

Topic:	Comprehensive Planning; Smart Growth; Moratoria
Resource Type:	Regulations
State:	New York
Jurisdiction Type:	Municipal
Municipality:	Town of Brookhaven
Year (adopted, written, etc.):	2003
Community Type - applicable to:	Suburban; Rural
Title:	Town of Brookhaven Moratorium on Development of Substandard Parcels
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Abstract

Chapter 17C of the Town Code for the Town of Brookhaven creates a moratorium halting construction on substandard parcels (lot width of less than 60 feet or a lot area of less than 6,000 square feet) until the Board completes planning studies to enact comprehensive zoning changes. Though, there are exceptions for work in progress and hardship as described below. The moratorium is based on a desire for comprehensive planning and smart growth for the present and the future.

Resource

Town of Brookhaven NY Moratorium on Development of Substandard Parcels

Code of the Town of Brookhaven NY

Chapter 17C: Moratorium: Development on Substandard Parcels

Note: One of seven moratorium ordinances adopted by Town of Brookhaven.

General Code

[http://www.e-](http://www.e-codes.generalcode.com/codebook_frameset.asp?t=tc&p=0012%2D17C%2Ehtm&cn=267&n=[1][1343][1478][2][248][257][267)

[codes.generalcode.com/codebook_frameset.asp?t=tc&p=0012%2D17C%2Ehtm&cn=267&n=\[1\]\[1343\]\[1478\]\[2\]\[248\]\[257\]\[267\]](http://www.e-codes.generalcode.com/codebook_frameset.asp?t=tc&p=0012%2D17C%2Ehtm&cn=267&n=[1][1343][1478][2][248][257][267)

[HISTORY: Adopted by the Town Board of the Town of Brookhaven 6-3-2003 by L.L. No. 10-2003, effective 6-9-2003. Amendments noted where applicable.]

§ 17C-1. Purpose.

- A. In order to address present and future development within the Town and to continue the update of the Town's Comprehensive Plan, the Town Board heretofore directed the Commissioner of Planning, Environment and Development to undertake the identification of substandard parcels, which have a lot width of less than 60 feet or a lot area of less than 6,000 square feet. This moratorium enables the assessment of the appropriateness of developing such substandard lots. The moratorium, halting the

construction of single-family residences, enables the assessment of present and future growth and development needs within the Town and addresses the appropriateness of development of substandard parcels with respect to the existing surrounding communities and environmental impacts.

- B. Therefore, the Town Board of the Town of Brookhaven finds it prudent and necessary to enact a moratorium applicable to substandard parcels having a lot width of less than 60 feet or a lot area of less than 6,000 square feet halting the approval of land use applications and developments pursuant to land use applications, such as those for building permits, subdivision maps, land divisions, variances, special permits and/or zoning district classification petitions. This moratorium is intended to insure that no approvals for such land use applications as aforesaid, including but not limited to said building permits, subdivision maps, land divisions, variances, special permits and change of zoning petitions be granted until this Board may complete its planning studies in respect to said substandard parcels and have the opportunity to consider and enact comprehensive zoning changes as appropriate.
- C. This moratorium also establishes certain exceptions and includes a procedure to obtain hardship relief from the moratorium under certain exceptions.

§ 17C-2. Definitions.

For purposes of this chapter, the following definitions shall apply:

APPROVED APPLICATION — A complete and approved application shall conform to and comply with all applicable requirements of Chapter 85 of the Code of the Town of Brookhaven, the Planning Board Regulations contained in the Code of the Town of Brookhaven and all other applicable state and local laws, rules and regulations and shall have obtained final approved from the Town body, board or public official vested with jurisdiction over such application.

SUBSTANDARD PARCEL — Any parcel, whether single or separate or merged, having a lot area less than 6,000 square feet. **[Amended 9-16-2003 by L.L. No. 28-2003, effective 9-22-2003.]**

§ 17C-3. Prohibitions. [Amended 7-8-2003 by L.L. No. 14-2003, effective 7-14-2003; 9-16-2003 by L.L. No. 28-2003, effective 9-22-2003.]

No new land use applications for construction of new single- and two-family residences, including, but not limited to, those applications for building permits, subdivision maps, land division, variances, special permits and change of zone petitions, shall be accepted, reviewed and/or granted approval by the body, board or public official vested with

jurisdiction over such applications for all substandard parcels of land having a lot area less than 6,000 square feet.

