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Jurisdiction Type:	Municipal
Municipality:	Town of Brookhaven
Year (adopted, written, etc.):	Unknown
Community Type – applicable to:	Suburban; Rural
Title:	Town of Brookhaven Great South Beach Zoning Ordinance
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Abstract

This law was created to protect the Great South Beach in Fire Island National Seashore from ecological damage due to overdevelopment. The law does so by placing regulations on construction within the three districts that the island has been separated in to, which are: Residential, Oceanfront, and Commercial.

Resource

Town of Brookhaven NY Great South Beach

Code of the Town of Brookhaven NY

Chapter 85: Zoning

Article XVI

Note: barrier island; definition of family

General Code

[http://www.e-](http://www.e-codes.generalcode.com/codebook_frameset.asp?t=tc&p=0012%2D085%2Ehtm%23ArticleXVI&cn=1719&n=[1][1343][1478][1626][1738][1719])

[codes.generalcode.com/codebook_frameset.asp?t=tc&p=0012%2D085%2Ehtm%23ArticleXVI&cn=1719&n=\[1\]\[1343\]\[1478\]\[1626\]\[1738\]\[1719\]](http://www.e-codes.generalcode.com/codebook_frameset.asp?t=tc&p=0012%2D085%2Ehtm%23ArticleXVI&cn=1719&n=[1][1343][1478][1626][1738][1719])

ARTICLE XVI Great South Beach in Fire Island National Seashore

§ 85-165. Applicability; legislative intent; definitions; use districts.

A. Application of this article. This article shall apply only to land situate within bounds of the Fire Island National Seashore where the same lies within the Town of Brookhaven, but excluding any lands which lie within the boundaries of incorporated villages.

B. Legislative intent.

- (1) In order to promote the health, safety and welfare of residents and visitors of the Town of Brookhaven on the barrier beach known as "Fire Island," the Town Board of the Town of Brookhaven has enacted this article. The provisions of this article shall protect said barrier beach from development, which is inconsistent with prudent resource management and its ecological capabilities.
- (2) The Town Board is cognizant of the unique characteristics of Fire Island communities and, as such, adopts this article to encourage the most appropriate use of land throughout said communities.
- (3) The Town Board recognizes the need for the conservation and preservation of natural resources on Fire Island while at the same time ensuring the widest possible use.

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

ABANDONMENT — Nonpayment of taxes for one year and intent to abandon as manifested by noncontinuous use of any use within a building for a three-year period as measured by three summer seasons from Memorial Day to Labor Day.

ACCESSORY BUILDING, STRUCTURE OR USE — A building, structure or use customarily incidental and subordinate to the principal building or use and located on the same lot with such principal building or use.

ALTERATION — A change or rearrangement in the structural parts of a building or other structure, including interior partitions, exterior porches, exits and decks, interior load-bearing walls, capacities of utility pipes, ducts or conduits.

BATHHOUSE — A building or portion thereof containing dressing rooms and/or lockers for bathers.

BOARDINGHOUSE — A building, other than a hotel or restaurant, where lodging and meals for five or more persons are served for compensation, including tourist houses, rooming houses and lodging houses.

BUILDING — An enclosed structure having a roof supported by columns, walls or cantilevers, and if separated by a party wall without openings, it shall be deemed a separate building.

BUILDING AREA — The total areas taken on a horizontal plane at the main grade level

of the principal building and all accessory buildings on a lot, excluding uncovered steps.

BUILDING HEIGHT — The vertical distance between the average existing ground elevation up to the highest point of the roof. In no case shall the building height be measured from a point less than the minimum elevation necessary to meet the prerequisite for federal flood insurance, designated within the Flood Risk Zone by the National Flood Insurance Programs Federal Emergency Management Agency, indicated on the Flood Insurance Rate Map for the Great South Beach, Brookhaven Town, Community No. 365-334B.

DANCE HALL or DISCOTHEQUE — A public place in which people assemble where the main purpose of assembly is dancing to musical accompaniment, live or recorded. Such establishment may or may not serve alcoholic beverages.

DEVELOPED PROPERTY — Any property which has been altered from its natural state by the construction or erection of materials located in, upon or attached to something located in or upon the ground. Such alterations may include buildings, decks, aboveground swimming pools, storage sheds, patios, docks, tennis courts, septic systems or leaching fields, walkways, groins, fences and signs (except dune protection fences and signs), roads, retaining walls, grading, artificial fill or other structures or materials, excluding live vegetation.

DEVELOPMENT — Any activity, action or alteration which changes undeveloped property into developed property.

