

Town of Babylon, NY  
Wednesday, April 15, 2015

## Chapter 213. Zoning

[HISTORY: Adopted by the Town Board of the Town of Babylon 12-9-1969.<sup>[1]</sup> Amendments noted where applicable.]

### GENERAL REFERENCES

Department of Planning and Development — See Ch. 49.

Amusement devices — See Ch. 76.

Bazaars and fairs — See Ch. 79.

Building construction — See Ch. 89.

Cabarets and dance halls — See Ch. 94.

Coastal erosion hazard areas — See Ch. 99.

Environmental quality review — See Ch. 114.

Land resource excavations — See Ch. 117, Art. II.

Fire prevention — See Ch. 123.

Flood damage control — See Ch. 125.

Freshwater wetlands — See Ch. 128.

Preservation of historic areas — See Ch. 137.

Junk dealers — See Ch. 143.

Multiple dwellings — See Ch. 153.

Noise — See Ch. 156.

Pawnbrokers and secondhand dealers — See Ch. 162.

Sewers — See Ch. 181.

Site plan review — See Ch. 186.

Trailer camps — See Ch. 200.

Adoption of land use regulations — See Ch. 215.

[1]: *Editor's Note: The provisions of Arts. I through III, V through IX, XI, XII, XIV through XVIII, XX and XXI are derived from Ch. 15 of the 1969 Unified Code of Ordinances of the Town of Babylon.*

## Article I. General Provisions

### § 213-1. Definitions and word usage.

[Amended 10-9-1974; 12-2-1975; 7-1-1980 by Res. No. 5]

- A. Unless otherwise stated expressly, the following words and expressions, where used in this chapter, shall have meanings as follows:

#### ACCESSORY BUILDING

A building or a detached private garage subordinate to the main building on a lot, used for purposes customarily incidental to those of the main building, not used for habitation and which does not exceed the size of the main building. This shall not include trailers, mobile homes or like structures, with or without wheels.

[Amended 11-1-1988; 3-21-1989; 2-17-1998 by L.L. No. 1-1998]

### **ACCESSORY STRUCTURE**

A structure subordinate to the buildings on a lot, used for purposes customarily incidental to those of the buildings, having no foundation or permanent attachment to the land other than a simple slab, not used for habitation, swimming pool enclosures or garage purposes and which does not exceed the size of the main building. This shall not include trailers, mobile homes or like structures, with or without wheels.

[Added 11-1-1988; amended 3-21-1989]

### **AGRICULTURE**

The cultivation of the soil for food products or other useful or valuable growths of the field or garden, but does not include dairying, raising of livestock, breeding or keeping of animals, fowl or birds where the same is carried on as a business or gainful occupation.

### **BOARDINGHOUSE**

A building or part thereof containing one or more rooming units, which is occupied or intended to be occupied, which is offered or permitted to be used, by the owner, operator, occupant, person in charge, agent or anyone acting on behalf of any of the aforementioned, which is not a motel or hotel, for one or more nights, and sometimes for extended periods of weeks, months and years, where lodging and meals are provided, with or without individual cooking facilities. Nothing herein shall be construed to prevent a natural family or functional equivalent of a natural family from occupying an entire one-family home, a legal accessory apartment or a legal unit in a multifamily dwelling, which by certificate of occupancy is permitted to be used as a multiple-family dwelling.

[Added 8-15-1989; amended 11-17-2010 by L.L. No. 34-2010]

### **BUILDING**

A combination of any materials, whether portable or fixed, having a roof, to form a structure affording shelter for persons, animals or property. The word "building" shall be construed, when used herein, as though followed by the words "or part or parts thereof" unless the context clearly requires a different meaning. The term "building" shall also mean "factory manufactured home" and "mobile home."

[Added 5-15-1990]

### **BUILDING AREA**

The area of the maximum horizontal cross section of the building on a lot.

### **BUILDING INSPECTOR**

The Building Inspector of the Town of Babylon or any person duly appointed as such Inspector.

### **CAMP COTTAGE**

Any building of whatever material constructed, designed or equipped to be used for living, sleeping or eating only by transient or seasonal occupants.

### **CAMP UNIT**

Any plot of land in a tourist camp upon which is proposed to be located any tent, tent house, camp cottage, tourist unit, house car or trailer designed or equipped to be used for living, sleeping or eating.

**COMMERCIAL VEHICLE**

Any commercially registered vehicle, including but not limited to a bus, a minibus, a box truck, a tractor-trailer combination (or either component thereof), an ambulance, an articulated bus, an automobile transporter, a boat transporter, a hazard vehicle, a livery, an omnibus, a sani-van, a taxi, a tow truck, a truck, a vanpool vehicle, or any vehicle bearing commercial advertising or identification or any vehicle which is not designed for use as a passenger-only vehicle, which is not a limousine, taxi, livery or other for-hire vehicle.

[Added 10-1-2002 by L.L. No. 30-2002; amended 6-21-2005 by L.L. No. 11-2005]

**CORNER LOT**

A lot having a street line along two streets forming an angular or curved corner.

**DATE OF ADOPTION**

The day that the Zoning Chapter is formally adopted by resolution of the Town Board and entered in its minutes.

**DECK**

An open structure subordinate to the main building on a lot, used for purposes customarily incidental to the main building and associated with patios, porches, porticoes, balconies and sun decks, not used for habitation and which does not exceed the size of the main building. Decks having a height of 18 inches or less shall be considered accessory structures. Decks having a height of more than 18 inches, but five feet or less, shall be considered accessory buildings. Decks having a height of more than five feet shall be considered building extensions/additions.

[Added 3-21-1989; amended 3-6-2007 by L.L. No. 3-2007]

**DEPTH OF A LOT**

The average of the distance from the street line of the lot to its opposite rear line, measured in the general direction of the side lines of the lot.

**DIVISION OF BUILDING**

The Division of Building in the Department of Planning and Development of the Town of Babylon or any employee or officer of such Department.

[Amended 4-7-1976 by L.L. No. 15-1976<sup>[1]</sup>]

**DOUBLE FRONT LOT**

A lot having a street line at both ends of the lot.

**DRIVEWAY**

A paved surface consisting of nonporous materials, creating a barrier between the nonporous materials and the earth, where registered automobiles and other registered vehicles are operated or allowed to stand, connecting a real property to a public road.

[Added 9-10-2008 by L.L. No. 22-2008]

**EFFECTIVE DATE**

The tenth day after said chapter is published in a newspaper in the township and posted in a newspaper in the Town and posted in accordance with the provisions of §§ 264 and 265 of the Town Law of the State of New York.

**FAMILY**

A single person or collective group of persons related by kinship, adoption, blood or marriage, or the functional and factual equivalent of a natural family, living together under the same roof and cooking

together as a single housekeeping unit, in a common household whose relation is of a permanent and distinct domestic character.

[Amended 8-15-1989]

**FENCE**

Either basket-weave, woven-wire, vertical-wood-staving, split-rail or a fence having open spaces the same width as and between each of the pickets, slats or other materials used in its construction, unless otherwise permitted by the Board of Appeals as hereinafter provided.

**FRONT BUILDING LINE**

The line across the entire frontage of the lot at the required front setback distance.

**FRONT YARD**

The required open space extending along the streetline of any street on which the lot abuts.

**FUNCTIONAL AND FACTUAL EQUIVALENT OF A NATURAL FAMILY**

A single housekeeping unit bearing the generic character of a family unit as a relatively permanent household, not a framework for transients or transient living, leading a stable, nonprofit, family-like existence, headed by a householder as one would likely find in a biologically unitary family; in every sense but a biological one it must function as a stable, single-family unit, albeit occasionally changing in composition even as a natural family might and does.

[Added 8-15-1989]

**GARAGE, MINOR**

A building, other than a private garage, used for the storage only of: noncommercial automobiles; or commercial automobiles only for a purpose accessory to the permitted use of the lot.

[Amended 11-1-1988]

**GARAGE, PRIVATE**

A building detached from and accessory to a residential building, or a building attached to a residential building, or a part of a residential building, which is designed to be used for or is actually used for the parking or storage of motor vehicles, boats or trailers, having not more than two bays and not more than 250 square feet per bay and each bay being not less than 10 feet in width and 20 feet clear interior depth, in any zoning district.

[Amended 11-1-1988; 2-17-1998 by L.L. No. 1-1998; 9-10-2008 by L.L. No. 22-2008]

**GARAGE, PUBLIC**

A building or portion thereof, other than a private garage, designed or used for equipping, repairing, renting, parking or storing motor vehicles.

[Amended 11-1-1988]

**GROUND STORY OR FIRST STORY**

The lowest story of a building entirely above the level of the ground in front of a building.

**HEIGHT OF A BUILDING**

The distance measured from the mean average grade of the ground surrounding the building to the highest point of the roof, provided that chimneys, spires, elevator penthouses, tanks and similar projections shall not be included for the purpose of determining the height.

[Amended 10-18-2005 by L.L. No. 24-2005]

**KITCHEN**

A room or an area in a building in which food is cooked and/or prepared and which contains

equipment used in the cooking and preparation of food, i.e., stove and/or oven and/or microwave oven or any other appliance, device or equipment ordinarily used in the preparation and/or cooking of food. It may also contain any or all of the following: sink and/or refrigerator and/or base cabinet(s) and/or upper cabinet(s).

[Added 6-10-1997 by L.L. No. 7-1997]

### **LOT AREA**

The area of a lot on which a building and its accessories may be located, exclusive of land in the bed of any street and exclusive of any land intermittently or permanently underwater.

[Amended 12-2-1986]

### **LOT IN SINGLE AND SEPARATE OWNERSHIP**

Evidenced by a deed showing same is recorded by the Suffolk County Clerk's Office prior to the effective date of this chapter or evidenced by a written agreement showing same to be contracted for prior to the effective date of this chapter.

### **MOTEL-HOTEL**

A structure in which lodging is provided for transient people and offered to the public for compensation and in which ingress and egress to and from all rooms is made through an inside lobby or office supervised by a person in charge at all hours.

[Amended 8-4-1981 by Res. No. 2]

### **MULTIPLE RESIDENCE**

A building or group of buildings designed for occupancy by three or more families living independently of each other in separate dwelling units.

### **NONCONFORMING BUILDING OR USE**

One that does not conform to the regulations of the district in which it is situated.

### **OCCUPIED**

The presence of a person in any rooming unit, unit, area or space within a premises, when said rooming unit, unit, area or space is used, furnished to be used or intended to be used for living or sleeping, which may or may not be used for cooking or eating purposes and with or without private bathroom facilities. There shall be a rebuttable presumption that a rooming unit, unit, area or space within a premises is occupied when said rooming unit, unit, area or space is furnished or set up to be used for human occupancy.

[Added 4-22-2009 by L.L. No. 8-2009]

### **OFF-STREET PARKING AREA**

The area of a lot or a building used or designated to be used for the purpose of accessory parking of vehicles. Such area shall be on or part of the same lot on which the principal use is located. However, when approved by the Planning Board as part of the review of site plans pursuant to Chapter **186**, Site Plan Review, such area may be maintained on a separate lot determined by said Board to be convenient thereto; provided, however, that such separate lot shall be permanently and exclusively committed to such use, and for such purpose the Planning Board shall require such recordable instruments which, as to execution and form, shall be satisfactory and are deemed necessary to ensure the continued and noninterrupted use of such parking area for such purpose.

### **OUTDOOR STORAGE**

The deposit, placement, maintenance or sufferance of any materials, equipment, commercial vehicle (except during actual business hours, but in no event between 10:00 p.m. and 6:00 a.m.), building

materials, objects or items of any kind or character, except while engaged in actual immediate delivery at the premises.

[Added 6-21-2005 by L.L. No. 11-2005]

### **PARKING SPACE**

The space required for each motor vehicle intended or required to be parked in an off-street parking area. Each parking space shall have an area of not less than 200 square feet, and in addition thereto, there shall be provided such space as is reasonably necessary for adequate ingress, egress and turning. The formula for providing an adequate parking area is an area of 334 square feet per required motor vehicle unit.

### **PERSON IN CHARGE**

The person or persons possessed of the fee simple of an improvement or a lesser estate therein, a mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee, agent or any other person directly or indirectly in control of any premises.

[Added 4-22-2009 by L.L. No. 8-2009]

### **PREMISES**

The land and all buildings and structures thereon.

### **PRIVATE PROPRIETARY CONVALESCENT HOME**

A facility where lodging, board and health-related services are provided for persons recuperating from illness or incapacity.

[Added 8-15-1989; amended 11-17-2010 by L.L. No. 34-2010]

### **PRIVATE PROPRIETARY HOME FOR ADULTS**

An adult-care facility, for the purpose of providing temporary or long-term residential care, room, board, housekeeping, personal care and supervision to adults.

[Added 8-15-1989; amended 11-17-2010 by L.L. No. 34-2010]

### **PRIVATE PROPRIETARY NURSING HOME**

A facility, other than a hospital, where lodging, board and health-related services are provided for persons with or recuperating from illness or incapacity.

[Added 8-15-1989; amended 11-17-2010 by L.L. No. 34-2010]

### **PUBLIC PARKING PLACE**

Any plot other than one owned or maintained by the Town or a municipal district or authority, used by the public for parking of automobiles or other motor vehicles.

### **REAR YARD**

The required open space extending along the rear lot line (not a street line) throughout the whole width of the lot.

### **REST HOME**

A facility established and operated for compensation and profit, where lodging, meals and nonmedical supervision are provided for persons on a transient, long-term or permanent basis.

[Added 8-15-1989]

### **ROOMING HOUSE**

A building or part thereof containing one or more rooming units, which is occupied or intended to be occupied, which is offered or permitted to be used, by the owner, operator, occupant, person in charge, agent or anyone acting on behalf of any of the aforementioned, which is not a motel or hotel,

for one or more nights, and sometimes for extended periods of weeks, months and years. Nothing herein shall be construed to prevent a natural family or functional equivalent of a natural family from occupying an entire one-family home, a legal accessory apartment or a legal unit in a multifamily dwelling, which by certificate of occupancy is permitted to be used as a multiple-family dwelling. [Added 8-15-1989; amended 4-22-2009 by L.L. No. 8-2009]

**ROOMING UNIT**

Any room or group of rooms forming a space used furnished to be used or intended to be used for living or sleeping which may or may not be used for cooking or eating purposes and with or without private bathroom facilities.

[Added 4-22-2009 by L.L. No. 8-2009]

**SANITARIUM**

Not an institution required to be licensed under the Mental Hygiene Law of the State of New York.

**SCRAP METAL PROCESSING FACILITY**

An establishment engaged primarily in the purchase, processing and shipment of ferrous and/or nonferrous scrap, the end product of which is the production of raw material for remelting purposes for steel mills, foundries, smelters, refiners, and similar users and provided that such establishment is within 100 feet of property zoned H Industry, is comprised of at least four acres and a portion of the property contains a nonconforming use that permits the processing of scrap metal.

[Added 11-17-2011 by L.L. No. 24-2011]

**SCRAP PROCESSOR**

Any person, association, partnership or corporation operating and maintaining a scrap metal processing facility.

[Added 11-17-2011 by L.L. No. 24-2011]

**SHED**

A structure subordinate to the buildings on a lot, used for purposes customarily incidental to the buildings and associated with cabanas, playhouses or storage of lawn and pool care equipment or any other items used in the normal maintenance of residential property, not used for habitation and which does not exceed 100 square feet and/or 10 feet in height. "Sheds" shall be considered accessory structures and shall not include trailers, mobile homes or like structures with or without wheels.

[Added 3-21-1989; amended 5-27-2008 by L.L. No. 15-2008]

**SIDE YARD**

The required open space extending along the side lot line from the front yard to the rear yard.

**SIGN**

Every kind of billboard, signboard and other shape or device or display arranged, intended, designed or used to advertise, announce, direct or otherwise inform, including any text, symbol, marks, letters or figures painted on or incorporated in the composition of the exterior surface of a building or structure.

**SINGLE- OR ONE-FAMILY DWELLING**

A building designated for and occupied exclusively as a home or residence for not more than one family.

**SMALL IMPROVEMENT**

A minor addition or change in the quality of the natural and man-made environment that makes

something better or more valuable, which includes, but is not limited to, a dock, fence, boathouse or storage shed or other like structure which does not exceed 100 square feet and/or 10 feet in height, which is not used for living accommodations.

[Added 8-14-2012 by L.L. No. 11-2012]

**STREET LINE or FRONT PROPERTY LINE**

The dividing line between the street and a lot.

**STRUCTURE**

A combination of materials other than a building forming a construction that is safe and stable and includes, among other things, stadiums, gospel and circus tents, reviewing stands, platforms, stagings, poles, stacks, observation towers, sheds, coal bins, bulkheading, walls, fences over four feet in height and signs; the word "structure" shall be construed as though followed by the words "or part thereof."

**TELEPHONE EXCHANGE**

A building erected or used exclusively as a central station where telephone lines meet and where connections are made between them and where no trucks or materials are stored.

**TOURIST CAMP**

Any plot on which are located or which is offered to the public for the location of one or more tents, cabins, tent houses, camp cottages, tourist houses, house cars or trailers designed or equipped to be used for living, sleeping or eating.

**TRAILER or HOUSE CAR**

Any vehicle designed or equipped to be used for living, sleeping or eating and designed to move from place to place on wheels, propelled by its own power or otherwise drawn or propelled.

**TWO-AND-ONE-HALF-STORY BUILDING**

A building whose main eaves are below the mid-height of the third story.

**TWO-FAMILY DWELLING**

A building designed for and occupied exclusively as a home or residence for two families.

**TWO-STORY BUILDING**

Any building having an area on the second floor of not less than 75% of the area on the first floor.

**WIDTH OF A LOT**

The average width measured at right angles to the direction of its average depth.

[1]: *Editor's Note: Local Law No. 15-1976 created the Department of Planning and Development, in which Department the Division of Building replaced the former Building Department. For the text of this local law, see Ch. 49.*

- B. Words used in the singular number shall include the plural and vice versa. The word "building" includes the word "structure"; the word "lot" includes the word "plot"; the word "shall" is always mandatory.

## § 213-2. Interpretation.

In interpreting and applying the provisions of this chapter, they shall be held to be the minimum requirements adopted for the promotion of health, safety, morals, comfort, convenience and the general welfare.



## § 213-3. Construal of provisions.

This chapter shall not repeal, abrogate, annul or in any way impair or interfere with any existing provisions of law or ordinance or any rules or regulations previously adopted or issued or which shall be adopted or issued pursuant to law relating to the use of buildings or premises, provided that where this chapter imposes a greater restriction upon the use of buildings or premises or upon the height of buildings or requires larger lots or yards than are imposed or required by such existing provisions or regulations, the provisions of this chapter shall control.

## § 213-4. Role of Planning Board.

The Planning Board of the Town shall study the application of this chapter and shall, from time to time, recommend to the Town Board such changes in the chapter and in the boundaries of the various zones as it shall deem desirable in the public interest.

## § 213-5. Lot, open space and yard area requirements.

The lot, open space or yard areas required by this chapter for a particular building shall not be diminished and shall not be included as a part of the required lot, open space or yard areas for any other building. If the lot, open space or yard areas required by this chapter for a particular building are diminished, the continued existence of such building shall be deemed to be a violation of this chapter. The lot, open space or yard areas of buildings existing at the time of the passage of this chapter shall not be diminished below the requirements herein provided for buildings hereafter erected, and such required areas shall not be included as a part of the required areas of any building hereafter erected.

