*, individuals, partnerships and/or corporations who are the holders of any instrument creating an encumbrance upon the property which is the subject of the application and shall also state the nature of such encumbrance.
- 14.9.5 All affiants shall state to the best of their knowledge whether any *person* mentioned in the affidavit is a current town officer or employee or is related to a town officer or employee. If such is the case, the affiant shall provide full details.
- 14.9.6 All affiants shall set forth all prior enforcement actions against any party who has an interest in the application or the property, arising from any violation of any law, statute or civil action, whether said action has occurred within the Town of Oyster Bay or in any other jurisdiction within or beyond the borders of the United States of America. Said disclosure shall be only in a manner prescribed by the Town Board. Failure to fully comply with this section shall cause the application to be judged incomplete and shall prevent said application from being entertained in any manner by the Town Board. Said affiants shall supplement their affidavit within 48

hours of any change affecting their disclosure statement occurring prior to a decision on their application. Any incorrect or incomplete statements made in the disclosure which may come to the attention of any enforcement agency or individual of the Town of Oyster Bay after the approval of the application to which the disclosure is attached shall cause the approved application and any other permit or approval issued by any Town *department* or individual pursuant thereto to be reviewed as follows:

14.9.6.1 The Town Attorney is hereby authorized to conduct an investigation and to demand additional information to determine if the affiant's original disclosure was, and currently is, accurate and complete. Said information may be obtained from the affiant or from an independent source.

14.9.6.2 The Town Attorney shall, upon completion of said investigation, report findings to the Town Board. If any incomplete or inaccurate statement, relevant to the subject application, was found to exist, the Town Board shall conduct a public hearing in accordance with the following:

14.9.6.2.1 Whenever it shall be provided herein that a hearing may be held by the Town Board, such hearing shall be conducted on a date and at a place and hour designated by the Town Board, but in no event shall this date exceed 30 days from the date of the Town Attorney's report of findings to the Town Board.

14.9.6.2.2 The Town Attorney shall give notice of such hearing, stating the name and address of the *applicant* or lessees and fee owner concerned, the subject matter of the hearing and the date, place and hour designated therefor, by mailing a copy thereof to the *applicant* or lessee and fee owner concerned at the address shown upon the most recent application of such *applicant* or licensee, at least 10 days before such hearing.

14.9.6.2.3 At any such hearing, the *applicant* or lessee and fee owner involved shall be entitled to be represented by legal counsel and to present such competent material testimony or other evidence in the *applicant* or lessee and fee owner's behalf as may be relevant to the subject matter of the hearing.

14.9.6.2.4 All witnesses shall be sworn and examined under oath.

14.9.6.3 The Town Board, after the conclusion of any public hearings, and after considering all facts and testimony presented at said hearings, shall either revoke, amend or sustain the original approval.

14.9.7 In the event that there is any change in any matter set forth on any affidavit submitted hereunder prior to the time a certificate of occupancy is granted to the subject premises, the affiant affected by such change shall file a supplemental affidavit within 48 hours after such change has occurred, giving the full details thereof. The new party introduced by said change, if any, shall, within 48 hours after such change has occurred, also file an affidavit in compliance with the

requirements of this section and shall thereafter be subject to all the requirements as set forth in this section.

14.9.8 Corporations whose stock is listed on a stock exchange or sold over the counter under regulation of the Securities and Exchange Commission, lending institutions licensed or franchised by the State of New York and public corporations are excluded from the provisions of this section.

§ 246-15.
MISCELLANEOUS

15.1. Separability.

Should any section, subsection, paragraph, sentence, clause, provision or phrase of this chapter be declared by any court of competent jurisdiction to be unconstitutional or invalid, such decision shall not affect any other portion of this chapter.

15.2. Short title.

This chapter shall be known and may be cited as the "Zoning Code of the Town of Oyster Bay."

15.3. Effective date.

This chapter shall take effect on May 29, 2001.

15.4. Effect on *building* permits and *building* permit applications.

Nothing herein contained shall require any change in the plans or construction or designated use of any proposed *building* or *structure* for which a valid *building* permit was lawfully issued prior to the effective date of this chapter, provided that construction pursuant to such permit is begun within six months of the date of such permit and further provided that the entire *building* or *structure* is completed within one year of the date of such permit. The construction completion date may be extended by the Town Board for a period of up to six months upon good cause shown.