DWELLING, MULTIPLE — A building designed for or occupied by three or more families living independently of each other with separate cooking facilities, including cooperative apartments, garden apartments and condominium apartments.

DWELLING, SINGLE- OR ONE-FAMILY — A detached building arranged, designed for or occupied exclusively as a home or residence by one family doing its own cooking.

DWELLING, TWO-FAMILY — A detached building designed for or occupied exclusively as a home or residence for not more than two families living independently of each other with separate cooking facilities.

FAMILY — One or more persons related by blood, adoption or marriage, living and cooking together as a single housekeeping unit, or a number of persons living and cooking together as a single housekeeping unit though not related by blood, adoption or marriage. [Amended 10-3-1995, effective 10-23-1995]

FLOOR AREA, GROUND — The area within the exterior walls of a building at the first

floor.

GUESTHOUSE — An accessory structure, on the same lot as the principal building, for the temporary accommodation of guests of residents living in the principal building, without any cooking facilities.

HOTEL — A building designed to provide individual sleeping accommodations for short-term transient occupants, with or without direct outside access, with or without restaurant facilities and with or without a common entrance, common heating system or general dining room.

IMPROVED PROPERTY — A type of developed property which is defined by the Fire Island National Seashore Act, Public Law No. 88-587, Section 2(F), 1964, to mean any building, the construction of which was begun prior to July 1, 1963, and such amount of land, not in excess of two acres in the case of a residence or 10 acres in the case of a commercial or industrial use, on which said building is situated as the Secretary of the Interior considers reasonably necessary to the use of the building. The Secretary of the Interior may exclude from such improved property any beach or waters, as well as land adjoining such beach or waters which he deems necessary for public access thereto.

LOT — A parcel of land, exclusive of public walk areas, used or designed to be used by one use or building or by a related group of uses or buildings and the accessory uses of buildings customarily incident thereto, including such open spaces as are required by this chapter.

LOT AREA — The total area measured inside of all the lot lines, excluding underwater areas below mean high water.

NONCONFORMING USE — Any building, structure or land lawfully occupied by a use that does not conform to the regulations of the use district in which it is situated.

PREMISES — A tract of land with buildings thereon.

RESTAURANT — A building or part of a building or plot on or in which food and/or beverages are prepared and served to patrons, either inside and/or outside, whether counter service or carry-out, fast-food or table service.

SIGN — Any device intended for use for the purpose of advertisement, identification, publicity or notice when visible from the exterior of a structure in or on which the sign is located. The term "sign" shall include any billboard illustration, insignia, lettering, picture, display banner, pennant or flag, however made, displayed, painted, supported or attached, and shall exclude house numbers in the residence district not larger than

1/2 square foot.

STORY — That portion of a building included between the surface of any floor and the surface of the floor next above it or, if there is no floor above it, then the space between such floor and ceiling, which shall not exceed 28 feet in height. In structures of more than one story, the definitional footage measurement to be used to determine height is 10 feet.

STRUCTURE — Anything constructed or erected which requires location in or upon the ground or attached to something having location in or upon the ground, including all types of signs. The word "structure" shall be construed as though followed by the words "or part thereof."

UNDEVELOPED PROPERTY — Any property which has not been altered from its natural state, with the exception of such dune protection measures as snow fencing, beach nourishment or dune grass planting.

UNIMPROVED PROPERTY — Either undeveloped property or property which is developed or built after July 1, 1963.

USE — The purpose for which land or a building or structure is designed, arranged or intended or for which it is or may be occupied or maintained. The term "permitted use" shall not be deemed to include any nonconforming use.

WALK — A public or private right-of-way, as shown on the Zoning Map, which affords the principal means of access to abutting properties. Neither tidal nor nontidal waters nor the shores, strands or beaches along the same shall be deemed walks for the purpose of this chapter.

YARD, FRONT — The open space between the walk or right-of-way and the nearest part of any building.

YARD, REAR — Open space on the same lot with the main building between the rear line of said building and the rear line of the lot.

YARD, SIDE — Open space on the same lot with the main building situated between the building and the side line of the lot and extending through from the walk or from the front yard to the rear yard of the lot. Any lot line not a walk line or a rear line shall be deemed a "side line."

D. Use districts.

(1) For the purposes of this article, those portions of the Great South Beach within the Town of Brookhaven are hereby divided into three use districts which shall be designated as follows:

(a) RD Residential District.

(b) OFD Oceanfront Dune District.

(c) CD Commercial District.

(2) For the purposes of this article, the zoning districts presently assigned to properties located on the Great South Beach within the Town of Brookhaven are hereby converted as follows in order to conform to the three use districts aforementioned:

(a) All properties zoned D, E and F Residential shall become RD Residential.