### § 213-5.1. Yield calculations in determining lot area.

[Added 12-2-1986]

In any residential, business or industrial district, the square footage of any land intermittently or permanently under water shall not be included in the yield calculations used to determine the area of a lot upon which a building may be erected.

## § 213-6. Premises owned by Town.

[Amended 4-28-1971]

This chapter shall not apply to or affect any building, structure or premises owned by the Town of Babylon or any building or structure erected or standing on premises owned by the Town of Babylon. This chapter shall not apply to or affect any building, structure or premises which shall or may be erected, altered or used for any municipal purposes permitted by law, and any building, structure or premises may be erected, altered or used for any such purpose in any district by resolution of the Town Board, subject to such conditions and safeguards as the Town Board may deem appropriate in each particular case.

## § 213-7. Buildings under construction prior to adoption.

- A. Nothing herein contained shall require any change in the plans, construction or designated use of a building actually under construction at the time of the passage of this chapter and which entire building shall be completed within one year from the date of issue. Nothing herein contained shall require any change in plans, construction or designated use of a building for which a building permit has been heretofore issued and which entire building shall be completed within one year from date of issue.
- B. If an amendment to this chapter is hereafter adopted changing the boundaries of districts, the provisions of this chapter, with regard to buildings or permits existing or buildings under construction or building permits issued at the time of the passing of this chapter, shall apply to buildings or premises existing or buildings under construction or building permits issued in the area affected by such amendment at the time of the passage of such amendment.

## § 213-8. Penalties for offenses.

[Amended 5-20-2003 by L.L. No. 7-2003; 4-29-2008 by L.L. No. 13-2008; 7-15-2008 by L.L. No. 17-2008]  
Legislative intent. The Town Board finds that the proliferation of violations of the provisions of the Town Code of the Town of Babylon and of conditions of or imposed on zoning-related grants and/or approvals by the Town Board, Planning Board and Zoning Board of Appeals has caused a serious threat to the safety and welfare of the residents of the Town and has eroded the quality of life of all who live and work in the Town. The Town Board therefore finds it necessary and proper to increase the fines and related penalties for violations of the Town Code. It is the further intent of the Town Board to exercise its authority as provided by law with particular reference to its authority pursuant to Municipal Home Rule Law § 135, and the Town Board hereby supersedes any inconsistent provisions of state law.

- A. Any person who shall violate any of the provisions of this chapter or who shall fail to comply therewith or with any of the requirements thereof or who shall build or alter or use any building or land in violation of any detailed statement or plan submitted and approved hereunder shall be guilty of a violation, and upon conviction thereof, a fine of not less than \$250 nor more than \$1,000 must be imposed and a term of imprisonment for a period not to exceed 15 days may be imposed, or both, for conviction of a first offense; for conviction of a second offense, both of which were committed within a period of five years, shall be guilty of a violation, and upon conviction a fine not less than \$1,000 nor more than \$2,500 must be imposed and a term of imprisonment for a period not to exceed 15 days may be imposed, or both; and upon conviction for a third or subsequent offense, all of which were committed within a period of five years, shall be guilty of a violation, and a fine not less than \$2,500 nor more than \$5,000 must be imposed and a term of imprisonment for a period not exceed 15 days, or both. Each day's continued violation shall constitute a separate additional violation.
- B. Upon application of the Town Attorney's office, a violation of this chapter may be reduced to an "attempted violation" as established by the New York State Penal Law § 110.00. Penalties for the reduced charge of attempt shall be:
  - (1) Any person who shall attempt to violate any of the provisions of this chapter shall be guilty of a violation, and upon conviction thereof, a fine of not less than \$100 nor more than \$500 must be imposed and a term of imprisonment for a period not to exceed 15 days, or both, for conviction of a first offense; for conviction of a second offense, both of which were committed within a period of five years, a fine of not less than \$500 nor more than \$1,000 must be imposed and a term of

imprisonment for a period not to exceed 15 days may be imposed, or both; and upon conviction for a third or subsequent offense, all of which were committed within a period of five years, a fine of not less than \$1,000 nor more than \$2,500 must be imposed and a term of imprisonment for a period not to exceed 15 days may be imposed, or both. Each day's continued violation shall constitute a separate additional violation.

[Amended 1-25-2011 by L.L. No. 5-2011]

- C. Notwithstanding anything in § **213-8A** and **B**, any person who shall allow, permit or suffer the existence of a rooming house on any property within the Town of Babylon shall be guilty of a Class A misdemeanor and, upon conviction thereof, shall be punishable by a fine of not less than \$5,000 and not more than \$10,000 or imprisonment for a period not to exceed one year, or both.

[Added 4-22-2009 by L.L. No. 8-2009]

- (1) Upon application of the Town Attorney's office (Special Assistant District Attorney), a violation of this chapter may be reduced to an attempted violation as established by the New York State Penal Law § 110.00. Penalties for the reduced charge of attempt shall be:

- (a) Any person who shall attempt to violate any of § **213-62A**, **213-75.3A**, **213-77A**, or 213-92A of this article shall be guilty of a violation and, upon conviction thereof, a fine of not less than \$2,000 nor more than \$5,000 must be imposed and a term of imprisonment for a period not to exceed 15 days may be imposed, or both.

## § 213-9. Parties responsible for offenses.

[Amended 9-13-2006 by L.L. No. 31-2006]

No owner or lessee or person having possession and control of a premises or any part thereof shall cause or permit any violation of this chapter to exist or fail to comply with the requirements of this chapter, and any architect, builder, contractor, agent, person, firm or corporation which shall have caused or permitted or assisted in the commission of any violation of this Code or fails to comply with any provision or requirement of this Code shall each be guilty of a separate and individual offense and, upon conviction thereof, shall be punished as herein provided.

## § 213-10. Action to restrain and abate violations.

In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted or maintained or any building, structure or land is used in violation of this chapter or of any regulations made pursuant thereto, in addition to other remedies provided by law, any appropriate action or proceedings, whether by legal process or otherwise, may be instituted or taken to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use to restrain, correct or abate such violation, to prevent the occupancy of said building, structure or land or to prevent any illegal act, conduct, business or use in or about such premises.

### § 213-10.1. Consent of owner required prior to application.

[Added 10-20-1987]

The owner of any parcel of land, structure or other type of property which is the subject of an application made

to any board, commission or agency with the authority to hear any application authorized under any section of this chapter shall file with such board, commission or agency a duly executed, signed sworn statement consenting to the making of an application concerning said parcel of land, structure or other type of property by said applicant.

## Article II. Board of Appeals

### § 213-11. Creation.

[Added 4-26-2005 by L.L. No. 6-2005]

The Town Board hereby supersedes, pursuant to its powers set forth in § 10 of the Municipal Home Rule Law, § 267(2) of the Town Law, which limits the Board of Appeals to three or five members, and § 267(11) of the Town Law, which only allows for alternate members to serve where a conflict of interest is involved. There shall be a Board of Appeals consisting of seven members appointed by the Town Board. There shall also be up to three alternate members who may serve when a member has a conflict of interest or is absent or when a vacancy on the Board occurs. Such Board of Appeals shall, consistent with Town Law, determine its own rules and procedure, the manner in which appeals shall be brought before it and what notice shall be given of proceedings before it. The Board of Appeals shall investigate and report upon all matters referred to it by the Town Board. The Board of Appeals shall have the powers granted by the Town Law and the following powers.

### § 213-12. Variance powers.

Where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of these regulations, the Board of Appeals shall have power to vary or modify the application of such regulations so that the spirit of the chapter shall be observed, public safety and welfare secured and substantial justice done.

### § 213-13. Authorization of permissive uses.

Whenever a use or the location thereof is permitted only if the Board of Appeals shall approve thereof, the Board of Appeals may, in a specific case and after notice and public hearing, authorize such permissive use and its location within the district in which this chapter specifies the permissive use may be located, subject, however, to the following:

A. Before such approval shall be given, the Board of Appeals shall determine:

- (1) That the use will not prevent the orderly and reasonable use of adjacent properties or of properties in adjacent use districts.
- (2) That the use will not prevent the orderly and reasonable use of permitted or legally established uses in the district wherein the proposed use is to be located or of permitted or legally established uses in adjacent use districts.
- (3) That the safety, the health, the welfare, the comfort, the convenience or the order of the Town will not be adversely affected by the proposed use and its location.

- (4) That the use will be in harmony with and promote the general purposes and intent of this chapter.
- B. In making such determination, the Board of Appeals shall also give consideration, among other things, to:
- (1) The character of the existing and probable development of uses in the district and the peculiar suitability of such district for the location of any of such permissive uses.
  - (2) The conservation of property values and the encouragement of the most appropriate uses of land.
  - (3) The effect that the location of the proposed use may have upon the creation or undue increase of vehicular traffic congestion on public streets or highways.
  - (4) The availability of adequate and proper public or private facilities for the treatment, removal or discharge of sewage, refuse or other effluent (whether liquid, solid, gaseous or otherwise) that may be caused or created by or as a result of the use.
  - (5) Whether the use or materials incidental thereto or produced thereby may give off obnoxious gases, odors, smoke or soot.
  - (6) Whether the use will cause disturbing emissions of electrical discharges, dust, light, vibration or noise.
  - (7) Whether the operations in pursuance of the use will cause undue interference with the orderly enjoyment by the public of parking or of recreational facilities, if existing, or if proposed by the Town or by other competent governmental agency.
  - (8) The necessity for bituminous surfaced space for purposes of off-street parking of vehicles incidental to the use and whether such space is reasonably adequate and appropriate and can be furnished by the owner of the plot sought to be used within or adjacent to the plot wherein the use shall be had.
  - (9) Whether a hazard to life, limb or property because of fire, flood, erosion or panic may be created by reason or as a result of the use, or by the structures to be used therefor, or by the inaccessibility of the property or structures thereon for the convenient entry and operation of fire and other emergency apparatus or by the undue concentration or assemblage of persons upon such plot.
  - (10) Whether the use or the structures to be used therefor will cause an overcrowding of the land or undue concentration of population.
  - (11) Whether the plot area is sufficient, appropriate and adequate for the use and the reasonably anticipated operation and expansion thereof.
  - (12) Whether the use to be operated is unreasonably near to a church, school, theater, recreational area or other place of public assembly.
- C. The Board of Appeals shall, in authorizing such permissive uses, impose such conditions and safeguards as it may deem appropriate, necessary or desirable to preserve and protect the spirit and objectives of this chapter. Such permits may be granted for a temporary period or permanently, as determined by the Board of Appeals. If granted for a temporary period, the application for extension of same will be subject to a public hearing as required in the original application.  
[Amended 10-7-2008 by L.L. No. 23-2008]

## § 213-13.1. Basis for variance or permissive use.

[Added 12-15-1987]

Every variance or permissive use granted or denied by the Board of Appeals shall be based upon and accompanied by specific findings supported by evidence produced at a public hearing. In the case of a variance, the decision shall set forth whether or not there are unique circumstances of the particular case as measured by the criteria set forth in § 213-13, so as to constitute practical difficulties or unnecessary hardship in the way of carrying out the strict letter of the Zoning Ordinance. In the case of a permissive use, the decision shall set forth whether or not the criteria of § 213-13 for the granting of a permissive use have been met and the determinations of the Board with respect to matters upon which the Zoning Ordinance requires Board of Appeals consideration. The determination of the Board of Appeals shall be made at the time of the decision to grant or deny the variance or special use. A determination made after the issuance of the Board's decision, including such a determination included in a return on judicial review, shall not satisfy the requirements of this section.

## § 213-14. Power to make rules.

The Board of Appeals shall make rules as to the manner of filing appeals and applications for variances or for special exceptions.

## § 213-15. Notice of hearing for variance.

[Amended 7-7-1970]

- A. Posting of signs. After filing with the Board of Appeals, and payment of the requisite fees, of an appeal for a variance or of an application for special exception, the Board of Appeals shall fix a time and place for a public hearing thereon and shall give notice thereof by publishing a notice thereof in accordance with Town Law and by requiring the applicant to erect a white with red lettering sign or signs measuring not less than 30 inches high and 40 inches wide, which shall be prominently displayed on the premises facing each public street on which the property abuts, giving notice that an application for an appeal or special exception use is pending and the date, time and place where the public hearing will be held. The sign shall not be set back more than 10 feet from the property line and shall be not less than two nor more than six feet above the grade at the property line. The sign shall be made of fourteen-ply pressed board or other durable material. It shall be displayed for a period of not less than 10 days immediately preceding the public hearing date or any adjourned date. The applicant shall file an affidavit that he has complied with the provisions of the section.
- B. Notice to surrounding property owners.  
[Added 6-6-2000 by L.L. No. 12-2000]
  - (1) Not less than 15 days prior to the date fixed for the public hearing, the applicant shall file with the Clerk of the Board the following:
    - (a) A radius map drawn by a professional engineer or architect for all applications where the subject property is used as or zoned business or industrial, which map shall depict all properties and zoning districts within 200 feet of the perimeter of the subject property.
    - (b) A copy of the Suffolk County Tax Map for all applications with a two-hundred-foot border drawn around the perimeter of the subject property.

- (c) A list of names and addresses of all owners of properties within 200 feet of the perimeter of the subject property, as listed on the assessment rolls of the Town.
  - (d) Envelopes (Size 10: 4 1/8 inches by 9 1/2 inches) with first-class postage affixed thereto, addressed to the owners of properties located within 200 feet of the perimeter of the subject property, as listed on the assessment rolls of the Town, which envelopes shall name the Board as the return addressee.
- (2) The Clerk of the Board shall mail notice of the hearing utilizing the foregoing not less than 10 days prior to the date fixed for the hearing. The failure of a property owner to actually receive the notice required by this section shall not be deemed a jurisdictional defect, and the Board, in its discretion, may proceed with the hearing and render a decision.

## § 213-16. Expiration of variance in absence of construction.

Every variance or application granted by the Board of Appeals in pursuance of the provisions of this chapter shall be and become null, void and of no further force or effect, unless, within 180 days after filing with the Town Clerk of the decision of the Board of Appeals, the use so granted shall actually have commenced upon the premises or the erection and construction of the principal building or structure for the construction or use of which a variance or special exception shall have been granted by the Board of Appeals shall actually have been commenced; provided, however, that excavation for or construction of a building foundation shall not be deemed to be commencement of the erection or construction of such building or structure within the meaning of this section.

### § 213-16.1. Additional variance applications.

[Added 8-20-1985]

No parcel or part thereof may be the subject of an application for a variance within one year after the Board of Appeals has held a public hearing on an application for a variance, unless such application shall be substantially different from the previous application.

## Article III. Permits and Certificates

### § 213-17. Enforcement; permit fee.

[Amended 7-20-1999 by L.L. No. 8-1999; 2-24-2004 by L.L. No. 4-2004]

- A. It shall be unlawful to own, occupy, lease, let or use a building, structure, accessory building or accessory structure that has been constructed, erected, modified or altered unless a permit authorizing the same shall have been issued by the Building Inspector. There shall be a rebuttable presumption that a building, structure, accessory building or accessory structure has been constructed, erected, modified or altered where the building, structure, accessory building or accessory structure does not conform to the approved set of plans on file with the Town of Babylon.

[Amended 5-9-2006 by L.L. No. 14-2006]

- (1) Any person who shall obtain a building permit shall be in violation of this section if said building permit expires before the completion of all of the work for which the permit was issued. It shall be an affirmative defense that said building permit was renewed, surrendered to the Building Inspector or expired without any work being performed pursuant to said permit.
  - (2) Any person who shall obtain a building permit shall be in violation of this section if said building permit expires before the issuance of a certificate of occupancy for work performed pursuant to said building permit, if such work requires the issuance of a certificate of occupancy.
- B. A fee shall be charged for every permit issued. The amount of such fee shall be as may be determined from time to time by the Town Board and, commencing February 1, 2000, shall be doubled for every permit application filed after the work which is the subject of the permit has been commenced.

## § 213-18. Expiration of building permit.

[Amended 3-3-1998 by L.L. No. 3-1998; 7-20-1999 by L.L. No. 9-1999; 2-24-2004 by L.L. No. 4-2004]

Each and every permit issued by the Building Inspector under the provisions of this chapter shall expire and become null and void at the expiration of 180 days from the date of issuance, unless, within such period, an extension of such permit has been duly obtained from the Building Inspector. The provisions of this section shall apply to any such extension.

## § 213-19. Extension of building permit.

[Amended 4-24-2001 by L.L. No. 5-2001; 5-7-2002 by L.L. No. 6-2002]

- A. The Building Inspector is hereby authorized to grant more than one extension of any permit; provided, however, that the applicant shall submit proof of his inability to complete the existing building or structure within the time limit. For each extension the fee shall be half the original fee.
- B. For all additional extensions, the fee shall be half of the original fee. However, a maximum of two renewal fees shall be collected for extensions of residential building permits.

## § 213-20. Certificate of occupancy.

- A. No land shall be occupied or used and no building hereafter erected or altered shall be occupied or used in whole or in part for any purpose whatsoever except for the alteration of or addition to a dwelling until a certificate of occupancy shall have been issued by the Building Inspector stating that the premises or building complies with all the provisions of this chapter. No change or extension of use and no alteration shall be made in a nonconforming use of premises without a certificate of occupancy having first been issued by the Building Inspector that such change, extension or alteration is in conformity with the provisions of this chapter.
- B. A certificate of occupancy shall be applied for at the same time that the building permit is applied for and shall be issued within 10 days after the erection or alteration of the building shall have been completed.
- C. A record of all certificates shall be kept on file in the office of the Building Inspector, and copies shall be furnished upon request to any person having a proprietary or tenancy interest in the building affected.



- D. No permit for excavation shall be issued before application has been made for a certificate of occupancy.
- E. No building or premises for which a certificate of occupancy is required may be occupied until such a certificate shall have been issued.

## § 213-21. Fee for certificate of occupancy.

A fee shall be charged for every certificate of occupancy issued. The amount of such fee shall be determined from time to time by the Town Board.

## § 213-22. Continuation of legal nonconforming use.

[Added 6-7-1977]

- A. The term "legal nonconforming use," as used in this article, shall mean any nonconforming use which, at the time such use was commenced, was maintainable as a master of right under the statutes, ordinances and general rules of law then in effect in the Town of Babylon.
- B. Any legal nonconforming use may be continued; provided, however, that a legal nonconforming use shall not be abandoned or changed unless changed to a conforming use. A legal nonconforming use, if changed to a conforming use, may not be thereafter changed to any nonconforming use.

## § 213-23. Extension of legal nonconforming use.

[Added 6-7-1977]

- A. No legal nonconforming use may be extended, except as provided in this section. In any building wherein the legal nonconforming use occupies more than 50% of the floor area, then the legal nonconforming use may be extended to the entire floor area.
- B. A building arranged, designed or devoted to a nonconforming use at the time of the adoption of this section may not be reconstructed or structurally altered to an extent exceeding in aggregate 25% of the ground area of the building, unless the use of said building is changed to a conforming use, notwithstanding the provisions of Subsection **A** of this section. A nonconforming use of land may not be extended in the aggregate more than 25% of the area occupied at the time of the adoption of this section.

## § 213-24. Board of Review.

[Added 6-7-1977; amended 10-20-2014 by L.L. No. 13-2014]

There is established a Board of Review, which shall be known as the Legal Nonconforming Use Board, to hear applications by property owners claiming legal nonconforming use. This Board shall consist of three members. The Supervisor, the Town Attorney, and the Commissioner of Planning and Development of the Town of Babylon shall each designate one representative to be members of this Board.