§ 17C-4. Exceptions. [Amended 7-8-2003 by L.L. No. 14-2003, effective 7-14-2003; 9-16-2003 by L.L. No. 28-2003, effective 9-22-2003.]

The prohibition on land use applications shall not be applied with respect to the following:

- A. Development pursuant to existing building permits or other approved applications, any cluster subdivision application pursuant to § 278 of Town Law or any application for additions and/or accessory structures to existing single- and two-family residences; or
- B. Any application for an area variance in which a public hearing has been held before the Zoning Board of Appeals prior to the effective date of the moratorium.

§ 17C-5. Hardship.

- A. Should any owner of property affected by this moratorium suffer an unnecessary hardship in the way of carrying out the strict letter of this moratorium, then the owner of said property may apply to the Town Board in writing for relief from strict compliance with this moratorium upon submission of proof of such unnecessary hardship. For the purposes of this moratorium, unnecessary hardship shall not be the mere delay in being permitted to make an application or waiting for a decision on the application for a building permit, subdivision map, land division, variance, special permit, change of zone, or other approval during the period of the moratorium.
- B. Substantive requirements. No relief shall be granted hereunder unless the Town Board shall specifically find and determine and shall set forth in its resolution granting such exemption that:
 - (1) Failure to grant an exemption to the petitioner will cause the petitioner unnecessary hardship, which hardship is substantially greater than any harm to the general public welfare resulting from the granting of the exemption; and
 - (2) The grant of the hardship, even if the project or activity for which exemption is sought is approved, will clearly have no adverse effects upon any of the Town's goals or objectives in undertaking the community planning effort or in adopting this moratorium, including but not limited to effects resulting from uses detrimental to the community's resources or character, from loss of potential open space including areas important as wildlife habitat or from other adverse environmental impacts; and

(3) The project or activity for which the petitioner seeks an exemption is in harmony and consistent with any interim data or recommendations or conclusions may be drawn from the Town or community-planning effort then in progress.

C. Procedure. Upon submission of a written application to the Town Clerk by the property owner seeking relief from this moratorium, the Town Board shall, within 30 days of receipt of said application, schedule a public hearing on said application upon five days' written notice in the official newspaper of the Town. At said public hearing, the property owner and any other parties wishing to present evidence with regard to the application shall have an opportunity to be heard, and the Town Board shall, within 30 days of the close of said public hearing, render its decision either granting or denying the application for relief from the strict requirements of this moratorium. If the Town Board determines that a property owner will suffer an unnecessary hardship if this moratorium is strictly applied to a particular property, then the Town Board shall grant relief from the moratorium to the minimum extent necessary to provide the property owner relief from strict compliance with this moratorium. The Town Board may impose any conditions on any such grant that is deemed necessary.

§ 17C-6. Term. [Amended 10-21-2003 by L.L. No. 38-2003, effective 10-27-2003; 3-2-2004 by L.L. No. 8-2004, effective 3-8-2004; 8-26-2004 by L.L. No. 19-2004, effective 8-30-2004; 11-16-2004 by L.L. No. 38-2004, effective 11-22-2004; 5-3-2005 by L.L. No. 10-2005, effective 5-9-2005]

This chapter shall expire on August 3, 2005.

§ 17C-7. Supersession of Town Law. [Amended 9-16-2003 by L.L. No. 28-2003, effective 9-22-2003.]

This chapter is hereby adopted pursuant to Municipal Home Rule Law § 10(1)(i) and § 10(1)(ii)(a)(14) and Statute of Local Governments § 10(6) of the State of New York. It is the intent of the Legislature, pursuant to Municipal Home Rule Law § 10(1)(ii)(d)(3) to supersede the provisions of the Town Law, Chapter 16, §§ 264.1, 265.1, 267-a.5, 8, 11, 13(b), 274-a.8, 10, 274-b.6, 8, 276.5, 6, 8 (and specific reference to any local laws incorporating relevant time limits) relating to time limits in connection with zoning and planning determinations.

§ 17C-8. Severability.

If any part or provision of this chapter or the application thereof to any person or circumstance be adjudged invalid by any court of competent jurisdiction, such judgment shall be limited in its operation to the part or provision or application directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this chapter or the application thereof to other persons or circumstances, and the Town Board of the Town of Brookhaven hereby declares

that it would have passed this chapter or the remainder thereof had such invalid application or invalid provision been apparent.