(b) All properties zoned G and H Business, J-2 Business and L-1 Industrial shall become CD Commercial.

§ 85-166. Conformance required; nonconforming uses; certificates of occupancy.

A. Conformity with article provisions. No building or land shall be used and no building shall be erected or structurally altered except in conformity with the provisions of this article.

B. Legal nonconforming use defined. The term "legal nonconforming use," as used in this article, shall mean any nonconforming use which, at such time such use was commenced, was maintainable as a matter of right under the code and general rules of law in effect in the Town of Brookhaven.

C. Continuation or change of nonconforming use.

(1) Any legal nonconforming use may be continued; provided, however, that a legal nonconforming use shall not be changed unless changed to a conforming use. A legal nonconforming use, if changed to a conforming use, may not thereafter be changed or returned to any nonconforming use.

(2) A legal nonconforming use if discontinued by virtue of fire, explosion, acts of God or other causes to the extent of not more than 75% of the total use shall not be deemed to have lost its legal nonconforming use status. Reconstruction and

restoration of said use where discontinued to more than 75% of the total use shall be determined by the following guidelines:

- (a) Those legal nonconforming uses established prior to July 1, 1963, shall be reconstructed in accordance with the building dimensions as stated in this article. Such legal nonconforming uses shall constitute developed improved property.
- (b) Those legal nonconforming uses established subsequent to July 1, 1963, with the permission of the Town of Brookhaven, as evidenced by the acquisition of a valid variance from the Zoning Board of Appeals shall be reconstructed in accordance with the dimensions as stated in this article.
- (c) Those nonconforming uses established subsequent to July 1, 1963, without the permission of the Town of Brookhaven, as evidenced by the lack of acquisition of a valid variance from the Zoning Board of Appeals, shall be reconstructed in accordance with the dimensions as stated in this article.
- (d) A legal nonconforming use, if discontinued by virtue of abandonment, shall be deemed to have lost its legal nonconforming use status and will be required to have any and all new structures or uses conform to the dimensions of this article.

(3) The aforementioned guidelines of this section shall be applicable in the RD Residential District, OFD Oceanfront Dune District and the CD Commercial District.

- D. Extension within a building of a nonconforming use. Any existing building designed, arranged, intended or devoted to a use which is not permitted in the district in which such building is located shall not be enlarged, extended, altered or reconstructed unless such use is changed to a use which is permitted in the district in which such building is located. This section is subject to the provisions of Subsection C of this section.
- E. Certificate of occupancy. Certificates of occupancy shall be issued in accordance with the provisions of this chapter.
- F. Building permits. Permits for the erection or alteration of any building or structure shall be issued in accordance with the provisions of this chapter. In addition to all other requirements of the Zoning Chapter of the Town of Brookhaven and the Building Construction Code, no permit shall be issued by the Chief Building Inspector unless the owner of the property or his duly authorized representative meets the following conditions:

- (1) That the premises upon which the structure is to be erected fronts on a Town-owned and Town-maintained boardwalk or that a boardwalk giving access to such proposed structure is shown upon a plat approved by the Planning Board as provided in §§ 276 and 277 of the Town Law and that a performance bond has been furnished to the Town by the owner of the property shown on said plat.
- (2) That the premises upon which the structure is sought to be erected is located in an area on Fire Island which is west of the eight-mile district, as defined by the east line of Ocean Ridge, formerly known as "Sammis Lot No. 42, Section 3 (western boundary)," to the west boundary of Smith Point County Park (eastern boundary).
- (3) That the erection of the proposed structure will not further contribute to the process of erosion on the Great South Beach and will not in any manner further damage the Great South Beach.

§ 85-167. RD Residential District.

- A. Application of this section. The provisions of this section shall apply to all residential properties on the Great South Beach, Town of Brookhaven, New York.
- B. Legislative intent. The Town Board recognizes the unique characteristics of Fire Island. The Town Board encourages land use which is consistent with the characteristics of Fire Island and which constitutes wise resource management. To this end and in order to promote the health, safety and welfare of the public, the Town Board of the Town of Brookhaven has enacted this section.
- C. Permitted uses. In the RD Residential District, no building, structure or premises shall be used or occupied and no building or part thereof or other structure shall so erected or altered except for one or more of the following purposes:
 - (1) Single-family detached dwellings.
 - (2) Accessory buildings may be erected on the same lot, provided that all requirements of this chapter are met.
 - (3) Municipal parks, municipal playgrounds or municipal recreation buildings or uses.
 - (4) Accessory uses as enumerated in § 85-170B of this article.
- D. Uses permitted by special permit.