## **§ 213-25. Application for certificate of occupancy for legal nonconforming use of single-family dwellings and/or additions.**

[Added 6-7-1977; amended 4-18-1978; 11-4-1987]

- A. There shall be submitted to said Board by every applicant four copies of a current survey of the property, a letter from the Office of the Assessor of the Town of Babylon stating that the building existed on the tax rolls prior to whatever zoning the use predates and an affidavit or affidavits from parties other than individuals related to the applicant-owner stating the evidentiary facts which claim to establish such use as a legal nonconforming use.
- B. Upon the evidence submitted, the Board of Review shall make a determination, in writing, confirming or denying that such use is a legal nonconforming use and shall further state those facts which this Board finds has established such use.

## **§ 213-26. Application for certificate of occupancy for legal nonconforming use for two-family dwellings, multiple residences and nonpermitted uses.**

[Added 6-7-1977; amended 11-4-1987]

- A. There shall be submitted to said Board by every applicant four copies of a current survey of the property, a letter from the Office of the Assessor of the Town of Babylon stating that the building existed on the tax rolls prior to whatever zoning the use predates and an affidavit or affidavits from parties other than individuals related to the applicant-owner stating the evidentiary facts which claim to establish such use as a legal nonconforming use.
- B. The Department of Planning and Development shall prepare for the Review Board a radius map depicting the affected premises and all premises situated within 200 feet of the affected premises, and that shall be a charge to the applicant for maps used by the Department. Stated on a form shall be a listing of the affected property owners and such additional information as shall identify each property owner to the premises which he or she may own. The property owners to be so notified are those appearing on the form provided to the applicant by the Department of Planning and Development.
- C. After receiving the list of property owners, the applicant shall send the notice of said application to the owner or owners of real property situated within 200 feet of the real property which is the subject of such application. Such notice shall be on a form prescribed by the Board of Review and shall be mailed to such property owners by certified mail, return receipt requested, not less than 17 days in advance of the date upon which this Board shall hear and consider the application. Prior to such hearing, the applicant shall file with the Board of Review all of the return receipts, together with a radius map, in two copies, depicting the affected premises and all premises situated within 200 feet of the affected premises. Stated on the radius map or upon an attached paper shall be a listing of the affected property owners and such additional information as shall identify each property owner to the premises which he or she may own. The property owners to be so notified are those appearing on the current tax rolls of the Town of Babylon, except that, if the applicant shall have personal knowledge that any such property has been conveyed to a new owner,

such notice shall be sent to the new owner, and the applicant shall so advise the Board of Review, in writing, of the change of ownership.

- D. The Board of Review shall hold a public hearing at which the applicant and persons who have submitted affidavits shall appear before this Board. The burden of proof shall be upon the applicant to show that such use existed before the applicable Zoning Ordinance and that such use has not lapsed.
- E. Upon the evidence submitted, the Board of Review shall make a determination, in writing, confirming or denying that such use is a legal nonconforming use and shall further state those facts which this Board finds have established such use.

## **§ 213-27. Issuance of certificate of occupancy for legal nonconforming use.**

[Added 6-7-1977]

Upon confirmation by the Board of Review of any legal nonconforming use pursuant to this article, a Building Inspector or other persons charged with the issuance of certificates of occupancy and/or certificates of compliance shall issue to the applicant a certificate of occupancy with an endorsement thereon specifying the legal nonconforming use found by the Board of Review, and such certificate shall constitute presumptive evidence that such use is a legal nonconforming use in any action or proceeding brought to enforce this Code.

## **Article IV. Amendment of Regulations**

[Added 2-1-1977]

### **§ 213-28. Amendment procedure.**

- A. The Town Board may, from time to time, on its own motion or on verified petition or on recommendation of the Planning Board, amend, change, supplement or repeal the regulations, restrictions, district boundaries and provisions of this chapter, including the Zoning Map, after public notice and hearing.
- B. Such proposed amendment or change, whether initiated by the Town Board or by petition, shall be referred to the Planning Board and the Architectural Review Board for reports thereon. The Town Board, by resolution adopted at a meeting thereof, shall fix the time and place of a public hearing on the proposed amendment or change and cause notice to be given in accordance with the provisions of the Town Law.

### **§ 213-29. Conditions on amendment.**

Amendments are conditioned to the development of the property in accordance with the petition and any covenants and restrictions within six months of such amendment.

### **§ 213-30. Petition to change zone.**

A verified petition requesting a change of use district classification shall be addressed to the Town Board in quintuplicate, on the form prescribed by the Commissioner of Planning and Development, available at cost, and must contain the original signature of each petitioner and shall state clearly and concisely the following:

- A. That the petitioner is the owner or contract vendee of all the property affected by the application. If the petitioner is other than the owner, he must obtain the consent of the owner, which consent must be duly acknowledged.
- B. The current zoning of the property, the change desired and the reason for such change.
- C. Metes and bounds description of the boundaries of the property affected by the application.
- D. A statement as to which side of any street in the Town of Babylon the property affected by the application is located and the distance and direction from the nearest intersecting street. If the property is located at the intersection of two or more streets, a petition shall state on which corner the property affected by the application is located. For the purposes of this article, the word "street" shall mean an existing traveled right-of-way owned and maintained by the Town of Babylon or other municipality or governmental authority.
- E. The name and number of the school district in which the property is situated.
- F. A statement as to whether or not the property is within 500 feet of the boundary line of any incorporated village, other Town, state park or state parkway.
- G. The name and address of each petitioner.
- H. A statement as to whether or not property affected by the application has been the subject of a previous application for rezoning for a period of one year preceding the filing of this application.
- I. A statement that the petitioner does not own or have an interest in any contiguous property or, in the event that the petitioner does have such an interest, a metes and bounds description of such property.

## § 213-31. Filing petition to change zone.

The original petition and four confirmed copies thereof shall be filed with the Department of Planning and Development together with the appropriate fee therefor and the following exhibits attached to each petition copy:

- A. An eight-inch by ten-inch glossy photograph of the property.
- B. A nine-inch by fourteen-inch aerial photograph (two-hundred-foot scale), with the property affected prominently identified; however, this requirement may be waived by the Town Board on the recommendation of the Commissioner of Planning and Development to the effect that such photograph will not add significantly to consideration of the petition.
- C. Complete metes and bounds description (separate from that appearing in the petition body).
- D. A photocopy of the deed and/or any deed restrictions or easements affecting the property to which the application is to apply.
- E. A full disclosure affidavit, in the form prescribed by the Town Attorney.
- F. The names and addresses of property owners adjacent to the affected property.

- G. A sworn statement to the effect that all owners of property lying within a two-hundred-foot perimeter of the affected property have been notified of the petition and that it is on file at the Department of Planning and Development for public inspection. Included with this exhibit shall be the actual postal receipts for the certified or registered postage of said notice to all such neighboring owners.
- H. Thirteen copies of a recent survey, drawn to scale, prepared by a person registered in the State of New York as a licensed professional engineer or licensed land surveyor, revealing the area in square feet and the exact distance to the nearest intersection of streets, if the affected property is not located at a corner. Included on this survey shall be a statement signed by the preparer thereof to the effect that the survey accurately describes the uses of the property surrounding the affected property as of that date.
- I. An affidavit to be filed not later than 48 hours prior to the public hearing on the petition stating that identical posters, not more than 200 feet apart, have been conspicuously posted along the street frontage of the affected property at least 10 days prior to the time set for public hearing.
- J. A proposed site plan, prepared in accordance with the Code of the Town of Babylon and the specifications of the Planning Board, in 12 copies, for Planning Board review.
- K. Elevational drawings of the affected property, in seven copies, for review of the Architectural Review Board.
- L. A copy of the Zoning Map outlining the lines of the affected property in red and with any school district lines outlined in green.
- M. A list of neighboring property owners produced from the assessment roll of the Town of Babylon, together with a map showing all structures and locating by number all said owners' properties within 200 feet of the perimeter of the affected property. Included in this list shall be the identities and addresses of all other affected parties. On this same map, a five-hundred-foot radius within which the zoning is shown for all properties located between the two-hundred-foot radius and the five-hundred-foot radius shall be included. [Amended 10-4-1977]

## § 213-32. Erection of signs.

- A. The petitioner shall erect on the affected property a sign or signs of black printing on a white background measuring 30 inches high and 40 inches wide, which shall be prominently displayed on the premises facing each public street on which the affected property abuts, set back not less than 10 feet from the property line and shall not be less than two feet nor more than six feet above the grade at the property line, giving notice that an application for change of zone is pending and the date, time and place when the public hearing will be held.
- B. The sign shall be of the standard type prescribed by the Commissioner of Planning and Development.
- C. Each sign shall be displayed for a period of not less than 10 days immediately preceding the public hearing or an adjourned date thereof. Subject to rebuttal, the filing of an affidavit by the petitioner reciting the facts of such posting shall be deemed sufficient proof of compliance herewith.

## § 213-33. Handling of petition.

- A. Upon submission of the required petition and exhibits as provided in §§ **213-30** through **213-35**, the application shall be forwarded to the Planning Board and Architectural Review Board, which shall forward

their recommendations to the Town Board upon completion of their proceeding with regard to the same. Upon such recommendations, the Town Clerk may be directed by the Town Board to set the petition down for public hearing at a time convenient for Town Board consideration.

[Amended 5-7-2002 by L.L. No. 7-2002]

- B. The notice of public hearing before the Town Board published by the Town Clerk shall contain the following:

[Amended 10-4-1977]

- (1) The name of the applicant.
- (2) The existing zoning and the proposed change or amendment.
- (3) A statement that public hearing on the proposed change will be held at a specific time, date and place.
- (4) A metes and bounds description of the affected property.
- (5) The distance and direction of the affected property from the nearest intersection of streets and, if the property is located on a corner, which corner.
- (6) The school district in which the property is located.
- (7) A statement that a more detailed diagram of the property which is affected by the petition is on file in the office of the Department of Planning and Development and may be examined during regular office hours by any interested person.
- (8) A statement that any interested person will be given the opportunity to be heard at the public hearing.

## § 213-34. Restrictions on petitions.

No petition shall be accepted or filed with respect to any property which has been the subject of a public hearing pursuant to this article during the period of one year immediately following such public hearing, unless such petition shall have endorsed thereon the consent to the filing thereof of at least three members of the Town Board.

## § 213-35. Withdrawal of petition.

A petition may be withdrawn by the petitioner at any time prior to Town Board action, after public hearing. Upon withdrawal, the petitioner shall be entitled to a refund of 1/2 of the filing fee submitted with the petition, less any necessary incidental expenses incurred in connection with the processing of the petition withdrawn.

## § 213-36. Procedure on Town Board's motion.

Whenever the Town Board, on its own motion or upon recommendation of the Planning Board, shall consider any change of use district classifications, the resolution setting a date for a public hearing shall contain a clause requiring that the owners of all property abutting the boundaries of the property to be affected by the proposed change and all owners of property located within 200 feet of the perimeter of the affected property be notified of the proposed change, except as hereinafter provided. Said notices shall be sent either by certified mail or

registered mail, return receipt requested, to such owner at the address shown on the current Town of Babylon assessment roll and shall be mailed to such owner at least 10 days prior to the public hearing. Said notice shall contain a description sufficient to identify the property which is proposed to be affected, together with information substantially similar to that required by § 213-31F. This notice shall not be required under the following circumstances only:

- A. In the event that the area of the proposed change represents 50% or more of the property contained within the bounds of a school district within the Town of Babylon.
- B. In the event that the area of the proposed change exceeds 50 acres.
- C. In all other cases where the Town of Babylon shall determine that the notice required by this section may be dispensed with, consistent with the interests of the owners of property in the surrounding areas.

## § 213-37. Petition by landowners.

Whenever the owners of 50% or more of the frontage in any district or part thereof to be affected by a petition shall present to the Town Board a verified petition requesting an amendment, supplement, change, modification or repeal of the regulations prescribed for or of the Zoning Map including such district or part thereof, the Town Board may hold a public hearing thereon and cause notice thereof to be given in the manner prescribed above for changes made on the motion of the Town Board. Whenever a protest against such change signed by the owners of 20% or more of the frontage to be affected by said petition or immediately adjacent to such frontage extending 100 feet therefrom is presented, such amendment shall not become effective except by the affirmative vote of at least four members of the Town Board.

## § 213-38. Placing restrictive covenants upon change of zone.

Whenever the Town Board, as a condition for the granting of an application for a change of zone, requires a restrictive covenant to be imposed upon the affected property, such restrictive covenant must be filed in the office of the Planning Board not later than 60 days from the date the applicant was notified of granting of the change of zone by the Town Clerk: except that the Town Board may extend this time, upon good cause shown. Failure to file said restrictive covenant with the Planning Board within the stipulated period shall render the granting of the change of zone null and void.

## § 213-39. Alteration of restrictive covenants.

- A. The Town Board may, from time to time, on its own motion or on petition, amend, supplement, change, modify or repeal any covenant imposed on property at the time of a change of zone.
- B. A petition requesting such relief shall be addressed to the Town Board and shall state the following:
  - (1) The name and address of the petitioner.
  - (2) A precise description of the boundaries of the property.
  - (3) The covenant imposed on the property.

- (4) The change requested.
- (5) The grounds therefor.
- C. The Town Board, by resolution adopted at a regular meeting, shall fix the time and place of a public hearing thereon and cause notice to be given in accordance with the provisions of § 264 of the Town Law.
- D. At least 10 days before the public hearing, the petitioner shall mail notice thereof by either certified or registered mail, return receipt requested, to every owner of property, as shown on the current Town of Babylon assessment roll, immediately adjacent and directly opposite the property affected for a distance of 200 feet from the perimeter of the property.
- E. The following shall be submitted and filed with the Planning Board in support of such a petition:
  - (1) Original and four copies of the petition.
  - (2) Ten copies of a diagram, drawn to suitable scale, showing the dimensions of the property affected by the petition.
  - (3) A copy of the notice of hearing.
  - (4) A list containing the names and addresses of the owners to whom notices were sent.
  - (5) Affidavit of mailing the aforesaid notices.
  - (6) Return receipts from such posting.
  - (7) Affidavit of posting.  
[Added 6-5-1984]
  - (8) A full disclosure affidavit in the form prescribed by the Town Attorney.  
[Added 6-5-1984]
- F. Posting of signs by petitioner.  
[Added 4-19-1984]
  - (1) The petitioner shall erect on the affected property a sign or signs of black printing on a white background measuring 30 inches high and 40 inches wide, which shall be prominently displayed on the premises facing each public street on which the affected property abuts, set back not less than 10 feet from the property line and shall not be less than two feet nor more than six feet above the grade at the property line, giving notice that an application is pending and the date, time and place when the public hearing will be held.
  - (2) The sign shall be of the standard type prescribed by the Commissioner of Planning and Development.
  - (3) Each sign shall be displayed for a period of not less than 10 days immediately preceding the public hearing or an adjourned date thereof. Subject to rebuttal, the filing of an affidavit by the petitioner reciting the facts of such posting shall be deemed sufficient proof of compliance herewith.

## § 213-40. Form of petitions.

Except as otherwise provided in this article, all petitions and exhibits required to be filed according to the provisions of this article shall be in the form prescribed by the Commissioner of Planning and Development of



the Town of Babylon, subject to the approval of the Town Board.

## § 213-41. Fee for petition.

[Amended 4-9-1996 by L.L. No. 8-1996]

Prior to the filing of each petition authorized by this article, a fee shall be paid to the Town Clerk with respect thereto in such amount as shall be established from time to time by Town Board resolution.

## § 213-42. Additional zone changes.

No parcel or part thereof may be the subject of an application change for a change of zone within one year after the Town Board has held a public hearing on an application for a change of zone unless the second application seeks a change to a more restrictive zoning category than was earlier sought.

# Article V. Conflicts of Interest

## § 213-43. Purpose.

It is the intent of this article to provide a procedure whereby there shall be full disclosure of the interests of all parties appearing before the Town Board, the Board of Appeals and the Planning Board in connection with any application relating to this chapter or the zoning of property, as well as the connection and interest, if any, of any official or employee of the Town in respect of such application, to the end that all proceedings before such Boards shall be conducted in good faith and in the best interests of the residents of the Town consistent with any code of ethics adopted by the Town and free of any undisclosed conflicts of interests.

## § 213-44. Definitions.

Whenever used in this article, unless the context requires otherwise, the following words and expressions shall have meanings as follows:

### **AFFIDAVIT**

Any instrument in writing executed under oath required to be filed with any application to the Town Board, Board of Appeals and Planning Board.

### **APPLICANT**

Any person who makes and signs an application either for himself or as agent for another person.

### **APPLICATION**

Any written request to the Town Board for any change of zone or other relief or to the Board of Appeals for any variance, exception, permission or other relief with the jurisdiction of said Board or to the Planning Board, under the provisions of this chapter, the Town Law or any rule or regulation adopted by any of such Boards.

**BOARD OF APPEALS**

The duly appointed and constituted Board of Appeals of the Town.

**BUILDING ZONE ORDINANCE**

This chapter and amendments thereto and any Zoning Map duly adopted by the Town Board.

**PERSON or PERSONS HAVING AN INTEREST**

Include an individual male or female, individual or individuals doing business under assumed names, copartnerships, corporation, society, joint-stock company and any person acting as agent or on behalf of another.

**PLANNING BOARD**

The duly appointed and constituted Planning Board of the Town.

**TOWN BOARD**

The duly elected and constituted Town Board of the Town.

## § 213-45. Affidavits required.

All applicants must file an affidavit stating the nature, extent and full details of any interest, proprietary or otherwise, in the property described in the application. Such Boards may also require any person disclosed in the affidavit of the applicant as having an interest, proprietary or otherwise, in the property described in the application to file an affidavit stating the nature, extent and details of his interest in the said property.

## § 213-46. Contents of affidavit.

In addition to the application and such other information as any Board may determine, the applicant shall submit an affidavit containing the following:

- A. The name and address of the applicant and any person making the application on behalf of another or his agent.
- B. The name and address of any person having an interest in the property described in the application, whether such interest is proprietary, legal or equitable, setting forth the nature of such interest. Without limitation by the enumeration thereof, a person having an interest in the property shall include a contract vendor, contract vendee, lessor, sublessor, contract lessor, lessee, sublessee, contract lessee, holder of any beneficial interest, contract holder of any beneficial interest, mortgagor, mortgagee, holder of any encumbrance or lien, contract holder of any encumbrance or lien guarantor, assignee, agent and broker.
- C. The name and address of the person owning the property described in the application, whether or not the evidence of ownership is of record in the Office of the County Clerk or Registrar.
- D. The name and address of any person who, in connection with the acquisition or development of the property described in the application, has made any loan or financial accommodation or accepted any lien or mortgage on said property, except, however, any bank or lending institution organized under the banking or insurance laws of the state or under the laws of the United States of America.
- E. The name and address of any person having any legal, equitable or contractual interest in the property described in the application which will arise or be affected by any decision of the Town Board, Board of

Appeals or Planning Board relating to the said property.

- F. The name and address of any person who, under any agreement or understanding, oral or written, will receive any payment, compensation, reward, gift, whether in money or property or interest in the ownership, use and development of the property described in the application as a result of his work, effort or services in connection with said application and the hearing thereof before any Board.
- G. The name and address of any person having an interest in the property described in the application who has simultaneously any financial, proprietary or other interest, direct or indirect, including interlocking ownership, stock ownership, directors or officers in any property adjacent to, contiguous with or lying within the radius of one mile of the property described in the application.
- H. The name and address of any person who is an elected or appointed officer or employee of the Town or who is related to any elected or appointed officer or employee of the Town, shall set forth in detail the nature of the relationship and the nature and extent of his interest in property described in the application.