In addition, if a complete application for a *building* permit, including all required accompanying site development and *building* construction plans, is filed prior to the effective date of this chapter, and all necessary approvals, including, but not limited to, special use permit, site plan and/or variance, as applicable, have been obtained, then a *building* permit shall be issued in accordance with the zoning requirements in effect at the time of the application, subject to the construction timing requirements as set forth above.

Other than as set forth above, any *building* permit issued on or after the effective date of this chapter shall be required to conform with all requirements of this chapter.

15.5. Repeal of existing ordinance.

The Ordinance adopted by the Town Board of Oyster Bay on November 1, 1929, as amended through March 27, 2001, entitled Zoning, Chapter 246, from the Code of the Town of Oyster Bay, is hereby repealed as of the effective date of this chapter.

§ 246-16.
ILLEGAL OCCUPANCIES
[Added 8-28-2007 by L.L. No. 8-2007]

16.1. Legislative findings.

The Town Board has found there are instances in the Town of owners of properties exploiting their *buildings* by maintaining or creating illegal occupancies of their premises. These illegal occupancies expose the residents therein to substandard rooms or *apartments*. Such practices are in derogation of the health, safety and welfare of members of the public who are entitled to such suitable and safe housing as is assured by the Code of the Town. Such illegal occupancies have a detrimental effect on Town services to the community. Accordingly, enforcement of applicable Code provisions is a legitimate governmental obligation which requires appropriate consideration.

16.2. Provisions relating to illegal occupancy prosecutions.

16.2.1 In all civil and criminal prosecutions brought for the enforcement of Code provisions in respect to nonpermitted occupancies, it shall be a rebuttable presumption that a *building* or *dwelling unit* zoned for single-family occupancy is occupied by more than one *family* if any two or more of the following features are found to exist on the premises of that *building* or *dwelling unit*:

16.2.1.1 More than one gas meter, electric meter or water meter.

16.2.1.2 More than one connecting line for cable or satellite television.

16.2.1.3 More than one doorbell or doorway on the same side of the *building* or *dwelling unit*.

16.2.1.4 More than one mailbox, mail slot, or post office address, or any combination thereof.

16.2.1.5 That there exists permanent partitions or "key locked" internal doors which may serve to bar access between segregated portions of the *dwelling*, including but not limited to bedrooms, or the inability of any occupant or *person* in possession thereof to have unimpeded and/or lawful access to all parts of the *dwelling unit*.

16.2.1.6 That there exists two or more *kitchens* each containing one or more of the following: a range, oven, hot plate, microwave, or other similar device customarily used for cooking or preparation of foods, unless the existence of the additional *kitchens* has been approved by the Town in writing.

16.2.1.7 A *dwelling* which has been advertised in any newspaper, magazine or local advertising publication as being available for sale or rent, which advertisement expressly or implicitly provides that such *dwelling* contains rooms for rent, more than one separate *dwelling living unit*, or may be occupied by more than one separate family, is being used as a *dwelling* containing the number of

rooms for rent, *dwelling units* or families stated or implied in such advertisement.

16.2.1.8 Separate written or oral rental agreements or leases or the payment of rent for portions of the *building* or *dwelling unit* among the owners or residents, or any combination thereof.

16.2.2 The presumption raised by proof of the existence of any such conditions as set forth in Subsection 16.2.1 herein may be rebutted by conclusive evidence that such conditions do not, in fact, exist or that such conditions, in fact, comply with Code. The failure of a *person* charged under this section to rebut the presumption shall not mean that the trier of fact must find the *person* guilty.

16.2.3 A *person* charged with a violation of Code as described herein may demand an inspection of the subject premises by the Department of Planning and Development to rebut such presumption. Such demand shall be in writing and addressed to the Department of Planning and Development. The Inspector shall prepare a report of his findings, together with photographs, if appropriate.

16.3. Penalties for offenses.

Notwithstanding any provision of this Code inconsistent herewith, the owner and/or any *person* in control of the subject property at the time of the violation shall be subject to a fine not exceeding \$1,000 or imprisonment for a period not to exceed six months, or both. Each week's continued violation shall constitute a separate additional violation.