(1) With the approval of the Zoning Board of Appeals, after public hearing, except for property owned or leased by the Town of Brookhaven, the following uses may be permitted:

(a) Public utilities.

(b) Community buildings and places of worship.

(c) Historical or memorial monuments.

(2) In addition, recommendations of the advisory committee(s) from the community area(s) affected shall be considered by the Zoning Board of Appeals.

E. Prohibited uses. Consistent with the objectives of the Town of Brookhaven, buildings or land hereafter may not be altered, changed, expanded, converted, constructed or used for any of the following purposes:

(1) Those uses not expressly permitted herein.

§ 85-168. OFD Oceanfront Dune District.

A. Application of this section. The provisions of this section shall apply to that area of the Great South Beach extending from the mean high tide mark landward to the crest of the primary dune as defined by the Fire Island National Seashore on OGP-0004 and on Suffolk County Property Maps, Section Nos. 985.70-987 (Brookhaven), as mapped in November 1976, and landward an additional 40 feet beyond the crest of the primary dune. The aforementioned defined area shall be known as the "OFD Oceanfront Dune District."

B. Legislative intent. The Town Board acknowledges the crucial function that the sand dunes located along the Great South Beach provide in protecting and preserving the inland areas of Fire Island from storm damage and erosion. Thus, the Town Board has concluded that it is essential that these dunes be preserved so that they may continue to protect the whole of the Great South Beach. It is with the purpose of safeguarding the health, safety and welfare of the public that the Town Board has seen fit to institute the regulations regarding the dune district which are contained in this section.

C. Permitted uses. In the OFD Oceanfront Dune District, no building, structure or premises shall be used or occupied and no building or part thereof shall be erected, extended or added to except for one or more of the following uses:

- (1) Reconstruction and/or repair of a building or structure as permitted under Subsection D of this section.
- (2) Community vehicular crossing and private or community pedestrian dune crossings necessary for access to areas behind the dune.
- (3) Snow fences of the type approved by the Town of Brookhaven.

D. Continuation of existing uses.

- (1) Those alterations necessary to accomplish the proper and routine maintenance of existing structures are permitted.
- (2) Reconstruction of a building or structure is permitted to previous dimensions in the OFD Oceanfront Dune District, except where said building or structure was damaged by virtue of fire, explosion, acts of God or other causes to the extent of not more than 75% of its full value. Where damage exceeds 75% of the full value of the building or structure, said building or structure shall be reconstructed and/or repaired in conformity with the dimensions as stated in this article. For the purposes of this section, full value shall be computed by applying the current state equalization rate to the current assessed value of the building or structure.

§ 85-169. CD Commercial District.

- A. Application of this section. The provisions of this section shall apply to all commercial properties on the Great South Beach, Town of Brookhaven, New York.
- B. Legislative intent. The Town Board of the Town of Brookhaven recognizes that commercial development in the Town should provide necessary conveniences and services to the residents of the Town. Furthermore, in order to protect the viability of existing business on Fire Island and to preserve and protect the residential character of the Great South Beach, yet enhancing the character and appearance of its business districts, the Town Board of the Town of Brookhaven hereby enacts regulations designed to control the proliferation of business inconsistent with the objectives of the Town of Brookhaven and to allow the proper development of businesses which provide necessary public services and are consistent with the predominantly residential community on the Great South Beach.
- C. Permitted uses. In the CD Commercial District, no building, structure or premises shall be used or occupied and no building or part thereof or other structure shall be erected or altered except for one or more of the following uses:

- (1) Uses permitted in the RD Residential District under § 85-167C(3).
- (2) Stores in which goods, services and commodities are sold at retail in support of community living.
- (3) Professional offices.
- (4) Churches, schools, libraries and community buildings.
- (5) Telephone exchanges, electric substations, public utility buildings or structures other than public business offices, garages or storage yards when authorized by special permit from the Zoning Board of Appeals upon the recommendation of the advisory committee(s) in the area(s) directly affected.
- (6) Offices, banks and theaters.
- (7) Restaurants, dance halls and discotheques.
- (8) Shops for custom work and for making articles to be sold at retail on the premises.
- (9) Ferry slips, boat docks and other transportation terminal facilities.
- (10) Art galleries, exhibit halls, artists' and photographers' studios and historical or memorial monuments.
- (11) Accessory uses:
 - (a) The following accessory uses shall be permitted when located on the same lot with the authorized use:
 - [1] Buildings for storing products or merchandise incidental to the authorized use.
 - [2] Signs as regulated in § 85-171J of this article.
 - [3] Other customary uses, structures and buildings, provided that such uses are clearly incidental to the principal use and do not include any activity commonly conducted as a business.