## **§ 213-47. Submission of affidavit.**

Any affidavit required under this article shall be submitted with the application or at such other time as the Board may require, either prior to any hearing, during the proceedings or at any subsequent time prior to a final determination and decision by such Board. Any affidavit required shall be deemed a necessary part of the application without which the matter may not be heard, considered or determined.

## **§ 213-48. Certain affidavits confidential.**

Any affidavit which may be required of any lending institution organized under the banking or insurance laws of the state or under the laws of the United States of America, shall be treated as a privileged communication to the Board requiring the same and shall not be available for examination by the public.

## **§ 213-49. Supplemental affidavit.**

If there is any change in any of the facts and information stated or required to be stated in any affidavit filed with any Board, after the filing of the same and before a final determination of the application or the issuance of a certificate of occupancy, whichever event last occurs, a supplemental affidavit stating such changes and additional facts or information must be filed with the appropriate Board within 10 days after any such change.

## **§ 213-50. Report in lieu of affidavit.**

Any information required to be set forth in any affidavit may be contained in a report prepared by a title company or abstractor acceptable to the Board or by a certified copy of any instrument recorded in the office of the Clerk of a village, Town or county.

## **§ 213-51. Resolution of conflicts of interest required.**

Wherever any conflict of interest arises, exists or becomes apparent or evident between any elected or appointed officer or employee of the Town and any owner, applicant or person interested in the property under any code of ethics adopted by the Town Board or any applicable law of the state, the hearing of any application and any decision thereon shall be adjourned or reserved until such time as full disclosure of such conflict shall have been made to the Board and an opinion in writing shall have been rendered by any board of ethics constituted under any code of ethics to hear and render.

## § 213-52. Falsification of affidavit information.

The intentional and willful filing of any affidavit pursuant to this article containing false, ambiguous and misleading information or the intentional and willful failure to file any affidavit as required by this article shall be deemed a violation of this article, and the person filing such affidavit or failing to file the required affidavit shall be subject to the penalties of this article in addition to any penalties imposed by any other applicable law.

## § 213-53. Filing affidavit prior to property transfer.

Any person who willfully, knowingly and intentionally files an affidavit or causes another to file an affidavit, as required by this article as an inducement to or as a requirement of any Board to consider or act upon an application before it, and knowing and intending at the time of the filing of such affidavit that, subsequent to the decision of the Board or the issuance of a certificate of occupancy thereunder, he would sell, convey or transfer the property or any part thereof or make payment or give any compensation, reward or gift under a contract or agreement, oral or in writing, in existence prior to the time of such decision or the issuance of a certificate of occupancy to any person who, at the time of such decision, would have a conflict of interest under any code of ethics adopted by the Town Board or other applicable law shall be deemed to have violated this article, and he shall be subject to the penalties of said article in addition to any penalties imposed by any other law.

### § 213-53.1. Notice of change in ownership.

[Added 9-22-1987]

- A. Any owner of property which is the subject of a rezoning application before the Town Board must notify the Town Board in writing by certified mail, return receipt requested, of any sale, lease, transfer or other type of change or transaction affecting said property which is the subject of a rezoning application, within 48 hours prior to the transfer of title, assignment of lease or transfer or assignment of rights to the subject property or change in use or plans of the subject property.
- B. Any prospective purchaser, tenant, assignee, distributee or lessee of property which is the subject of a rezoning application before the Town Board must notify the Town Board in writing by certified mail, return receipt requested, of any sale, lease, transfer or other type of change or transaction affecting said property which is the subject of a rezoning application, within 48 hours prior to the transfer of title, assignment of lease or transfer or assignment of rights to the subject property or change in use or plans of the subject property.
- C. Failure of either the owner of property or the prospective purchaser, tenant, assignee, distributee or lessee of property which is the subject of a rezoning application before the Town Board to notify the Town Board in writing by certified mail, return receipt requested, of any sale, lease, transfer or other type of change or

transaction affecting said property which is the subject of a rezoning application, within 48 hours prior to the transfer of title, assignment of lease or transfer or assignment of rights to the subject property or change in use or plans of the subject property, shall result in the immediate rejection and nullification of the subject rezoning application by the Town Board.

## § 213-54. Action of Board for violation.

Whenever it shall be determined by any Board that any person shall have violated any provision of this article, such Board shall have the power to:

- A. Dismiss the application and terminate all proceedings if a decision shall not have been made on such application.
- B. Revoke any variance, permission or special exception granted under such application.
- C. Rezone the property to its former classification.
- D. Direct the Building Inspector to withhold the issuance of any certificate of occupancy or to revoke any certificate of occupancy issued as a result of any decision of any Board affecting the property, until such time as the facts and circumstances are explained to the satisfaction of the Board.

## § 213-55. (Reserved)

[1]: *Editor's Note: Former § 213-55, Penalties for offenses, was repealed 6-22-2010 by L.L. No. 20-2010. See now Ch. 1, General Provisions, Art. II, General Penalties.*

# Article VI. General District Regulations

## § 213-56. Use districts.

[Amended 7-7-1970; 5-7-1985 by L.L. No. 1-1985; 11-9-2005 by L.L. No. 29-2005; 10-4-2006 by L.L. No. 37-2006]  
For the purpose of this chapter, the Town of Babylon, outside of the incorporated villages, is hereby divided into use districts which shall be designated as follows:

- A Residence District
- AA Residence District
- B Residence District
- C Residence District
- D Residence District
- M.R. Multiple Residence District
- Senior Citizens Multiple Use District
- Residence-Office Mixed-Use District
- E Business District (Neighborhood Business)
- Ea Business District
- Eb Business District

G	Light Industrial District
Ga	Light Industrial District
GB	Light Industrial District
H	Heavy Industrial District
M-H	Planned Motel-Hotel District
PIP-1	Planned Industrial Park District-1

## § 213-57. Zoning Map adopted.

The boundaries of the districts designated in § 213-56 are hereby established as shown upon the Building Zone Map of the Town of Babylon, Suffolk County, New York, as amended July 7, 1954, which map is hereby made a part of this chapter, and all notations, references and other things shown thereon shall be as much a part of this chapter as if fully described herein.

[1]: *Editor's Note: The Zoning Map is on file in the office of the Town Clerk.*

## § 213-58. Compliance with regulations required.

No building shall be erected, altered or used, and no premises shall be used for any other purpose than as may be permitted in the district in which such building or premises shall be located.

## § 213-59. Determination of district boundaries.

The boundaries between districts are either the center lines of streets or of railroad rights-of-way or such lines extended or lines parallel thereto, unless otherwise indicated upon the Building Zone Map. Where figures are shown on the Building Zone Map between a street and a district boundary line, such figures indicate that the district boundary line runs parallel to the street line at the distance so indicated by such figures. When the location of a district boundary line is not otherwise determined, it shall be determined by the scale of the map. Whenever the lines of an existing or mapped street vary from the same street lines as shown on the Building Zone Map, the district designated shown on the Building Zone Map shall govern and control.

## § 213-60. Division of lot by boundary line.

Where a district boundary line divides a lot which was held in single and separate ownership on July 7, 1954, the Board of Appeals, as hereinafter provided, may permit the less restricted use to extend to the whole or any part of such lot for a distance not exceeding 50 feet.

### § 213-60.1. Height of piles of building materials.

[Added 6-4-1985; amended 12-8-2010 by L.L. No. 39-2010]

In no event shall fencing material, lumber, pallets, crates, bricks, cement blocks, piping or any other materials be so piled as to exceed the height of eight feet in any district established under this chapter. Piles shall be

maintained to the height of the fence required under §§ **213-72, 213-87, 213-102** and **213-107** within 15 feet from said fence.

## Article VII. A Residence District

### § 213-61. Permitted uses.

[Amended 8-17-1993 by L.L. No. 6-1993; 5-19-2014 by L.L. No. 5-2014]

In an A Residence District, no building or premises shall be used and no building shall be hereafter erected or altered, unless otherwise provided for in this chapter, except for one or more of the following uses:

- A. One-family dwelling.
- B. Churches, places of worship and parish houses.
- C. Public parks, playgrounds and recreational areas when authorized or operated by a governmental authority.
- D. Colleges or universities; provided, however, and as a continuing condition of such use, that:
  - (1) The lot area therefor shall be not less than 75 acres and that the plot or premises shall have at least 400 feet of continuous frontage upon a public road, street or highway with only one means of vehicular ingress and egress hereto from said premises.
  - (2) Buildings of all types, a stadium and structures accessory thereto shall not exceed 10% of the total lot area; provided, however, that grandstands which are not part of a stadium shall not be included within such building area limitations.
  - (3) In addition to such off-street parking areas as are required in any residential use district, off-street parking areas shall be provided in the ratio of one parking space for every two students of the total student capacity thereof, and no parking area shall be within 150 feet of any property or lot line.
  - (4) No structures or buildings shall be erected within 150 feet of any property or lot line.
  - (5) No structure or building shall be erected thereon in excess of three stories or 50 feet in height.
- E. A regularly organized elementary or high school approved by the Board of Regents of the State of New York.
- F. Customary agricultural occupations; provided, however, that 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 line.
- G. Office of a physician, lawyer, architect, musician, teacher or similar professional person residing on the premises and when such use is incidental to such residence; provided, however, that such use shall be within the main dwelling and occupying not more than 1/3 of the first-floor area.
- H. Golf courses and country clubs, when occupying not less than 50 acres, not including, however, clubs whose activities include the maintenance, storage or takeoffs and landings of aircraft.
- I. Accessory buildings and structures, including a private detached garage when located not less than 60 feet from the front lot line or a private garage within, attached to or made an integral part of the main dwelling

which shall have a front yard of 40 feet.

- J. Other customary accessory uses and buildings, provided that such uses are incidental to the principal use, but such uses shall not include any activity conducted as a business.
- K. Subject to the provisions of §§ **86-8B**, **86-10B** and **86-11**, not more than one boat for every 35 feet of water frontage, up to three boats, or as determined by the Planning Board in a subdivision map at the time of plat approval, shall be docked at or placed upon such real property where such real property is not improved by any buildings or structures used as a residence or where the owner of the real property does not use the premises as his/her principal residence.
- L. Solar energy production facility, when occupying not less than 50 acres and when allowed as a special exception by the Planning Board, subject to conditions, restrictions and safeguards as may be imposed by the Planning Board.

## § 213-62. Uses not permitted.

[Added 6-15-1971]

Anything in this chapter to the contrary notwithstanding, in an A Residence District, no building or premises shall be used and no building shall be erected or altered for any of the following uses:

- A. Rooming house.
- B. Boardinghouse.
- C. Rest home.
- D. Private proprietary nursing home.
- E. Private proprietary convalescent home.
- F. Private proprietary home for adults.
- G. Wrestling rings, boxing rings or similar type structures.  
[Added 5-7-2002 by L.L. No. 5-2002]
- H. Parking and/or storing of commercial vehicles for a period of longer than one hour and exclusive of local delivery.  
[Added 10-1-2002 by L.L. No. 30-2002]
- I. Any use substantially similar to any of the foregoing prohibited uses by whatever name called.  
[Amended 5-7-2002 by L.L. No. 5-2002; 10-1-2002 by L.L. No. 30-2002]
- J. Any business use not permitted in § **213-61**, nor shall any building or premises be advertised, used, held out or offered as an address, location or place of business, nor shall any sign, poster, flyer, business card or similar item list the building or premises as an address, location or place for a business; however, nothing herein shall prohibit the use of one room in a residential structure, not more than 150 square feet in size, from being used as a private office, nor the use of a residence from conducting an Internet business or business conducted solely by telephone, however; no merchandise or items offered for wholesale or retail sale by said business shall be delivered to or shipped from any residence, nor shall any residence be used for business meetings, nor shall any person or persons, other than the owner of the premises, be permitted to conduct business on said premises or visit said premises for business purposes, nor shall any merchandise



or wholesale or retail items be stored or sold on or from residential premises. Nothing herein shall prohibit any professional business from being conducted on residential premises as permitted by any other provision herein.

[Added 8-15-2006 by L.L. No. 24-2006; amended 10-20-2011 by L.L. No. 19-2011]

## § 213-63. Building height.

[Amended 11-18-1975; 5-15-1990; 6-20-2006 by L.L. No. 15-2006; 1-14-2013 by L.L. No. 3-2013]

In an A Residence District, no building or structure hereafter erected or altered shall exceed 30 feet or 2 1/2 stories. The maximum height allowance of 30 feet for existing habitable buildings or structures hereafter altered to increase the height of said building or structure located within the base flood or one-hundred-year flood zone may be increased in order to meet the enhanced height requirements in accordance with Chapter **125** of this Code and FEMA regulations. Said height allowance shall not exceed the enhanced height requirements above grade as defined in Chapter **125** of this Code.

## § 213-64. Lot area.

[Amended 7-20-1999 by L.L. No. 14-1999]

In an A Residence District, no building shall be erected on a lot having an area of less than 12,500 square feet and a width of less than 100 feet at the front street line; provided, however, that a single-family dwelling may be built upon a lot held in single and separate ownership on July 25, 1954, having an area of less than 12,500 square feet and a width of less than 100 feet at the front street line; and provided, further, that in such case the width of a lot shall not be less than 70 feet and the area not less than 7,000 square feet.

## § 213-65. Front yards.

[Amended 10-1-2002 by L.L. No. 31-2002]

- A. In an A Residence District, no building hereafter erected or altered shall have a depth of front yard less than 40 feet. If on the same side of the street, 40% or more of the total street line distance between the two nearest intersecting street lines shall have been improved with two or more buildings, or, in the event that building permits shall have been issued therefor, not less than the average depth of front yard as so established by such existing or permitted buildings shall be maintained; provided, however, that any such front yard depth shall not be required to be more than 60 feet.
- B. In an A Residence District, no part of any required front yard, other than a driveway or garage, shall be used for the parking or storage of motor vehicles and/or a marine craft.  
[Amended 5-3-1983 by Res. No. 3; 9-3-1980 by Res. No. 10]
- C. In an A Residence District, a maximum of 40% of the required front yard shall be used as a driveway or for off-street parking.
- D. In an A Residence District, the front yard shall have a maximum of one curb cut, with the exception of circular driveways.

## § 213-66. Corner lots.

[Amended 7-20-1999 by L.L. No. 14-1999]

In an A Residence District, a corner lot shall have a front yard along each street as is provided in § **213-65**, provided that in the case of such a lot held in single and separate ownership at the effective date of this amendment of this chapter, viz., July 25, 1954, which then had and still has a width of lot at the front street line of less than 100 feet, the one of such required front yards upon which the building proposed to be erected or altered does not face or have its principal entrance may be decreased by not more than 50% of the depth required by § **213-65** of this article.

## § 213-67. Double front lots.

In an A Residence District, the required front yard for double front lots shall be provided on both streets.

## § 213-68. Side yards.

[Amended 7-20-1999 by L.L. No. 14-1999; 9-3-1980 by Res. No. 10]

- A. In an A Residence District, there shall be two side yards, one on each side of the building, except in the case of a corner lot where there shall be two front yards, one side yard and one rear yard which shall be opposite the principal front yard. The total of the widths of both side yards shall be not less than 35 feet and no side yard shall be less than 15 feet wide; provided, however, that in the case of a lot held in single and separate ownership at the effective date of this amendment of this chapter, viz., July 25, 1954, and having a width of not less than 100 feet at the front street line, a single-family dwelling may be built thereon, provided that the width of the required side yards may be reduced to a total of 28 feet and the least side to not less than 10 feet minimum.
- B. In an A Residence District, no part of any required side yard, other than a driveway or garage, shall be used for the parking or storage of motor vehicles, other than a marine craft or house coach.

## § 213-69. Rear yards.

[Amended 7-15-2003 by L.L. No. 10-2003]

- A. In an A Residence District, there shall be a rear yard having a minimum depth of 40 feet; provided, however, that in the case of a lot held in single and separate ownership at on July 25, 1954, and having a depth of lot of less than 125 feet but not less than 100 feet, a single-family dwelling may be erected or altered thereon, provided that the rear yard in such case shall be not less than 25 feet.
- B. In an A Residence District, no part of any required rear yard, other than a driveway or garage, shall be used for the parking or storage of motor vehicles, other than a marine craft or house coach.

## § 213-70. Building area.

[Amended 10-15-1985]

In an A Residence District, the total building area shall not exceed 15% of the lot area, except that for a dwelling with all habitable living area on one floor, the total building area shall not exceed 30% of the lot area.

## § 213-71. Accessory buildings.

[Amended 11-1-1988; 8-19-1997 by L.L. No. 12-1997]

In an A Residence District, one accessory building shall be permitted; provided, however, that:

- A. The square footage of an accessory building shall not exceed 500 square feet.
  - B. The yard area occupied by an accessory building and accessory structures shall be included in computing the percentage of lot area permitted to be built upon.
  - C. An accessory building located on the lot shall not exceed 14 feet in height measured from grade to ridge.
  - D. Any accessory building shall be located on the same lot with the principal building.
  - E. No accessory building shall be constructed upon a lot until the construction of the main building has been actually commenced.
  - F. No accessory building shall be used unless the main building on a lot has been completed and is in use.
  - G. No accessory building shall be built within 10 feet of any side or rear lot lines or nearer than 50 feet to any street line.
  - H. The height of the garage door shall not exceed seven feet.
  - I. No interior plumbing fixtures shall be permitted in an accessory building; an exterior hose bib with vacuum breaker shall be permitted.
  - J. No habitable or occupied space shall be permitted in an accessory building.
  - K. The exterior of accessory buildings shall be constructed of material(s) having the same or similar appearance to the main building or shall be constructed of material(s) complimentary to the main building.
- [Added 2-17-1998 by L.L. No. 1-1998]

### § 213-71.1. Accessory structures.

[Added 11-1-1988; amended 3-21-1989; 8-19-1997 by L.L. No. 12-1997]

In an A Residence District, two accessory structures shall be permitted; provided, however, that:

- A. No shed shall exceed 100 square feet in area and/or 10 feet in height measured from grade to ridge. There shall be a maximum of two sheds per lot.
- B. The yard area occupied by accessory structures and an accessory building shall be included in computing the percentage of lot area to be built upon.
- C. Any and all accessory structures shall be located on the same lot with the building they are incidental to.
- D. No accessory structure shall be constructed upon a lot until the construction of the building has actually

commenced.

- E. No accessory structure shall be used unless the building on the lot has been completed and is in use.
- F. No accessory structure shall be built within two feet of any side or rear lot lines or nearer than 50 feet to any street line.
- G. No accessory structure shall exceed 10 feet in height measured from grade to ridge, have a roof, nor rest more than 18 inches above the ground if it shall have a floor or deck, said limitation being measured from the lowest point of the ground thereunder.
- H. Sheds which comply with the provisions of this section shall not require a building permit. Sheds permitted by a variance granted by the Zoning Board of Appeals or modifications granted by the Planning Board, pursuant to this chapter, shall require a building permit.
- I. Decks having a height of 18 inches or less which comply with the provisions of this section shall not require a building permit. Decks permitted by a variance granted by the Zoning Board of Appeals or modifications granted by the Planning Board, pursuant to this chapter, shall require a building permit.
- J. The permitted encroachment shall not exceed six inches for the roof overhang.
- K. No habitable or occupied space shall be permitted in an accessory structure.

## § 213-72. Fences, hedges and shrubbery.

[Amended 1-7-1975; 11-1-1988]

- A. In an A Residence District, the following fences, as defined in this chapter, shall be permitted:
  - (1) On the rear lot line and side lot lines, enclosing the rear and side yards, fencing may be erected not exceeding six feet in height, provided that it shall not exist in the front yard, that being beyond the front building line of the principal structure, on either side.
  - (2) In the front yard, beyond the front building line of the principal structure, fencing may be erected not exceeding four feet in height.
  - (3) On a corner lot, within the triangular area bounded by the lot lines connecting at the street corner of the lot and a point 20 feet from that intersection on each of said connecting lot lines, solid fencing, which might tend to cause a vision obstruction, may be erected not exceeding three feet in height.
  - (4) Within 10 feet of the edge of either side of the ingress and/or egress of a driveway, solid fencing, which might tend to cause a vision obstruction, may be erected not exceeding three feet in height.
  - (5) In all fence installations, the good side shall face out.  
[Added 11-18-2009 by L.L. No. 26-2009]
- B. In reference to any fence permitted herein, the following shall be strictly prohibited:
  - (1) The existence of any gate which opens onto any street.
  - (2) The use of any fence which delivers an electric shock, charge or current to any animal or human being, when contact is made.

- C. The provisions of this section shall also apply to hedges and/or densely growing shrubbery.
- D. For the purposes of this section only, the following terms shall have the meanings indicated:

**FRONT BUILDING LINE**

Refers only to the principal structure, and shall not include patios, porches, stoops, enclosed vestibules protruding from the front of the principal structure and any other non-living-space extensions to the principal structure.

**FRONT YARD**

Refers to the yard which faces the street that is used as the postal or mailing address of the subject property when said property has frontage on two or more streets.

- E. Fencing which complies with the provisions of this section shall not require a building permit. Fencing permitted by a variance granted by the Zoning Board of Appeals or modifications granted by the Planning Board, pursuant to this chapter, shall require a building permit.

## § 213-73. Permitted encroachments.

- A. In an A Residence District, the following encroachments upon required yard areas are permitted:
  - (1) Cornices, eaves, gutters, chimneys or bay windows and overhangs projecting not more than 24 inches.
  - (2) One-story open porches, and terraces not exceeding three feet in height, projecting not more than four feet into a front or rear yard.
  - (3) One-story enclosed vestibules not greater than six feet wide and five feet deep into the front yard.
- B. In any case where the Board of Appeals has diminished a required yard by a variance, none of the foregoing encroachments shall be permitted into such diminished yard.

## § 213-74. (Reserved)

[1]: *Editor's Note: Former § 213-74, Signs, as amended 12-21-1976, was repealed 9-25-1990.*

## § 213-75. Ground floor area.

- A. In case of a one-and-one-half-story (expansion attic area) dwelling, no such dwelling shall be hereafter erected unless the ground floor area contains not less than 1,150 square feet, exclusive of garage, car park, carport, open porches or terraces or any other unheated extensions outside the body of the house; provided, however, that a maximum of 150 square feet of expansion attic area, as hereinafter described, may be used and applied to the area requirements of the ground floor, diminishing said ground floor area to not less than 1,000 square feet.
- B. In case of a one-story dwelling not capable of qualifying for expansion attic area, as hereinafter described, no such dwelling shall be hereafter erected unless the ground floor area contains not less than 1,100 square feet, exclusive of garage, car park, carport, open porches or terraces or any other unheated extensions

outside the body of the house.

- C. To qualify as expansion attic area, such area shall have or be capable of having a finished ceiling height of not less than seven feet and a finished ceiling width of not less than four feet between opposing rafters. Such area shall further have knee walls of not less than four feet in height, with subflooring laid within the area to be computed and shall have access provided from the floor below by a permanent built-in stairway. The expansion attic area shall not be required to be finished except as provided herein.
- D. In case of a split-level dwelling, any two finished, decorated and heated levels may be combined to qualify for minimum ground floor area requirements; provided, however, that all remaining levels are finished, decorated and heated and are of sufficient square footage to, when combined with the ground floor area, total not less than 1,150 square feet.
- E. In case of a two-story dwelling, the ground floor area shall contain not less than 660 square feet, exclusive of garage, car park, carport, open porches or terraced or any other unheated extensions outside the body of the house; provided, however, that the second story area shall contain not less than 75% of the ground floor area, with an unobstructed ceiling height of not less than eight feet and access provided from the floor below by a permanent, built-in stairway. The second story area shall be finished, decorated and heated for the purpose of qualifying under this section.
- F. For the purpose of this section, "ground floor area" is defined as the area contained within the exterior dimensions of the ground floor.

## Article VIIA. AA Residence District

[Added 10-4-2006 by L.L. No. 37-2006]

### § 213-75.1. Intent.

The Town of Babylon seeks to maintain the character of communities which contain properties that are larger than those required in an A Residence District and also seeks to prevent the subdivision of lots in these communities into substandard lots.

### § 213-75.2. Permitted uses.

In an AA Residence District, no building or premises shall be used and no building shall be hereafter erected or altered, unless otherwise provided for in this chapter, except for one or more of the following uses:

- A. One-family dwellings.
- B. Churches, places of worship and parish houses.
- C. Public parks, playgrounds and recreational areas, when authorized or operated by a governmental authority.
- D. Colleges or universities; provided, however, and as a continuing condition of such use, that:
  - (1) The lot area therefor shall be not less than 75 acres and that the plot or premises shall have at least 400 feet of continuous frontage upon a public road, street or highway with only one means of

vehicular ingress and egress thereto from said premises.

- (2) Buildings of all types, a stadium and structures accessory thereto shall not exceed 10% of the total lot area; provided, however, that grandstands which are not part of a stadium shall not be included within such building area limitations.
- (3) In addition to such off-street parking areas as are required in any residential use district, off-street parking areas shall be provided in the ratio of one parking space for every two students of the total student capacity thereof, and no parking area shall be within 150 feet of any property or lot line.
- (4) No structures or buildings shall be erected within 150 feet of any property or lot line.
- (5) No structure or building shall be erected thereon in excess of three stories or 50 feet in height.
- E. A regularly organized elementary or high school approved by the Board of Regents of the State of New York.
- F. Customary agricultural occupations; provided, however, that 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 line.
- G. Office of a physician, lawyer, architect, musician, teacher or similar professional person residing on the premises and when such use is incidental to such residence; provided, however, that such use shall be within the main dwelling and occupying not more than 1/3 of the first-floor area.
- H. Golf courses and country clubs, when occupying not less than 50 acres, not including, however, clubs whose activities include the maintenance, storage or takeoff and landing of aircraft.
- I. Accessory buildings and structures, including a private detached garage when located not less than 60 feet from the front lot line or a private garage within, attached to or made an integral part of the main dwelling which shall have a front yard of 40 feet.
- J. Other customary accessory uses and buildings, provided that such uses are incidental to the principal use, but such uses shall not include any activity conducted as a business.
- K. Subject to the provisions of §§ **86-8B**, **86-10B** and **86-11**, not more than one boat for every 35 feet of water frontage, up to three boats, or as determined by the Planning Board in a subdivision map at the time of plat approval, shall be docked at or placed upon such real property where such real property is not improved by any buildings or structures used as a residence or where the owner of the real property does not use the premises as his/her principal residence.
- L. All existing single-family residence owners applying for accessory buildings, accessory structures and building permits to expand the existing single-family residence shall be grandfathered and the applications considered using the provisions applicable to the A Residence District.

## § 213-75.3. Uses not permitted.

Anything in this chapter to the contrary notwithstanding, in an AA Residence District, no building or premises shall be used and no building shall be erected or altered for any of the following uses:

- A. Rooming house.

- B. Boardinghouse.
- C. Rest home.
- D. Private proprietary nursing home.
- E. Private proprietary convalescent home.
- F. Private proprietary home for adults.
- G. Wrestling rings, boxing rings or similar type structures.
- H. Parking and/or storing of commercial vehicles for a period of longer than one hour and exclusive of local delivery.
- I. Any use substantially similar to any of the foregoing prohibited uses by whatever name called.
- J. Any business use not permitted in § **213-61**, nor shall any building or premises be advertised, used, held out or offered as an address, location or place of business, nor shall any sign, poster, flyer, business card or similar item list the building or premises as an address, location or place for a business; however, nothing herein shall prohibit the use of one room in a residential structure, not more than 150 square feet in size, from being used as a private office, nor the use of a residence from conducting an Internet business or business conducted solely by telephone; however, no merchandise or items offered for wholesale or retail sale by said business shall be delivered to or shipped from any residence, nor shall any residence be used for business meetings, nor shall any person or persons, other than the owner of the premises, be permitted to conduct business on said premises or visit said premises for business purposes, nor shall any merchandise or wholesale or retail items be stored or sold on or from residential premises. Nothing herein shall prohibit any professional business from being conducted on residential premises as permitted by any other provision herein.  
[Amended 10-20-2011 by L.L. No. 19-2011]

## § 213-75.4. Building height.

[Amended 1-14-2013 by L.L. No. 4-2013]

In an AA Residence District, no building or structure hereafter erected or altered shall exceed 30 feet or 2 1/2 stories. The maximum height allowance of 30 feet for existing habitable buildings or structures hereafter altered to increase the height of said building or structure located within the base flood or one-hundred-year flood zone may be increased in order to meet the enhanced height requirements in accordance with Chapter **125** of this Code and FEMA regulations. Said height allowance shall not exceed the enhanced height requirements above grade as defined in Chapter **125** of this Code.

## § 213-75.5. Lot area.

- A. In an AA Residence District, no building shall be erected on a lot having an area of less than 20,000 square feet and a width of less than 125 feet at the front street line. No flag lot shall be permitted. However, a single-family dwelling may be built upon a lot held in single and separate ownership on July 25, 1954, having an area of less than 20,000 square feet and a width of less than 100 feet at the front street line; and provided, further, that in such case the width of a lot shall not be less than 70 feet and the area not less than 7,000 square feet.



- B. For the purposes of this section only, the following terms shall have the meanings indicated:

**FLAG LOT**

An interior parcel of land shaped like a flag; the staff of which is a narrow strip of land providing vehicular and pedestrian access to a street, with the bulk of the property lying to the rear of the other lot.

## § 213-75.6. Front yards.

- A. In an AA Residence District, no building hereafter erected or altered shall have a depth of front yard less than 50 feet. If, on the same side of the street, 40% or more of the total street line distance between the two nearest intersecting street lines shall have been improved with two or more buildings, or, in the event that building permits shall have been issued therefor, not less than the average depth of front yard as so established by such existing or permitted buildings, shall be maintained; provided, however, that any such front yard depth shall not be required to be more than 70 feet.
- B. In an AA Residence District, no part of any required front yard, other than a driveway or garage, shall be used for the parking or storage of motor vehicles and/or a marine craft.
- C. In an AA Residence District, a maximum of 30% of the required front yard shall be used as a driveway or for off-street parking.
- D. In an AA Residence District, the front yard shall have a maximum of one curb cut, with the exception of circular driveways.

## § 213-75.7. Corner lots.

In an AA Residence District, a corner lot shall have a front yard along each street as is provided in § 213-65. However, a single-family dwelling may be built upon a lot held in single and separate ownership on July 25, 1954, having an area of less than 20,000 square feet and a width of less than 100 feet at the front street line; and provided, further, that in such case the width of a lot shall not be less than 70 feet and the area not less than 7,000 square feet.

## § 213-75.8. Double front lots.

In an AA Residence District, the required front yard for double front lots shall be provided on both streets.

## § 213-75.9. Side yards.

- A. In an AA Residence District, there shall be two side yards, one on each side of the building, except in the case of a corner lot where there shall be two front yards, one side yard and one rear yard which shall be opposite the principal front yard. The total of the widths of both side yards shall be not less than 50 feet, and no side yard shall be less than 25 feet wide; provided, however, that in the case of a lot held in single and separate ownership at the effective date of this amendment of this chapter, viz., July 25, 1954, and having a

width of not less than 100 feet at the front street line, a single-family dwelling may be built thereon, provided that the width of the required side yards may be reduced to a total of 28 feet and the least side to not less than 10 feet minimum.

[Amended 3-6-2007 by L.L. No. 4-2007]

- B. In an AA Residence District, no part of any required side yard, other than a driveway or garage, shall be used for the parking or storage of motor vehicles, other than a marine craft or house coach.

## § 213-75.10. Rear yards.

- A. In an AA Residence District, there shall be a rear yard having a minimum depth of 50 feet; provided, however, that in the case of a lot held in single and separate ownership on July 25, 1954, and having a depth of lot of less than 125 feet but not less than 100 feet, a single-family dwelling may be erected or altered thereon, provided that the rear yard in such case shall be not less than 25 feet.
- B. In an AA Residence District, no part of any required rear yard, other than a driveway or garage, shall be used for the parking or storage of motor vehicles, other than a marine craft or house coach.

## § 213-75.11. Building area.

In an AA Residence District, the total building area shall not exceed 15% of the lot area.

## § 213-75.12. Accessory buildings.

In an AA Residence District, one accessory building shall be permitted; provided, however, that:

- A. The square footage of an accessory building shall not exceed 500 square feet.
- B. The yard area occupied by an accessory building and accessory structures shall be included in computing the percentage of lot area permitted to be built upon.
- C. An accessory building located on the lot shall not exceed 14 feet in height measured from grade to ridge.
- D. Any accessory building shall be located on the same lot with the principal building.
- E. No accessory building shall be constructed upon a lot until the construction of the main building has been actually commenced.
- F. No accessory building shall be used unless the main building on a lot has been completed and is in use.
- G. No accessory building shall be built within 10 feet of any side or rear lot lines or nearer than 50 feet to any street line.
- H. The height of the garage door shall not exceed seven feet.
- I. No interior plumbing fixtures shall be permitted in an accessory building; an exterior hose bib with vacuum breaker shall be permitted.

- J. No habitable or occupied space shall be permitted in an accessory building.
- K. The exterior of accessory buildings shall be constructed of material(s) having the same or similar appearance to the main building or shall be constructed of material(s) complementary to the main building.

## § 213-75.13. Accessory structures.

In an AA Residence District, two accessory structures shall be permitted; provided, however, that:

- A. No shed shall exceed 100 square feet in area and/or 10 feet in height measured from grade to ridge. There shall be a maximum of two sheds per lot.
- B. The yard area occupied by accessory structures and an accessory building shall be included in computing the percentage of lot area to be built upon.
- C. Any and all accessory structures shall be located on the same lot with the building they are incidental to.
- D. No accessory structure shall be constructed upon a lot until the construction of the building has actually commenced.
- E. No accessory structure shall be used unless the building on the lot has been completed and is in use.
- F. No accessory structure shall be built within two feet of any side or rear lot lines or nearer than 50 feet to any street line.
- G. No accessory structure shall exceed 10 feet in height measured from grade to ridge, have a roof, nor rest more than 18 inches above the ground if it shall have a floor or deck, said limitation being measured from the lowest point of the ground thereunder.
- H. Sheds which comply with the provisions of this section shall not require a building permit. Sheds permitted by a variance granted by the Zoning Board of Appeals or modifications granted by the Planning Board, pursuant to this chapter, shall require a building permit.
- I. Decks having a height of 18 inches or less which comply with the provisions of this section shall not require a building permit. Decks permitted by a variance granted by the Zoning Board of Appeals or modifications granted by the Planning Board, pursuant to this chapter, shall require a building permit.
- J. The permitted encroachment shall not exceed six inches for the roof overhang.
- K. No habitable or occupied space shall be permitted in an accessory structure.

## § 213-75.14. Fences, hedges and shrubbery.

- A. In an AA Residence District, the following fences, as defined in this chapter, shall be permitted:
  - (1) On the rear lot line and side lot lines, enclosing the rear and side yards, fencing may be erected not exceeding six feet in height, provided that it shall not exist in the front yard, that being beyond the front building line of the principal structure, on either side.
  - (2) In the front yard, beyond the front building line of the principal structure, fencing may be erected not exceeding four feet in height.

- (3) On a corner lot, within the triangular area bounded by the lot lines connecting at the street corner of the lot and a point 20 feet from that intersection on each of said connecting lot lines, solid fencing, which might tend to cause a vision obstruction, may be erected not exceeding three feet in height.
  - (4) Within 10 feet of the edge of either side of the ingress and/or egress of a driveway, solid fencing, which might tend to cause a vision obstruction, may be erected not exceeding three feet in height.
  - (5) In all fence installations the good side shall face out.
- B. In reference to any fence permitted herein, the following shall be strictly prohibited:
- (1) The existence of any gate which opens onto any street.
  - (2) The use of any fence which delivers an electric shock, charge or current to any animal or human being, when contact is made.
- C. The provisions of this section shall also apply to hedges and/or densely growing shrubbery.
- D. For the purposes of this section only, the following terms shall have the meanings indicated:

**FRONT BUILDING LINE**

Refers only to the principal structure, and shall not include patios, porches, stoops, enclosed vestibules protruding from the front of the principal structure and any other non-living-space extensions to the principal structure.

**FRONT YARD**

Refers to the yard which faces the street that is used as the postal or mailing address of the subject property when said property has frontage on two or more streets.

- E. Fencing which complies with the provisions of this section shall not require a building permit. Fencing permitted by a variance granted by the Zoning Board of Appeals or modifications granted by the Planning Board, pursuant to this chapter, shall require a building permit.

## § 213-75.15. Permitted encroachments.

- A. In an AA Residence District, the following encroachments upon required yard areas are permitted:
- (1) Cornices, eaves, gutters, chimneys or bay windows and overhangs projecting not more than 24 inches.
  - (2) Front and rear stoops and terraces not exceeding three feet in height, projecting not more than four feet into a front or rear yard.
  - (3) One-story enclosed vestibules not greater than six feet wide and five feet deep into the front yard.
- B. In any case where the Board of Appeals has diminished a required yard by a variance, none of the foregoing encroachments shall be permitted into such diminished yard.
- C. For the purposes of this section only, the following terms shall have the meanings indicated:

**STOOP**

A platform or staircase leading to the entrance of a dwelling.

## § 213-75.16. (Reserved)

## § 213-75.17. Ground floor area.

- A. In case of a one-and-one-half-story (expansion attic area) dwelling, no such dwelling shall be hereafter erected unless the ground floor area contains not less than 1,400 square feet, exclusive of garage, car park, carport, open porches or terraces or any other unheated extensions outside the body of the house; provided, however, that a maximum of 200 square feet of expansion attic area, as hereinafter described, may be used and applied to the area requirements of the ground floor, diminishing said ground floor area to not less than 1,200 square feet.
- B. In case of a one-story dwelling not capable of qualifying for expansion attic area, as hereinafter described, no such dwelling shall be hereafter erected unless the ground floor area contains not less than 1,500 square feet, exclusive of garage, car park, carport, open porches or terraces or any other unheated extensions outside the body of the house.
- C. To qualify as expansion attic area, such area shall have or be capable of having a finished ceiling height of not less than seven feet and a finished ceiling width of not less than four feet between opposing rafters. Such area shall further have knee walls of not less than four feet in height, with subflooring laid within the area to be computed and shall have access provided from the floor below by a permanent built-in stairway. The expansion attic area shall not be required to be finished except as provided herein.
- D. In case of a split-level dwelling, any two finished, decorated and heated levels may be combined to qualify for minimum ground floor area requirements; provided, however, that all remaining levels are finished, decorated and heated and are of sufficient square footage to, when combined with the ground floor area, total not less than 1,400 square feet.
- E. In case of a two-story dwelling, the ground floor area shall contain not less than 750 square feet, exclusive of garage, car park, carport, open porches or terraced or any other unheated extensions outside the body of the house; provided, however, that the second story area shall contain not less than 75% of the ground floor area, with an unobstructed ceiling height of not less than eight feet and access provided from the floor below by a permanent, built-in stairway. The second story area shall be finished, decorated and heated for the purpose of qualifying under this section.
- F. For the purpose of this section, "ground floor area" is defined as the area contained within the exterior dimensions of the ground floor.