(b) Nothing herein contained shall be construed to permit the creation, alteration, addition, maintenance or use of any premises which shall provide open-air, outside service, outside display, outside or window service unless specifically authorized by the Zoning Board of Appeals, which may receive and give due consideration to the recommendation of the advisory committees of the community areas affected.

D. Prohibited uses. Consistent with the objectives of the Town of Brookhaven, buildings or land hereafter may not be altered, changed, expanded, converted, constructed or used for any of the following purposes:

(1) Two-family dwellings.

(2) Apartments, multiple dwellings and condominiums.

(3) Showers, lockers, changing rooms and bathhouses.

(4) Guesthouses, boardinghouses, lodging houses and hotels.

(5) Uses which are designed for manufacturing or industry or which are dangerous, unsafe or harmful to persons, health or property.

(6) Stores in which goods, services and commodities are sold at retail above the ground floor.

(7) Those uses not expressly permitted herein.

E. The following uses shall be permitted when authorized by special permit from the Board of Appeals:

(1) All uses permitted and as regulated in the RD Residential District.

§ 85-170. RD Residential District and OFD Oceanfront Dune District; dimensional requirements.

A. Application of this section.

(1) This section shall control over §§ 85-167 and 85-168 and, where applicable, shall be utilized in conjunction with §§ 85-165, 85-166, 85-167 and 85-172 of this

article.

- (2) Any development or construction permitted in §§ 85-167 and 85-168 of this article shall be subject to the building requirements as delineated within this section.

B. Accessory uses.

- (1) In the RD Residential District, the following accessory uses shall be permitted when located on the same lot with the authorized use:

- (a) Office of a physician, lawyer, architect, teacher or similar professional person residing on the premises when such use is incidental to such residence; provided, however, that such use shall be within the main building and occupying not more than 1/3 of the first-floor area.

- (b) Signs as regulated by Subsection J.

- (c) Other customary accessory uses, structures and buildings, including but not limited to aboveground swimming pools, sheds for storage, patios, decks and ramps, excluding primary walks, provided that such uses are clearly incidental to the principal use and are not equipped with facilities for cooking. An accessory use does not include any activity commonly conducted as a business. [Amended 10-3-1995, effective 10-23-1995]

- (d) Accessory enclosures subject to the following: [Added 3-20-2001, effective 4-9-2001]

- [1] Dimensional requirements: said structures shall be limited to a maximum height of 10 feet with a combined square footage of 100 square feet;

- [2] Location: such enclosures may be located on the property owner's access walkway or the Town's right-of-way adjacent to the subject lot;

- [3] The property owner or homeowner's association secures and maintains liability insurance for the benefit of the Town which policy or coverage is subject to the Town Attorney's approval and in such limits as the Town Attorney from time to time shall determine.

- (e) Existing accessory enclosures shall be permitted, provided that the property owner thereof fully complies with all requirements, set forth in this section,

except the dimensional criteria. [Added 3-20-2001, effective 4-9-2001]

- (f) Existing accessory enclosures erected before the date of this enactment, which are destroyed or damaged by fire, explosion, acts of God or other causes to the extent of more than 75% of their full value may not be reconstructed or repaired; replacement enclosures shall be permitted so long as in conformity with all applicable requirements set forth in this section. [Added 3-20-2001, effective 4-9-2001]

 - (g) Existing gatehouses or accessory structures located on or near a property owner's access walkway shall be permitted from the effective date of this section, provided that where such structures encroach upon the Town's right-of-way, such structures may be permitted so long as the property owner or homeowner's association secures and maintains liability insurance naming the Town as an insured in such limits as the Town Attorney shall determine. [Added 3-20-2001, effective 4-9-2001]
- (2) Any accessory building shall be located on the same lot with the principal building, and no accessory building shall be constructed on a lot until the construction of the main building has actually been commenced, and no accessory building shall be used unless the main building on the lot is completed and used.

 - (3) Whenever a use has been authorized by special permit pursuant to § 85-167D, no accessory use shall be permitted unless the same shall have been specifically authorized by the special permit issued.

C. Height.

- (1) In the RD Residential District, no building or structure shall be erected to a height in excess of 28 feet or 2 1/2 stories, whichever is less, as measured from the average existing ground elevation, but not less than the minimum elevation necessary to meet the prerequisites for federal flood insurance, designated within the Flood Risk Zone by the National Flood Insurance Program/Federal Emergency Management Agency, indicated on the Flood Insurance Rate Map for the Great South Beach, Brookhaven Town, Community Map No. 365-334-B. The rate map shall be on file with both the office of the Town Clerk and the Department of Planning, Environment and Development, Brookhaven Town Hall, New York, in compliance with the Public Officers Law, Article 6, New York Freedom of Information Law.