## Article VIII. B Residence District

## § 213-76. Permitted uses.

[Amended 8-17-1993 by L.L. No. 6-1993; 5-19-2014 by L.L. No. 5-2014]

In a B Residence District, no building or premises shall be used and no building shall be hereafter erected or altered, unless otherwise provided for in this chapter, except for one or more of the following uses:

- A. One-family dwelling.

- B. Churches, places of worship and parish houses.
- C. Public parks, playgrounds and recreational areas when authorized or operated by a governmental authority.
- D. Colleges or universities; provided, however, and as a continuing condition of such use, that:
  - (1) The lot area therefor shall be not less than 75 acres and that the plot or premises shall have at least 400 feet of continuous frontage upon a public road, street or highway with only one means of vehicular ingress and egress hereto from said premises.
  - (2) Buildings of all types, a stadium and structures accessory thereto shall not exceed 10% of the total lot area; provided, however, that grandstands which are not part of a stadium shall not be included within such building area limitations.
  - (3) In addition to such off-street parking areas as are required in any residential use district, off-street parking areas shall be provided in the ratio of one parking space for every two students of the total student capacity thereof, and no parking area shall be within 150 feet of any property or lot line.
  - (4) No structures or buildings shall be erected within 150 feet of any property or lot line.
  - (5) No structure or building shall be erected thereon in excess of three stories or 50 feet in height.
- E. A regularly organized elementary or high school having a curriculum approved by the Board of Regents of the State of New York.
- F. Customary agricultural occupation; provided, however, that no storage of manure or odor- or dust-producing substances shall be permitted within 75 feet of any side or rear lot line or within 150 feet of any street line.
- G. Office of a physician, lawyer, architect, musician, teacher or similar professional person residing on the premises and when such use is incidental to such residence; provided, however, that such use shall be within the main dwelling and occupying not more than 1/3 of the first-floor area.
- H. Golf courses and country clubs, when occupying not less than 50 acres, not including, however, clubs whose activities include the maintenance, storage or takeoffs and landings of aircraft.
- I. Accessory buildings and structures, including a private detached garage, when located not less than 50 feet from the front lot line or a private garage within, attached to or made an integral part of the main dwelling, shall have a front yard of 30 feet.
- J. Other customary accessory uses and buildings, provided that such uses are incidental to the principal use, but such uses shall not include any activity conducted as a business.
- K. Subject to the provisions of §§ **86-8B**, **86-10B** and **86-11**, not more than one boat for every 35 feet of water frontage, up to three boats, or as determined by the Planning Board in a subdivision map at the time of plat approval, shall be docked at or placed upon such real property where such real property is not improved by any buildings or structures used as a residence or where the owner of the real property does not use the premises as his/her principal residence.
- L. Solar energy production facility, when occupying not less than 50 acres and when allowed as a special exception by the Planning Board, subject to conditions, restrictions and safeguards as may be imposed by the Planning Board.

## § 213-77. Uses not permitted.

[Added 6-15-1971]

Anything in this chapter to the contrary notwithstanding, in a B Residence District, no building or premises shall be used and no building shall be erected or altered for any of the following uses:

- A. Rooming house.
- B. Boardinghouse.
- C. Rest home.
- D. Private proprietary nursing home.
- E. Private proprietary convalescent home.
- F. Private proprietary home for adults.
- G. Wrestling rings, boxing rings or similar type structures.  
[Added 5-7-2002 by L.L. No. 5-2002]
- H. Parking and/or storing of commercial vehicles for a period of longer than one hour and exclusive of local delivery.  
[Added 10-1-2002 by L.L. No. 30-2002]
- I. Any use substantially similar to any of the foregoing prohibited uses, by whatever name called.  
[Amended 5-7-2002 by L.L. No. 5-2002; 10-1-2002 by L.L. No. 30-2002]
- J. Any business use not permitted in § 213-61, nor shall any building or premises be advertised, used, held out or offered as an address, location or place of business, nor shall any sign, poster, flyer, business card or similar item list the building or premises as an address, location or place for a business; however, nothing herein shall prohibit the use of one room in a residential structure, not more than 150 square feet in size, from being used as a private office, nor the use of a residence from conducting an Internet business or business conducted solely by telephone; however, no merchandise or items offered for wholesale or retail sale by said business shall be delivered to or shipped from any residence, nor shall any residence be used for business meetings, nor shall any person or persons, other than the owner of the premises, be permitted to conduct business on said premises or visit said premises for business purposes, nor shall any merchandise or wholesale or retail items be stored or sold on or from residential premises. Nothing herein shall prohibit any professional business from being conducted on residential premises as permitted by any other provision herein.  
[Added 8-15-2006 by L.L. No. 25-2006; amended 10-20-2011 by L.L. No. 19-2011]

## § 213-78. Building height.

[Amended 11-18-1975; 5-15-1990; 6-20-2006 by L.L. No. 16-2006; 1-14-2013 by L. L. No. 5-2013]

In a B Residence District, no building or structure hereafter erected or altered shall exceed 30 feet or 2 1/2 stories. The maximum height allowance of 30 feet for existing habitable buildings or structures hereafter altered to increase the height of said building or structure located within the base flood or one-hundred-year flood zone may be increased in order to meet the enhanced height requirements in accordance with Chapter 125 of this Code and FEMA regulations. Said height allowance shall not exceed the enhanced height requirements above

grade as defined in Chapter **125** of this Code.

## § 213-79. Lot area.

[Amended 7-20-1999 by L.L. No. 14-1999]

- A. In a B Residence District, no building shall be erected on a lot having an area of less than 10,000 square feet and a width of less than 80 feet at the front street line; provided, however, that a single-family dwelling may be built upon a lot held in single and separate ownership at the effective date of this amendment of this chapter, viz., July 25, 1954, having an area of less than 10,000 square feet and a width of less than 80 feet at the front street line; and provided, further, that in such case the width of the lot shall not be less than 60 feet and the area not less than 6,000 square feet.
- B. No building may be altered or accessory building erected on a lot having a lot area of less than 10,000 square feet and a width of less than 80 feet at the front street line; provided, however, that where a main building was erected prior to July 25, 1954, and was constructed in conformity with the lot area requirements contained in the building zone ordinance in effect prior to July 25, 1954, said main building may be altered or an accessory building constructed, provided that they conform to all other provisions of the building zone ordinance in effect at the time of the application for a building permit.

## § 213-80. Front yards.

[Amended 10-1-2002 by L.L. No. 31-2002]

- A. In a B Residence District, no building hereafter erected or altered shall have a depth of front yard less than 30 feet. If on the same side of the street, 40% or more of the total street line distance between the two nearest intersecting street lines shall have been improved with two or more buildings, or, in the event that building permits shall have been issued therefor, not less than the average depth of front yard as so established by such existing or permitted buildings shall be maintained; provided, however, that any such front yard depth shall not be required to be more than 60 feet.
- B. In a B Residence District, no part of any required front yard, other than a driveway or garage, shall be used for the parking or storage of motor vehicles and/or a marine craft.  
[Amended 4-8-2003 by L.L. No. 4-2003; 7-15-2003 by L.L. No. 10-2003]
- C. In a B Residence District, a maximum of 40% of the required front yard shall be used as a driveway or for off-street parking.
- D. In a B Residence District, the front yard shall have a maximum of one curb cut, with the exception of circular driveways.

## § 213-81. Corner lots.

[Amended 7-20-1999 by L.L. No. 14-1999]

In a B Residence District, a corner lot shall have a front yard along each street as is provided in § **213-80**, provided that in the case of such lot held in single and separate ownership at the effective date of this amendment of this chapter, viz., July 25, 1954, which then had and still has a width of lot at the front street line of



less than 80 feet, the one of such required front yards upon which the building proposed to be erected or altered does not face or have its principal entrance may be decreased by not more than 50% of the depth required by § 213-80 of this article.

## § 213-82. Double front lots.

In a B Residence District, the required front yard for double front lots shall be provided on both streets.

## § 213-83. Side yards.

[Amended 7-20-1999 by L.L. No. 14-1999; 7-15-2003 by L.L. No. 10-2003]

- A. In a B Residence District, there shall be two side yards, one on each side of the building, except in the case of a corner lot where there shall be two front yards, one side yard and one rear yard which shall be opposite the principal front yard. The total of the widths of both side yards shall be not less than 30 feet and no side yard shall be less than 12 feet wide; provided, however, that in the case of a lot held in single and separate ownership at the effective date of this amendment of this chapter, viz., July 25, 1954, and having a width of not less than 80 feet at the front street line, a single-family dwelling may be built thereon, provided that the width of the required side yards may be reduced to a total of 20 feet and the least side to not less than eight feet minimum.
- B. In a B Residence District, no part of any required side yard, other than a driveway or garage, shall be used for the parking or storage of motor vehicles, other than a marine craft or house coach.

## § 213-84. Rear yards.

[Amended 7-15-2003 by L.L. No. 10-2003]

- A. In a B Residence District, there shall be a rear yard having a minimum depth of 40 feet; provided, however, that in the case of a lot having a depth of lot of less than 125 feet but not less than 100 feet, a single-family dwelling may be erected or altered thereon, provided that the rear yard in such case shall be not less than 25 feet.
- B. In a B Residence District, no part of any required rear yard, other than a driveway or garage, shall be used for the parking or storage of motor vehicles, other than a marine craft or house coach.

## § 213-85. Building area.

In a B Residence District, the total building area shall not exceed 20% of the total lot area.

## § 213-86. Accessory buildings.

[Amended 11-1-1988; 8-19-1997 by L.L. No. 12-1997]

In a B Residence District, one accessory building shall be permitted; provided, however, that:

- A. The square footage of an accessory building shall not exceed 500 square feet.
- B. The yard area occupied by an accessory building and accessory structures shall be included in computing the percentage of lot area permitted to be built upon.
- C. An accessory building located on the lot shall not exceed 14 feet in height measured from grade to ridge.
- D. Any accessory building shall be located on the same lot with the principal building.
- E. No accessory building shall be constructed upon a lot until the construction of the main building has been actually commenced.
- F. No accessory building shall be used unless the main building on a lot has been completed and is in use.
- G. No accessory building shall be built within eight feet of any side or rear lot lines or nearer than 40 feet to any street line.
- H. The height of the garage door shall not exceed seven feet.
- I. No interior plumbing fixtures shall be permitted in an accessory building; an exterior hose bib with vacuum breakers shall be permitted.
- J. No habitable or occupied space shall be permitted in an accessory building.
- K. The exterior of accessory buildings shall be constructed of material(s) having the same or similar appearance to the main building or shall be constructed of material(s) complimentary to the main building.  
[Added 2-17-1998 by L.L. No. 1-1998]

## § 213-86.1. Accessory structures.

[Added 11-1-1988; amended 3-21-1989; 8-19-1997 by L.L. No. 12-1997]

In a B Residence District, two accessory structures shall be permitted; provided, however, that:

- A. No shed shall exceed 100 square feet in area and/or 10 feet in height measured from grade to ridge. There shall be a maximum of two sheds per lot.
- B. The yard area occupied by accessory structures and an accessory building shall be included in computing the percentage of lot area to be built upon.
- C. Any and all accessory structures shall be located on the same lot with the building they are incidental to.
- D. No accessory structure shall be constructed upon a lot until the construction of the building has actually commenced.
- E. No accessory structure shall be used unless the building on the lot has been completed and is in use.
- F. No accessory structure shall be built within two feet of any side or rear lot lines or nearer than 40 feet to any street line.
- G. No accessory structure shall exceed 10 feet in height measured from grade to ridge if it shall have a roof, nor rest more than 18 inches above the ground if it shall have a floor or deck, said limitation being measured

from the lowest point of the ground thereunder.

- H. Sheds which comply with the provisions of this section shall not require a building permit. Sheds permitted by a variance granted by the Zoning Board of Appeals or modifications granted by the Planning Board, pursuant to this chapter, shall require a building permit.
- I. Decks having a height of 18 inches or less which comply with the provisions of this section shall not require a building permit. Decks permitted by a variance granted by the Zoning Board of Appeals or modifications granted by the Planning Board, pursuant to this chapter, shall require a building permit.
- J. The permitted encroachment shall not exceed six inches for the roof overhang.
- K. No habitable or occupied space shall be permitted in an accessory structure.

## § 213-87. Fences, hedges and shrubbery.

[Amended 1-7-1975; 11-1-1988]

- A. In a B Residence District, the following fences, as defined in this chapter, shall be permitted:
  - (1) On the rear lot line and side lot lines, enclosing the rear and side yards, fencing may be erected not exceeding six feet in height, provided that it shall not exist in the front yard, that being beyond the front building line of the principal structure, on either side.
  - (2) In the front yard, beyond the front building line of the principal structure, fencing may be erected not exceeding four feet in height.
  - (3) On a corner lot, within the triangular area bounded by the lot lines connecting at the street corner of the lot and a point 20 feet from that intersection on each of said connecting lot lines, solid fencing, which might tend to cause a vision obstruction, may be erected not exceeding three feet in height.
  - (4) Within 10 feet of the edge of either side of the ingress and/or egress of a driveway, solid fencing, which might tend to cause a vision obstruction, may be erected not exceeding three feet in height.
  - (5) In all fence installations, the good side shall face out.  
[Added 11-18-2009 by L.L. No. 27-2009]
- B. In reference to any fence permitted herein, the following shall be strictly prohibited:
  - (1) The existence of any gate which opens onto any street.
  - (2) The use of any fence which delivers an electric shock, charge or current to any animal or human being, when contact is made.
- C. The provisions of this section shall also apply to hedges and/or densely growing shrubbery.
- D. For the purposes of this section only, the following terms shall have the meanings indicated:

### **FRONT BUILDING LINE**

Refers only to the principal structure, and shall not include patios, porches, stoops, enclosed vestibules protruding from the front of the principal structure and any other non-living-space extensions to the principal structure.

**FRONT YARD**

Refers to the yard which faces the street that is used as the postal or mailing address of the subject property when said property has frontage on two or more streets.

- E. Fencing which complies with the provisions of this section shall not require a building permit. Fencing permitted by a variance granted by the Board of Appeals or modifications granted by the Planning Board, pursuant to this chapter, shall require a building permit.

## § 213-88. Permitted encroachments.

In a B Residence District, the following encroachments upon required yard areas are permitted:

- A. Cornices, eaves, gutters, chimneys or bay windows projecting not more than 24 inches.
- B. One-story open porches and terraces not exceeding three feet in height, projecting not more than four feet into a front or rear yard.
- C. One-story enclosed vestibules not greater than six feet wide and five feet deep into the front yard.
- D. In any case where the Board of Appeals has diminished a required yard by a variance, none of the foregoing encroachments shall be permitted into such diminished yard.

## § 213-89. (Reserved)

[1]: *Editor's Note: Former § 213-89, Signs, as amended 12-21-1976, was repealed 9-25-1990.*

## § 213-90. Ground floor area.

- A. In case of a one-and-one-half-story (expansion attic area) dwelling, no such dwelling shall be hereafter erected unless the ground floor area contains not less than 1,050 square feet, exclusive of garage, car park, carport, open porches or terraces or any other unheated extensions outside the body of the house; provided, however, that a maximum of 100 square feet of expansion attic area, as hereinafter described, may be used and applied to the area requirements of the ground floor, diminishing said ground floor area requirements to not less than 950 square feet.
- B. In case of a one-story dwelling, not capable of qualifying for expansion attic area, as hereinafter described, no such dwelling shall be hereafter erected unless the ground floor area contains not less than 1,000 square feet, exclusive of garage, car park, carport, open porches or terraces or any other unheated extensions outside the body of the house.
- C. To qualify as expansion attic area, such area shall have or be capable of having a finished ceiling height of not less than seven feet and a finished ceiling width of not less than four feet between opposing rafters. Such area shall further have knee walls of not less than four feet in height with subflooring laid within the area to be computed and shall have access provided from the floor below by means of a permanent built-in stairway. The expansion attic area shall not be required to be finished except as provided herein.
- D. In case of a split-level dwelling, any two finished, decorated and heated levels may be combined to qualify

for minimum ground floor area requirements; provided, however, that all remaining levels are finished, decorated and heated and are of sufficient square footage to, when combined with ground floor area, total not less than 1,050 square feet.

- E. In case of a two-story dwelling, the ground floor area shall contain not less than 660 square feet, exclusive of garage, car park, carport, open porches or terraces or any other unheated extension outside the body of the house; provided, however, that the second story area shall contain not less than 75% of the ground floor area, with an unobstructed ceiling height of not less than eight feet and access provided from the floor below by means of a permanent built-in stairway. The second story area shall be finished, decorated and heated for the purpose of qualifying under this section.
- F. For the purpose of this section, "ground floor area" is defined as the area contained within the exterior dimensions of the ground floor.

## Article IX. C Residence Districts

### § 213-91. Permitted uses.

[Amended 8-17-1993 by L.L. No. 6-1993; 5-19-2014 by L.L. No. 5-2014]

In a C Residence District, no building or premises shall be used and no building shall be hereafter erected or altered, unless otherwise provided for in this chapter, except for one or more of the following uses:

- A. One-family dwellings.
- B. Churches, places of worship and parish houses.
- C. Public parks, playgrounds and recreational areas when authorized or operated by a governmental authority; public library or museum.
- D. Colleges or universities; provided, however, and as a continuing condition of such use, that:
  - (1) The lot area therefor shall be not less than 75 acres and that the plot or premises shall have at least 400 feet of continuous frontage upon a public road, street or highway with only one means of vehicular ingress and egress thereto from said premises.
  - (2) Buildings of all types, a stadium and structures accessory thereto shall not exceed 10% of the total lot area; provided, however, that grandstands which are not part of a stadium shall not be included within such building area limitations.
  - (3) In addition to such off-street parking areas as are required in any residential use district, off-street parking areas shall be provided in the ratio of one parking space for every two students of the total student capacity thereof, and no parking area shall be within 150 feet of any property or lot line.
  - (4) No structures or buildings shall be erected within 150 feet of any property or lot line.
  - (5) No structure or building shall be erected thereon in excess of three stories or 50 feet in height.
- E. A regularly organized elementary or high school having a curriculum approved by the Board of Regents of the State of New York.
- F. A hospital or eleemosynary institution, when authorized by the Board of Appeals by virtue of an application

thereto as hereinafter provided for.

- G. Customary agricultural occupations; provided, however, that no storage of manure or odor- or dust-producing substances shall be permitted within 75 feet of any side or rear lot line or within 150 feet of any street line.
- H. Office of a physician, lawyer, architect, musician, teacher or similar professional person residing on the premises and when such use is incidental to such residence; provided, however, that such use shall be within the main dwelling and not occupying more than 1/3 of the first-floor area.
- I. Golf courses and country clubs, when occupying not less than 50 acres, not including, however, clubs whose activities include the maintenance, storage or takeoffs and landings of aircraft.
- J. A private club when authorized by the Board of Appeals by virtue of application thereto as hereinafter provided for.
- K. Accessory buildings and structures, including a private detached garage when located not less than 50 feet from the front lot line or a private garage within, attached to or made an integral part of the main dwelling, shall have a front yard of 30 feet.
- L. Other customary accessory uses and buildings, provided that such uses are incidental to the principal use, but such uses shall not include any activity conducted as a business.
- M. Subject to the provisions of §§ **86-8B**, **86-10B** and **86-11**, not more than one boat for every 35 feet of water frontage, up to three boats, or as determined by the Planning Board in a subdivision map at the time of plat approval, shall be docked at or placed upon such real property where such real property is not improved by any buildings or structures used as a residence or where the owner of the real property does not use the premises as his/her principal residence.
- N. Solar energy production facility, when occupying not less than 50 acres and when allowed as a special exception by the Planning Board, subject to conditions, restrictions and safeguards as may be imposed by the Planning Board.

## § 213-92. Uses not permitted.

[Added 6-15-1971]

Anything in this chapter to the contrary notwithstanding, in a C Residence District, no building or premises shall be used and no building shall be erected or altered for any of the following uses:

- A. Rooming house.
- B. Boardinghouse.
- C. Rest home.
- D. Private proprietary nursing home.
- E. Private proprietary convalescent home.
- F. Private proprietary home for adults.
- G. Wrestling rings, boxing rings or similar type structures.

[Added 5-7-2002 by L.L. No. 5-2002]

- H. Parking and/or storing of commercial vehicles for a period of longer than one hour and exclusive of local delivery.  
[Added 10-1-2002 by L.L. No. 30-2002]
- I. Any use substantially similar to any of the foregoing prohibited uses, by whatever name called.  
[Amended 5-7-2002 by L.L. No. 5-2002; 10-1-2002 by L.L. No. 30-2002]
- J. Any business use not permitted in § **213-61**, nor shall any building or premises be advertised, used, held out or offered as an address, location or place of business, nor shall any sign, poster, flyer, business card or similar item list the building or premises as an address, location or place for a business; however, nothing herein shall prohibit the use of one room in a residential structure, not more than 150 square feet in size, from being used as a private office, nor the use of a residence from conducting an Internet business or business conducted solely by telephone; however, no merchandise or items offered for wholesale or retail sale by said business shall be delivered to or shipped from any residence, nor shall any residence be used for business meetings, nor shall any person or persons, other than the owner of the premises, be permitted to conduct business on said premises or visit said premises for business purposes, nor shall any merchandise or wholesale or retail items be stored or sold on or from residential premises. Nothing herein shall prohibit any professional business from being conducted on residential premises as permitted by any other provision herein.  
[Added 8-15-2006 by L.L. No. 26-2006; amended 10-20-2011 by L.L. No. 19-2011]

## § 213-93. Building height.

[Amended 11-18-1975; 5-15-1990; 6-20-2006 by L.L. No. 17-2006; 1-14-2013 by L. L. No. 5-2013]

In a C Residence District, no building or structure hereafter erected or altered shall exceed 30 feet or 2 1/2 stories. The maximum height allowance of 30 feet for existing habitable buildings or structures hereafter altered to increase the height of said building or structure located within the base flood or one-hundred-year flood zone may be increased in order to meet the enhanced height requirements in accordance with Chapter **125** of this Code and FEMA regulations. Said height allowance shall not exceed the enhanced height requirements above grade as defined in Chapter **125** of this Code.

## § 213-94. Lot area.

[Amended 7-20-1999 by L.L. No. 14-1999]

- A. In a C Residence District, no building shall be erected on a lot having an area of less than 7,500 square feet and a width of less than 75 feet at the front street line; provided, however, that a single-family dwelling may be built upon a lot held in single and separate ownership on July 25, 1954, having an area of less than 7,500 square feet and a width of less than 75 feet at the front street line; and provided, further, that in such case the lot width shall not be less than 60 feet and the area no less than 6,000 square feet.
- B. No building may be altered or accessory building erected on a lot having a lot area of less than 7,500 square feet and a width of less than 75 feet at the front street line; provided, however, that where a main building was erected prior to July 25, 1954, and was constructed in conformity with the lot area requirements contained in the building zone ordinance in effect prior to July 25, 1954, said main building may be altered or an accessory building constructed, provided that they conform to all other provisions of the building zone ordinance in effect at the time of the application for a building permit.

## § 213-95. Front yards.

[Amended 10-1-2002 by L.L. No. 31-2002]

- A. In a C Residence District, no building hereafter erected or altered shall have a depth of front yard less than 30 feet. If on the same side of the street, 40% or more of the total street line distance between the two nearest intersecting street lines shall have been improved with two or more buildings, or, in the event that building permits shall have been issued therefor, not less than the average depth of front yard as so established by such existing or permitted buildings shall be maintained; provided, however, that any such front yard depth shall not be required to be more than 40 feet.
- B. In a C Residence District, no part of any required front yard, other than a driveway or garage, shall be used for the parking or storage of motor vehicles and/or a marine craft.  
[Amended 4-8-2003 by L.L. No. 4-2003; 7-15-2003 by L.L. No. 10-2003]
- C. In a C Residence District, a maximum of 40% of the required front yard shall be used as a driveway or for off-street parking.
- D. In a C Residence District, the front yard shall have a maximum of one curb cut, with the exception of circular driveways.

## § 213-96. Corner lot.

[Amended 7-20-1999 by L.L. No. 14-1999]

In an C Residence District, a corner lot shall have a front yard along each street as is provided in § 213-95, provided that in the case of such a lot held in single and separate ownership at the effective date of this amendment of this chapter, viz., July 25, 1954, which then had and still has a width of lot at the front street line of less than 75 feet, the one of such required front yards upon which the building proposed to be erected or altered does not face or have its principal entrance, may be decreased 50%.

## § 213-97. Double front lots.

In a C Residence District, the required front yard for double front lots shall be provided on both streets.

## § 213-98. Side yards.

[Amended 7-20-1999 by L.L. No. 14-1999; 7-15-2003 by L.L. No. 10-2003]

- A. In a C Residence District, there shall be two side yards, one on each side of the building, except in the case of a corner lot where there shall be two front yards, one side yard and one rear yard which shall be opposite the principal front yard. The total of the widths of both side yards shall be not less than 25 feet and no side yard shall be less than 10 feet wide; provided, however, that in the case of a lot held in single and separate ownership on July 25, 1954, and having a width of not less than 75 feet at the front street line, a single-family dwelling may be built thereon, provided that the width of the required side yards may be reduced to a total of 18 feet and the least side to not less than eight feet minimum.



- B. In a C Residence District, no part of any required side yard, other than a driveway or garage, shall be used for the parking or storage of motor vehicles, other than a marine craft or house coach.

## § 213-99. Rear yards.

[Amended 7-15-2003 by L.L. No. 10-2003]

- A. In a C Residence District, there shall be a rear yard having a minimum depth of 30 feet; provided, however, that in the case of a lot held in single and separate ownership on July 25, 1954, and having a depth of lot of less than 100 feet but not less than 90 feet, a single-family dwelling may be erected or altered thereon, provided that the rear yard in such case shall be not less than 20 feet.
- B. In a C Residence District, no part of any required rear yard, other than a driveway or garage, shall be used for the parking or storage of motor vehicles, other than a marine craft or house coach.

## § 213-100. Building area.

In a C Residence District, the total building area shall not exceed 30% of the total lot area.

## § 213-101. Accessory buildings.

[Amended 11-1-1988; 8-19-1997 by L.L. No. 12-1997]

In a C Residence District, one accessory building shall be permitted; provided, however, that:

- A. The square footage of an accessory building shall not exceed 500 square feet.
- B. The yard area occupied by an accessory building and accessory structures shall be included in computing the percentage of lot area permitted to be built upon.
- C. An accessory building located on the lot shall not exceed 14 feet in height measured from grade to ridge.
- D. Any accessory building shall be located on the same lot with the principal building.
- E. No accessory building shall be constructed upon a lot until the construction of the main building has been actually commenced.
- F. No accessory building shall be used unless the main building on a lot has been completed and is in use.
- G. No accessory building shall be built within six feet of any side or rear lot lines or nearer than 40 feet to any street line.
- H. The height of the garage door shall not exceed seven feet.
- I. No interior plumbing fixtures shall be permitted in an accessory building; an exterior hose bib with vacuum breaker shall be permitted.
- J. No habitable or occupied space shall be permitted in an accessory building.
- K. The exterior of accessory buildings shall be constructed of material(s) having the same or similar

appearance to the main building or shall be constructed of material(s) complimentary to the main building.  
[Added 2-17-1998 by L.L. No. 1-1998]

## § 213-101.1. Accessory structures.

[Added 11-1-1988; amended 3-21-1989; 8-19-1997 by L.L. No. 12-1997]

In a C Residence District, two accessory structures shall be permitted; provided, however, that:

- A. No shed shall exceed 100 square feet in area and/or 10 feet in height measured from grade to ridge. There shall be a maximum of two sheds per lot.
- B. The yard area occupied by accessory structures and an accessory building shall be included in computing the percentage of lot area to be built upon.
- C. Any and all accessory structures shall be located on the same lot with the building they are incidental to.
- D. No accessory structure shall be constructed upon a lot until the construction of the building has actually commenced.
- E. No accessory structure shall be used unless the building on the lot has been completed and is in use.
- F. No accessory structure shall be built within two feet of any side or rear lot lines or nearer than 40 feet to any street line.
- G. No accessory structure shall exceed 10 feet in height measured from grade to ridge if it shall have a roof, nor rest more than 18 inches above the ground if it shall have a floor or deck, said limitation being measured from the lowest point of the ground thereunder.
- H. Sheds which comply with the provisions of this section shall not require a building permit. Sheds permitted by a variance granted by the Zoning Board of Appeals or modifications granted by the Planning Board, pursuant to this chapter, shall require a building permit.
- I. Decks having a height of 18 inches or less which comply with the provisions of this section shall not require a building permit. Decks permitted by a variance granted by the Zoning Board of Appeals or modifications granted by the Planning Board, pursuant to this chapter, shall require a building permit.
- J. The permitted encroachment shall not exceed six inches for the roof overhang.
- K. No habitable or occupied space shall be permitted in an accessory structure.

## § 213-102. Fences, hedges and shrubbery.

[Amended 1-7-1975; 11-1-1988]

- A. In a C Residence District, the following fences, as defined in this chapter, shall be permitted:
  - (1) On the rear lot line and side lot lines, enclosing the rear and side yards, fencing may be erected not exceeding six feet in height, provided that it shall not exist in the front yard, that being beyond the front building line of the principal structure, on either side.
  - (2) In the front yard, beyond the front building line of the principal structure, fencing may be erected not

exceeding four feet in height.

- (3) On a corner lot, within the triangular area bounded by the lot lines connecting at the street corner of the lot and a point 20 feet from that intersection on each of said connecting lot lines, solid fencing, which might tend to cause a vision obstruction, may be erected not exceeding three feet in height.
- (4) Within 10 feet of the edge of either side of the ingress and/or egress of a driveway, solid fencing, which might tend to cause a vision obstruction, may be erected not exceeding three feet in height.
- (5) In all fence installations, the good side shall face out.  
[Added 11-18-2009 by L.L. No. 28-2009]

B. In reference to any fence permitted herein, the following shall be strictly prohibited:

- (1) The existence of any gate which opens onto any street.
- (2) The use of any fence which delivers an electric shock, charge or current to any animal or human being, when contact is made.

C. The provisions of this section shall also apply to hedges and/or densely growing shrubbery.

D. For the purposes of this section only, the following terms shall have the meanings indicated:

**FRONT BUILDING LINE**

Refers only to the principal structure, and shall not include patios, porches, stoops, enclosed vestibules protruding from the front of the principal structure and any other non-living-space extensions to the principal structure.

**FRONT YARD**

Refers to the yard which faces the street that is used as the postal or mailing address of the subject property when said property has frontage on two or more streets.

- E. Fencing which complies with the provisions of this section shall not require a building permit. Fencing permitted by a variance granted by the Board of Appeals or modifications granted by the Planning Board, pursuant to this chapter, shall require a building permit.

## § 213-103. Permitted encroachments.

In a C Residence District, the following encroachments upon required yard areas are permitted:

- A. Cornices, eaves, gutters, chimneys or bay windows projecting not more than 24 inches.
- B. One-story open porches and terraces not exceeding three feet in height, projecting not more than four feet into a front or rear yard.
- C. One-story enclosed vestibules not greater than six feet wide and five feet into the front yard.
- D. In any case where the Board of Appeals has diminished a required yard by a variance, none of the foregoing encroachments shall be permitted into such diminished yard.

## § 213-104. (Reserved)

[1]: *Editor's Note: Former § 213-104, Signs, as amended 12-21-1976, was repealed 9-25-1990.*

## § 213-105. Ground floor area.

- A. In case of a one-and-one-half-story (expansion attic area) dwelling, no such dwelling shall be hereafter erected unless the ground floor area contains not less than 950 square feet, exclusive of garage, car park, carport, open porches or terraces or any other unheated extensions outside the body of the house; provided, however, that a maximum of 100 square feet of expansion attic area, as hereinafter described, may be used and applied to the area requirements of the ground floor, diminishing said ground floor area requirements to not less than 850 square feet.
- B. In case of a one-story dwelling not capable of qualifying for expansion attic area, as hereinafter described, no such dwelling shall be hereafter erected unless the ground floor area contains not less than 900 square feet, exclusive of garage, car park, carport, open porches or terraces or any other unheated extension outside the body of the house.
- C. To qualify as expansion attic area, such area shall have or be capable of having a finished ceiling height of not less than seven feet in height and a finished ceiling width of not less than four feet between opposing rafters. Such area shall further have knee walls of not less than four feet in height, with subflooring laid within the area to be computed and have access provided from the floor below by means of a permanent built-in stairway. The expansion attic area shall not be required to be finished except as provided herein.
- D. In case of a split-level dwelling, any two finished, decorated and heated levels may be combined to qualify for minimum ground floor area requirements; provided, however, that all remaining levels are finished, decorated and heated and are of sufficient square footage to, when combined with ground floor area, total not less than 950 square feet.
- E. In case of a two-story dwelling, the ground floor area shall contain not less than 660 square feet, exclusive of garage, car park, carport, open porches or terraces or any other unheated extensions outside the body of the house; provided, however, that the second story area shall contain not less than 75% of the ground floor area with an unobstructed ceiling height of not less than eight feet and access provided from the floor below by means of a permanent built-in stairway. The second story area shall be finished, decorated and heated for the purpose of qualifying under this section.
- F. For the purpose of this section, "ground floor area" is defined as the area contained within the exterior dimensions of the ground floor.

## Article X. D Residence Districts

[Added 6-7-1977]

### § 213-106. Permitted uses.

In a D Residence District, no building or premises shall be used and no building shall be hereafter erected or altered, unless otherwise provided for in this chapter, except for one or more of the following uses:

- A. Any use permitted in any Residence C District pursuant to § **213-91** of this Code.

- B. Two-family dwellings.

## § 213-107. Applicability of C Residence District regulations.

Anything in this chapter to the contrary notwithstanding, in a Residence District, no building or premises shall be used and no building shall be erected or altered for any of the uses which are prohibited in a C Residence District pursuant to § **213-92** of this Code. The following specifications, applicable to a C Residence District pursuant to the following sections of this Code, shall apply equally to a D Residence District:

- A. Height of buildings, pursuant to § **213-93**.
- B. Lot area, pursuant to § **213-94**.
- C. Front yard depth, pursuant to § **213-95**.
- D. Corner lots, pursuant to § **213-96**.
- E. Double front lots, pursuant to § **213-97**.
- F. Side yards, pursuant to § **213-98**.
- G. Rear yards, pursuant to § **213-99**.
- H. Building area, pursuant to § **213-100**.
- I. Accessory buildings, pursuant to § **213-101**, except that no accessory buildings shall be built within three feet of any side or rear lot line or nearer than 45 feet to any street line.
- J. Fences, hedges and shrubbery, pursuant to § **213-102**.
- K. Permitted encroachments, pursuant to § **213-103**.
- L. <sup>[1]</sup>Size of buildings, pursuant to § **213-105**.  
<sup>[1]:</sup> *Editor's Note: Former Subsection L, regarding specifications for signs, was repealed 9-25-1990, which ordinance also redesignated former Subsection M as Subsection L.*
- M. Subject to the provisions of §§ **86-8B**, **86-10** and **86-11**, not more than one boat for every 35 feet of water frontage, up to three boats, or as determined by the Planning Board in a subdivision map at the time of plat approval, shall be docked at or placed upon such real property where such real property is not improved by any buildings or structures used as a residence or where the owner of the real property does not use the premises as his/her principal residence.  
 [Added 8-17-1993 by L.L. No. 6-1993]

## Article XA. F.H. Floating Home District

[Added 7-3-1984]

### § 213-107.1. Definitions.

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

**FLOATING HOME**

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

## § 213-107.2. Restriction on location of floating homes.

- A. Floating homes moored or erected over public lands underwater shall be prohibited from all zone districts.
- B. Floating homes moored or erected over private lands underwater shall be prohibited from all zone districts except the F.H. Floating Home District.

## § 213-107.3. Permitted uses.

In F.H. Floating Home District, no floating home shall be hereafter moored or altered, unless otherwise provided by this chapter, except for the following uses.

- A. One-family dwelling.

## § 213-107.4. Conducting of businesses or professions.

In the F.H. Floating Home District, the use of a floating home for a business or profession shall be prohibited.

## § 213-107.5. Height of floating homes.

In the F.H. Floating Home District, no floating homes hereafter moored or altered shall be more than 21 feet high, as measured from the waterline.

## § 213-107.6. Lot area.

In the F.H. Floating Home District, no floating home shall be moored or altered on or over an underwater lot having an area of less than 7,500 square feet.

## § 213-107.7. Building area.

In the F.H. Floating Home District, the total area of a floating home shall not exceed 25% of the underwater lot area.

## § 213-107.8. Mooring distance.

In the F.H. Floating Home District, there shall be a distance of five feet between the pier or bulkhead line and front wall of a floating home.

## § 213-107.9. Distance between floating homes.

In the F.H. Floating Home District, where two or more floating homes are moored together, there shall be 10 feet of open water space between the side walls or floats of adjacent floating homes.

## § 213-107.10. Public utilities and sanitary facilities.

In the F.H. Floating Home District, no floating home shall be moored or constructed unless provided with electricity, municipal water service and municipal sewage disposal facilities.

## § 213-107.11. Off-street parking.

In the F.H. Floating Home District, two paved off-street parking spaces shall be provided for each floating home.

## § 213-107.12. Construction standards.

In the F.H. Floating Home District, all floating homes shall be subject to the provisions of the State Building Construction Code and the Building Construction Code of the Town of Babylon.<sup>[1]</sup>

[1]: *Editor's Note: See Ch. 89, Building Construction.*

## § 213-107.13. Application for creation of district.

In the F.H. Floating Home District, every application for the creation of a floating home district shall be subject to the review of the Planning Board of the Town of Babylon.

## § 213-107.14. Environmental quality review.

Each applicant shall be required to prepare an environmental assessment [similar to that required by the New York State Environmental Quality Review Act (SEQRA)] and to file this assessment with the Planning Board, and it shall accompany the site plan application.