- (2) Accessory buildings shall not exceed 14 feet in height as measured in accordance with the standards enumerated in the map citation of Subsection C(1) of this

section.

(3) The following exceptions shall be permitted, subject to the approval of the Zoning Board of Appeals pursuant to recommendations of the respective advisory committee(s) from the community area(s) affected:

(a) A church or other place of worship.

(b) A water tank or standpipe.

D. Lot occupancy.

(1) In the RD Residential District, the total building area of the principal building and any and/or all accessory structure(s) shall not exceed or occupy more than 35% of the total lot area.

(2) In the RD Residential District:

(a) No building or structure shall be erected, altered or reconstructed on a lot having an area of less than 4,000 square feet, with a minimum frontage of 40 feet.

(b) Existing lots shall not be subdivided in area below 7,500 square feet, with a frontage of not less than 75 feet.

E. Front yard. In the RD Residential District, there shall be a front yard having a depth of not less than 20 feet. Where 40% or more of the frontage on that side of the walk and an intersecting walk is improved with buildings, a majority of which have observed an average front yard line having a variation in depth of not more than six feet, no building shall project beyond the average front yard so established. However, this regulation shall not be interpreted to require a front yard depth of more than 30 feet.

F. Side yards. In the RD Residential District, there shall be two side yards, one on each side of the building, the total width of both sides to be 30 feet, and no one side yard shall be less than 12 feet wide, provided that, in the case of a lot having a frontage of less than 75 feet at the building line, a single-family dwelling may be built thereon with the side yards totaling not less than 40% of the lot frontage, the lesser side not less than 16% of the lot frontage.

G. Rear yard. In the RD Residential District, there shall be a rear yard having a minimum depth of 20 feet.

H. Average setback. Where property in the vicinity is partly built-up with permanent buildings and structures and an average setback line has been established, no buildings or structures shall be erected or altered so as to project beyond the average setback line so established.

I. Fences.

(1) No fence or wall of any type or description shall be erected, in that portion of the Great South Beach, which has a height greater than six feet measured from the elevation of the average ground level of the lot or from the accessory structure upon which the fence is constructed, i.e., deck, patio, etc. At no point shall the height of the fence exceed 10 feet, inclusive of the skirting beneath the deck and/or accessory structure upon which the fence is constructed. In addition, a fence with a maximum height of four feet may extend beyond the front of the principal structure, so long as said fence is not located in the required front yard. No fence shall be built in such a way as to interfere with the fire, health and police regulations of the Town of Brookhaven or impede access of fire, health or police personnel. [Amended 10-3-1995, effective 10-23-1995; 4-6-1999; effective 4-25-1999]

(2) Nonconforming fences may continue such nonconformity until they are destroyed, structurally altered, reconstructed, changed or moved.

J. Signs.

(1) In the RD Residential District, no illuminated signs or displays shall be permitted, and no advertising or business sign shall be permitted, nor signs of an obscene nature appealing to the prurient interest or offensive to community standards.

(a) Signs shall be limited to one square foot and shall be limited in number to one per premises, to be located on the premises.

(b) Noncommercial signs to be used for public information, orientation or educational purposes may be larger by special permit from the Zoning Board of Appeals. Recommendation(s) of the respective advisory committee(s) for the community area(s) affected shall be received and considered by the Zoning Board of Appeals.

(2) Nonconforming signs may continue such nonconformity until they are destroyed, structurally altered, reconstructed, changed or moved, but the period of such nonconformity may not exceed two years from the date of enactment of this article.

K. Permitted encroachments. In the RD Residential District, the following encroachments are hereby permitted:

(1) Cornices, eaves, gutters and chimneys, projecting not more than 24 inches.

(2) Bay windows and fireplaces, projecting not more than 24 inches.

(3) Open unroofed entrance platforms or terraces not wider or deeper than six feet.

(4) Flagpoles, not to exceed the height of the principal structure.

(5) Chimneys.

L. Exterior lighting. In the RD Residential District, exterior lighting, including lighting for purposes of security, shall be directed so as not to create a nuisance to neighboring property.

M. Swimming pools. Swimming pools are permitted pursuant to the following regulations, provided that the dimensional requirements of this chapter are met:

(1) No swimming pool shall be installed which at any point is more than six feet below the adjacent ground level.

(2) No swimming pool may be closer than one foot to groundwater.

(3) The applicant must demonstrate that all excavated materials are to be placed or removed in such a manner as not to degrade the natural environmental features or vegetation in the area.

(4) Any such swimming pool shall be deemed a structure and require issuance of a building permit and certificate of occupancy.

(5) **Editor's Note: Former Subsection M(5), requiring the approval of the Brookhaven Town Division of Environmental Protection prior to the issuance of a building permit, was repealed 7-10-2001, effective 8-26-2001.** No excavation shall be permitted in a primary dune.

N. Minimum habitable area. In the RD Residential District, no dwelling shall hereafter be erected or altered for a single-family dwelling unless provision shall be made therein for not less than 720 square feet for the minimum ground floor area, exclusive of accessory structures.

§ 85-171. CD Commercial District and Oceanfront Dune District; dimensional requirements.

A. Application of this section.

- (1) This section shall control over §§ 85-168 and 85-169 and, where applicable, shall be utilized in conjunction with §§ 85-165, 85-166, 85-168, 85-169 and 85-172 of this article.
- (2) Any development or construction permitted in §§ 85-168 and 85-169 of this article shall be subject to the building requirements as delineated within this section.

B. Accessory uses.

- (1) In the CD Commercial District, the following accessory uses shall be permitted when located on the same lot with the authorized use:
 - (a) Uses permitted in §§ 85-169C(11) and 85-170B(1)(a) and (c) of this article.
 - (b) Signs, as regulated by Subsection J.
- (2) Any accessory building shall be located on the same lot with the principal building, and no accessory building shall be constructed on a lot until the construction of the main building has actually been commenced, and no accessory building shall be used unless the main building on the lot is completed and used.

C. Height.

- (1) In the CD Commercial District, no building or structure shall be erected to a height in excess of 28 feet or 2 1/2 stories, whichever is greater, as measured from the average existing ground elevation, but not less than the minimum elevation necessary to meet the prerequisites for federal flood insurance, designated within the Flood Risk Zone by the National Flood Insurance Program/Federal Emergency Management Agency indicated on the Flood Insurance Rate Map for the Great South Beach, Brookhaven Town, Community Map No. 365-334-B. The rate map shall be on file with both the office of the Town Clerk and Department of Planning, Environment and Development, Brookhaven Town Hall, New York, in compliance with the Public Officers Law, Article 6, New York Freedom of Information Law.
- (2) Accessory buildings shall not exceed 14 feet in height as measured in accordance with the standards enumerated in the map citation Subsection C(1) of this section.

(3) The following exceptions shall be permitted, subject to the approval of the Zoning Board of Appeals pursuant to recommendations of the respective advisory committee(s) from the residential area(s) affected:

(a) A church or other place of worship.

(b) A water tank or standpipe.

D. Lot occupancy.

(1) In the CD Commercial District, the total building area of the principal building and any and/or all accessory structure(s) shall not exceed or occupy more than 50% of the total area.

(2) In the CD Commercial District.

(a) No building or structure shall be erected, altered or reconstructed on a lot having an area of less than 4,000 square feet, with the minimum frontage of 40 feet.

(b) Existing lots shall not be subdivided in area below 7,500 square feet, with a frontage of not less than 75 feet.

E. Front yard. In the CD Commercial District, there shall be a front yard having a depth of not less than 15 feet. Where 40% or more of the frontage on that side of the walk and an intersecting walk is improved with buildings, a majority of which have observed an average front yard line having a variation in depth of not more than six feet, no building shall project beyond the average front yard so established. However, this regulation shall not be interpreted to require a front yard depth of more than 30 feet.

F. Side yards. In the CD Commercial District, there shall be two side yards, one on each side of the building, the total width of both sides to be 10 feet, and no one side yard shall be less than five feet wide.

G. Rear yard. In the CD Commercial District, there shall be a rear yard having a minimum depth of 20 feet.

H. Average setback. Where property in the vicinity is partly built up with permanent buildings and structures and an average setback line has been established, no buildings or structures shall be erected or altered so as to project beyond the average setback line so established.

I. Fences.

- (1) No fence or wall of any type or description shall be erected, in that portion of the Great South Beach, which has a height greater than six feet measured from the elevation of the average ground level of the lot or from the accessory structure upon which the fence is constructed, i.e., deck, patio, etc. In addition, the fenced area shall not extend beyond the front of the principal structure. No fence shall be built in such a way as to interfere with fire, health and police regulations of the Town of Brookhaven or impede access of fire, health or police personnel.
- (2) Nonconforming fences may continue such nonconformity until they are destroyed, structurally altered, reconstructed, changed or moved.

J. Signs.

- (1) In the CD Commercial District, no illuminating signs shall be permitted, nor signs of an obscene nature appealing to the prurient interest or offensive to community standards.
 - (a) Signs shall be limited to four square feet and shall be limited in number to two per premises, to be located on the premises directly in front of the area where the specific use occurs.
 - (b) Sign content must be either the name of the specific business establishment or related to the business on the premises.
- (2) Nonconforming signs may continue such nonconformity until they are destroyed, structurally altered, reconstructed, changed or moved, but the period of such nonconformity may not exceed two years from the date of enactment of this article.

K. Permitted encroachments. In the CD Commercial District, the following encroachments are hereby permitted:

- (1) Cornices, eaves, gutters and chimneys, projecting not more than 24 inches.
- (2) Bay windows and fireplaces, projecting not more than 24 inches.
- (3) Open and unroofed entrance platforms or terraces not wider or deeper than six feet.

(4) Flagpoles, not to exceed the height of the principal structure.

(5) Chimneys.

L. Exterior lighting. In the CD Commercial District, exterior lighting, including lighting for purposes of security, shall be directed so as not to create a nuisance to neighboring property.

M. Swimming pools. Swimming pools are permitted pursuant to the following regulations, provided that the dimensional requirements of this chapter are met:

(1) No swimming pool shall be installed which at any point is more than six feet below the adjacent ground level.

(2) No swimming pool may be closer than one foot to groundwater.

(3) The applicant must demonstrate that all excavated materials are to be placed or removed in such a manner as not to degrade the natural environmental features or vegetation in the area.

(4) Any such swimming pool shall be deemed a structure and require issuance of a building permit and certificate of occupancy.

(5) Prior to issuance of a building permit, the applicant must obtain the approval of the Brookhaven Town Division of Environmental Protection.

(6) No excavation shall be permitted in a primary dune.

N. Minimum habitable area.

(1) Where two-family dwellings are allowed, no dwelling shall be hereafter erected or altered for two-family dwelling use, unless provision shall be made therein for not less than 1,440 square feet for the minimum ground floor area, exclusive of accessory structures.

(2) Where multiple dwellings are allowed, no dwelling shall be hereafter erected or altered for multiple-dwelling use, unless provision shall be made therein for not less than 400 square feet of habitable floor area for each family unit.

§ 85-172. Miscellaneous provisions.

A. Advisory committees.

(1) Each community area situated within the bounds of the Great South Beach in the Town of Brookhaven shall establish an advisory committee. Said committee shall serve the purpose of:

(a) Monitoring the development process of the community.

(b) Encouraging compliance with land use management regulations which seek to preserve the barrier beach.

(c) Advising and submitting written recommendations to the Zoning Board of Appeals of the Town of Brookhaven regarding development and construction for its respective community.

(2) Each respective community, as represented by a majority of that community's property owners through its property owners' association, shall propose the names of not less than three persons nor more than five persons to serve on the advisory committee for that respective community, to be appointed by the Town Board of the Town of Brookhaven for a period not to exceed three years. The names, addresses and telephone numbers of the committee members must be on file with the Clerk of the Town of Brookhaven and the Zoning Board of Appeals.

(3) Each advisory committee shall meet quarterly and at least once per month during the summer season as measured from Memorial Day through Labor Day.

(4) The Zoning Board of Appeals shall notify each respective advisory committee as to all its applications concerning the community area(s) affected.

(5) The respective advisory committee for the area affected shall report any violation of this article or any other provision of the Brookhaven Town Code to the appropriate Town department for review.

B. Zoning Board of Appeals; guidelines for issuance of special permits. In determining whether a special permit shall be issued, the Zoning Board of Appeals shall adhere to the Code of the Town of Brookhaven, which establishes guidelines for the issuance of special permits.

C. Application of the Code of the Town of Brookhaven. Unless in direct contravention with the provisions of this article, all other provisions of the Code of the Town of Brookhaven are applicable.

D. Noncompliance with this article. Noncompliance with any of the provisions of this article shall be subject to the penalties provisions of the ordinances and regulations promulgated by the Town of Brookhaven.

E. Effective date of this article. This article shall become effective 10 days following its publication pursuant to New York Town Law § 133.

§ 85-173. (Reserved)

§ 85-174. (Reserved)

§ 85-175. (Reserved)

§ 85-176. (Reserved)

§ 85-177. (Reserved)

§ 85-178. (Reserved)

§ 85-179. (Reserved)

§ 85-180. (Reserved)

§ 85-181. (Reserved)

§ 85-182. (Reserved)