# Article XI. M.R. Multiple Residence Districts

## § 213-108. Permitted uses.

In an M.R. Multiple Residence District, no building or premises shall be used and no building shall hereafter be erected, unless otherwise provided in this chapter, except for use as a multiple residence or such use permitted in an A Residence District.

## § 213-109. Conduct of business.

In the M.R. Multiple Residence District, no business or profession of any type shall be permitted.

## § 213-110. Building height.

[Amended 5-15-1990]

In a M.R. Residence District, no building or structure hereafter erected or altered shall be more than 2 1/2 stories above ground level. No basic flat roof shall be permitted.

## § 213-111. Lot area.

In an M.R. Multiple Residence District, no building shall be erected or altered on a lot having an area of less than two acres.

## § 213-112. Front yards.

In an M.R. Multiple Residence District, the front setback in any building unit shall not be less than 40 feet. Balconies, porticos or like open areas may extend not more than 10 feet into the front yard.

## § 213-113. Front yard setback.

Where a private street or road is provided on the site in an M.R. Multiple Residence District, the front yard setback shall be measured from the established curbline of the unobstructed right-of-way.

## § 213-114. Corner lots.

In an M.R. Multiple Residence District, a corner lot shall have a front yard along each street as provided in § 213-112.

## § 213-115. Side yards.



In an M.R. Multiple Residence District, there shall be two side yards, one on each side of the plot. The total of the width of both side yards shall not be less than 80 feet, and neither side yard shall be less than 40 feet.

## § 213-116. Rear yards.

In an M.R. Multiple Residence District, there shall be a rear yard having a minimum depth of 50 feet.

## § 213-117. Density of dwelling units on lot.

[Amended 5-7-1974]

In an M.R. Multiple Residence District, there shall be provided at least 4,000 square feet of land area within the premises for each one-bedroom dwelling unit; 5,000 square feet of land area within the premises for each two-bedroom dwelling unit; 6,666  $\frac{2}{3}$  square feet of land area within the premises for each three-bedroom dwelling unit. In no event, however, shall the number of separate dwelling units exceed the rate of 10 units per acre for one-bedroom dwelling units; eight units per acre for two-bedroom dwelling units and six units per acre for three-bedroom dwelling units or any combination thereof in accordance with the aforementioned square footage requirements.

## § 213-118. Off-street parking areas.

[Amended 6-15-1971]

In an M.R. Multiple Residence District, two paved, off-street parking spaces shall be provided for each dwelling unit, plus  $\frac{1}{2}$  a paved, off-street parking space for each bedroom in excess of one bedroom per unit. Where garages are provided, they may be substituted for such off-street parking areas and shall conform architecturally to the principal buildings. Parking area shall not be permitted between the street and the front building line. Parking spaces may be provided by widening streets and roads on the premises. Said off-street parking area may be adjacent to and part of any unobstructed on-site driveways, provided that the traveled area is not reduced below a width of 34 feet. Said parking area must be curbed, lined off and the direction of travel lane shall be painted over blacktop. Minimum paving specifications shall be as designated by the Town of Babylon, Class B.

## § 213-119. Building exteriors.

[Amended 2-6-2008 by Res. No. 4]

In an M.R. Multiple Residence District, all walls of buildings shall be finished with face brick, stone, metal paneling, wood, glass, precast concrete finished with an attractive surface or their equivalent. No unpainted or unfinished metal or galvanized metal sidings shall be permitted for any exterior walls or roofs. All building exteriors, including, but not limited to, precast concrete, tilt-up concrete, metal or wood partitions, shall be painted in a color approved by the Planning Board as indicated on the required rendering of the building.

## § 213-120. Habitable floor area.

In an M.R. Multiple Residence District, the minimum habitable floor area for each dwelling shall not be less than

500 square feet. No portion of any building below the first story or above the second story shall be used for dwelling purposes or in computing habitable floor area.

## **§ 213-121. Landscaping.**

In an M.R. Multiple Residence District, there shall be suitable landscaping, shrubbery, trees and screening as determined by the Planning Board, and at the rear and side lines there shall be a planting strip of not less than five feet.

## **§ 213-122. Distance between buildings.**

In an M.R. Multiple Residence District, there shall be a minimum of 50 feet between all buildings erected upon the same lot or plot under the provisions of this article.

## **§ 213-123. Review of application for construction.**

In an M.R. Multiple Residence District, every application for the erection of a multiple residence shall be subject to the review of the Planning Board of the Town of Babylon.

## **§ 213-124. Stormwater drainage plan.**

In an M.R. Multiple Residence District, no building shall hereafter be erected unless a drainage plan providing for the collection, storage and disposal of stormwater runoff from the site according to standards established in the Babylon Subdivision Regulations has been approved by the Planning Board.

## **§ 213-125. Public water service.**

In an M.R. Multiple Residence District, no building shall be erected unless the same shall be provided with public water service.

## **§ 213-126. Utility areas and service platforms.**

In an M.R. Multiple Residence District, a designated utility area and service platform shall be provided for laundry and garbage areas. The builder must provide hanging space for drying clothes or provide dryers on the ratio of one for every 16 units. Commercial-type garbage bins must be provided with covered steel containers or concrete pads and kept clean at all times. All regulations must be approved by the Planning Board of the Town of Babylon. The utility area shall consist of 20 square feet for each unit, screened by stockade fencing or such fencing as is approved by the Planning Board and accessible by direct service lanes. No on-site incinerating shall be permitted.

## § 213-127. Public lighting.

All parking areas, entries, corridors, passages, utility areas and front landscaping must be provided with adequate lighting for safety purposes. Lights shall be so adjusted as not to shine into adjacent properties. Lights must be controlled by a time clock or positive photocell switching so as to ensure adequate lighting during all dark hours.

## § 213-128. Buffer strips.

[Added 9-15-1981]

Wherever an M.R. Residential zoned parcel shall abut upon a residential zoned parcel (except for another M.R. parcel) or any parcel used for residential purposes (except another M.R. parcel or cemeteries), there shall be a buffer strip five feet wide erected, planted and thereafter maintained on the plot pursuant to Planning Board requirements, unless the Planning Board shall require a greater or larger buffer strip.

## Article XII. E Business Districts

## § 213-129. Permitted uses.

[Amended 7-7-1970; 6-7-1977]

In an E Business District, no building or premises shall be used and no building shall be hereafter erected or altered unless otherwise provided in this chapter, except for one or more of the following uses:

- A. Shops and stores for the sale of retail or consumer merchandise and services.
- B. Personal service shops such as barbershops, beauty parlors and like services.
- C. Banks, theaters and offices.  
[Amended 10-7-1980]
- D. Undertaking establishments.
- E. Minor garages.
- F. The following uses, when allowed as special exceptions by the Board of Appeals, subject to conditions, restrictions and safeguards as may be imposed by the Board of Appeals:  
[Amended 5-3-1983]
  - (1) Hospitals and clinics, convalescent homes and nursing homes, assisted living facilities, licensed by the State of New York, and day nurseries.  
[Amended 4-8-2014 by L.L. No. 3-2014]
  - (2) Veterinarians, kennels and pet shops, animal hospitals and cemeteries.
  - (3) Broadcasting stations, golf courses, private, country and yacht clubs and marinas.
  - (4) Shops and stores for the sale of merchandise and services at wholesale.

- (5) Public garages.
  - (6) Places of amusement, recreation and assembly halls.
  - (7) Sales, storage, display and service of new and used automotive equipment, including automobiles and gasoline-driven cycles and carts, trucks and agricultural and garden equipment.
  - (8) Commercial video game centers.  
[Added 9-7-1983]
  - (9) Car washes.  
[Added 3-6-2007 by L.L. No. 1-2007]
- G. On-premises food and beverage consumption establishments, when permitted by special exception by the Planning Board pursuant to Article **XXVI** of this chapter, subject to such conditions, restrictions and safeguards as may be imposed by the Planning Board.  
[Amended 10-7-1980; 8-11-2000 by L.L. No. 17-2000]

## § 213-129.1. Puppy stores.

[Added 11-17-2011 by L.L. No. 21-2011]

- A. Definitions and word usage. Whenever used in this section, words in the singular include the plural and vice versa. As used in this section, the following terms shall have the meanings indicated:

### **ANIMAL RESCUE ORGANIZATION**

Any not-for-profit organization which is dedicated to pet adoption and takes unwanted, abandoned, abused or stray animals with the intent to find the animal a suitable new permanent home. Animal rescue organizations are not required to have a dedicated shelter for rescued animals, but may have volunteers which take animals in the care of the organization into their residences temporarily.

### **ANIMAL SHELTER**

Any public or privately owned organization in Suffolk County which maintains property, buildings or structures for the purpose of harboring animals which may be stray, unwanted, lost, abandoned or abused and seeks to find appropriate permanent homes for such animals. For the purpose of this law, the term "animal shelter" shall not apply to a facility commonly known as a "boarding kennel," where the ownership of the animal is not transferred; a facility commonly known as a "pet store," where animals are offered for sale as all or part of a business; an animal hospital owned, operated or supervised by a licensed veterinarian; or a facility where the owner or operator is licensed by the New York State Department of Environmental Conservation as a nuisance wildlife control agent or wildlife rehabilitator.

### **BREEDER**

Any person who breeds nine or more dogs per year.

### **DOG**

An animal of the Canidae family of the order Carnivora.

### **PUPPY**

Any dog that is less than one year old.

**PUPPY STORE**

A business establishment or individual(s) who obtain puppies with the intent to sell the animals in the retail market, but shall not include animal shelters or other animal rescue organizations and which have on premises more than six (6) puppies at any one time.

**PUPPY STORE OPERATOR**

A person who owns, operates, manages or is in control of or is working in a puppy store, or both.

- B. Nonpermitted use. In an E Business District, no building or premises shall be used and no building shall be hereafter erected or altered unless otherwise provided in this chapter for use as a puppy store, except by special exception by the Zoning Board of Appeals subject to the following conditions, restrictions and safeguards:
- (1) There is a minimum of 25 square feet per puppy of space where the puppies are kept on display, bedded, fed or maintained.
  - (2) There shall be one puppy permitted to be kept, housed, maintained, stored or offered for sale on the premises for every 100 square feet of retail puppy store space.
  - (3) There is a valid certificate of occupancy for said premises.
  - (4) The owner/operator of the puppy store shall provide a certified list of breeders from whom said puppies shall be obtained. Said list shall be updated if the owner/operator desires to purchase puppies from any additional breeders not on the original list.
  - (5) All breeders shall be properly licensed by the United States Department of Agriculture.
  - (6) The owner/operator of the puppy store shall provide an affidavit that they have investigated each breeder on said list and that none of the breeders, the breeders' employees, agents or owners or the owner, employee or agent of the applicant puppy store have been ever convicted of animal cruelty or under investigation for animal cruelty.
  - (7) The premises shall comply with the current New York State Fire Prevention Code and shall have sprinklers and be alarmed as if said premises was a public assembly.
  - (8) A \$500,000.00 bond is posted and maintained during the operation of said puppy store. Said bond shall be forfeited for any violation of this section.
- C. Penalties for offenses. Any person who shall violate this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than \$5,000 and not more than \$10,000 or imprisonment for a period not to exceed one year, or both. In addition to the aforementioned criminal penalties, any person who knowingly violates the provisions of this section shall be subject to a civil penalty of \$1,000 per puppy on said premises, per day.
- D. Severability. If any clause, sentence, paragraph, subdivision, section, or part of this section or the application thereof to any person, individual, corporation, firm, partnership, entity, or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section, or part of this section, or in its application to the person, individual, corporation, firm, partnership, entity, or circumstance directly involved in the controversy in which such order or judgment shall be rendered.

## § 213-130. Residential uses prohibited.

[Amended 9-12-1989]

- A. In an E Business District, buildings used for residential purposes, in whole or in part, shall be strictly prohibited. Any building used for residential purposes in an E Business District, prior to the effective date of this section, shall be a nonconforming use and shall conform to the lot area, width and all yard requirements at least equal to those in a C Residence District.
- B. Notwithstanding any of the above, a nonconforming use which shall be discontinued for more than six months shall thereafter be determined to be illegal and in violation of this section.

## § 213-131. Building height.

[Amended 11-8-1975; 5-15-1990]

In a E Business District, no building or structure hereafter erected or altered shall exceed 35 feet or three stories.

## § 213-132. Lot area.

In an E Business District, no building shall be erected or altered on a lot having an area of less than 10,000 square feet or upon a lot having a frontage of less than 50 feet.

## § 213-133. Front yards.

- A. In an E Business District, the required front yard shall be not less than 25 feet. If the street frontage on the same side of the street between the two nearest intersecting streets shall have been improved with two or more business buildings or in the event that building permits shall have been issued therefor and work commenced thereon, not less than the average front yard depth as so established by such existing or permitted buildings shall be maintained; provided, however, that any such front yard depth shall not be required to be more than 35 feet.
  - B. In a case where a new street line with respect to a lot has been created by the acceptance by the Town or the County of Suffolk of the dedication of an area designed for public off-street parking, the required depth of front yard along such new street line shall be not less than 10 feet; provided, however, that such dedicated area shall be not less than 50 feet in depth for a distance of at least 80% of the width of the lot.
  - C. In the case of facade or facade-related improvements in Town Board designated commercial facade improvement areas, there shall be no minimum front yard setback requirements.
- [Added 5-15-1984]

## § 213-134. Double front lots.

In an E Business District, the required front yard for a double frontage lot shall be provided for on both streets.

## § 213-135. Corner lots.

In an E Business District, corner lots shall have a front yard on each street as is provided for in § ~~213-133~~, and notwithstanding anything to the contrary therein contained, each such front yard shall be not less than 10 feet.

## § 213-136. Side yards.

In an E Business District, there shall be two side yards, one on each side of the building, the total width of both to be 15 feet, and no one side shall be less than three feet wide.

## § 213-137. Rear yards.

In an E Business District, there shall be a rear yard having a minimum depth of 50 feet; provided, however, that in the case of a lot held in single and separate ownership on July 25, 1954, having an average lot depth of less than 100 feet, a business building may be built thereon with a rear yard of not less than 10 feet. The rear yard may be used for the purpose of off-street parking and loading space.

## § 213-138. Building area.

In an E Business District, the total building area shall not exceed 60% of the total lot area.

## § 213-139. Accessory buildings.

In an E Business District, accessory buildings may occupy 25% of the required rear yard up to an average height of 18 feet. The yard area allowed for such accessory buildings shall be included in computing the percentage of lot area to be built upon; provided, however, that no building of any kind or nature shall be built within three feet of any lot line.

## § 213-140. Security gates; restrictions; phaseout.

[Added 8-10-2004 by L.L. No. 23-2004]

- A. No solid metal barrier, screen or cover shall be erected or maintained in front of or behind doors, windows or other openings of any building located within a business district.
- B. All security gates shall be of a mesh-type as will not prevent the viewing of the interior of the premises from outside the premises.
- C. When a security gate is not in use, it shall be removed or stored in such a manner so as not to be visible from the exterior of the premises.

- D. No security gate shall be placed in such a manner that it blocks any active emergency exit at any time during which the business is open to the public or to any employees.
- E. All installations of any security gate must be preceded by the issuance of a building permit from the Building Department and must be in accordance with the standards set forth by the New York State Uniform Fire Prevention and Building Code and this Code.
- F. All security gates which have been installed in accordance with a duly issued building permit and which are in existence prior to August 10, 2004, and which do not comply with the provisions of this section shall be made to comply with the provisions of this Code on or before August 10, 2009, or they shall be removed. All security gates installed without a building permit shall be removed immediately.

[1]: *Editor's Note: Former § 213-140, Signs, as amended 12-21-1976, was repealed 9-25-1990.*

## § 213-141. Applicability to Ea District.

In an Ea Business District, all of the uses and other regulations applicable to an E Business District shall apply, except that the front setback shall be 60 feet.

## § 213-142. Applicability to Eb District.

In an Eb Business District, all of the uses and other regulations applicable to an E Business District and to an Ea Business District shall apply, except that the front setback shall be 45 feet.

## § 213-143. Outdoor storage and display; permit required.

[Added 1-18-1977; amended 1-17-1978; 6-21-2005 by L.L. No. 12-2005]

- A. In an E Business District, there shall be no outdoor storage and/or display of merchandise intended for sale, marked for sale, or having the appearance of being for sale; however, a forty-five-day temporary permit may be issued in the discretion of the Chief Building Inspector for such purpose.
- B. In an E Business District, there shall be no outdoor storage as it is defined in this chapter.
- C. Any person or entity, as owner, occupant, lessee, agent, or in any other capacity, may be guilty of a violation of this section.

## § 213-144. Buffer strips.

[Added 9-15-1981 by Res. No. 9]

Wherever an E Business zoned parcel shall abut upon a residential zoned parcel or any parcel used for residential purposes (except for cemeteries), there shall be a buffer strip five feet wide erected, planted and thereafter maintained on the plot pursuant to Planning Board requirements, unless the Planning Board shall require a greater or larger buffer strip.



# Article XIIA. Residence-Office Mixed-Use District

[Added 11-8-2006 by Res. No. 9]

## § 213-144.1. Legislative intent.

The regulations set forth in this article or set forth elsewhere in this chapter and applicable to the Residence-Office Mixed-Use District are intended to encourage office development of a high character compatibly mixed with residential uses, principally for areas within the Town in which a similar pattern of use has occurred or for areas in which an office-residence pattern is an appropriate transition between higher-density business districts and residential neighborhoods. Further, the regulations set forth in this article are designed to encourage and continue to improve the existing aesthetic appearance of those areas contained within this district. Where the existing aesthetic appearance is one of residences, the continuation of that appearance is both necessary and proper to preserve surrounding property values and to promote harmony with existing conditions. Further, the purpose of this section is to maintain existing development of residential-style buildings originally constructed in the early 1900s. These buildings are rightfully preserved for their architectural and historical significance.

## § 213-144.2. Definitions.

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

### **DWELLING UNIT**

An area of a building or structure designated for and/or occupied as a home or residence containing not more than one cooking area.

### **OFFICE USE**

The business, educational, and professional offices of architects, attorneys, professional engineers, real estate or insurance brokers, or surveyors; and studios for an artist, musician, photographer, sculptor or craftsman, including the teaching of art, music or other artistic instruction.

### **RESIDENCE-OFFICE MIXED-USE DWELLING**

A building or structure containing one office use limited to the first story thereof and one dwelling unit limited to the second story or stories thereof.

## § 213-144.3. Permitted uses.

In a Residence-Office Mixed-Use District, no building or premises shall be used and no building shall hereafter be erected or altered unless otherwise provided in this chapter, except for one or more of the following uses:

- A. Single-family residence;
- B. Office use;
- C. A residence-office mixed-use dwelling containing one office use limited to the first story thereof and one dwelling unit limited to the second story or stories thereof;

- D. A use of the same general character as those specifically permitted in this section, when authorized as a special exception by the Board of Appeals, subject to conditions, restrictions and safeguards as may be imposed by the Board of Appeals;
- E. Houses of worship;
- F. Office of a physician, lawyer, architect, musician, teacher or similar professional person residing on the premises, and when such use is incidental to such residence; provided, however, that such use shall be within the main dwelling and occupying not more than 1/3 of the first-floor area.
- G. Accessory buildings and structures in conformance with the requirements of the C Residence District, hereinbefore set forth in Article **IX**, which cannot occupy required parking area(s).

## **§ 213-144.4. Retail uses strictly prohibited.**

In a Residence-Office Mixed-Use District, buildings used for retail purposes, in whole or in part, shall be strictly prohibited.

## **§ 213-144.5. Building height.**

In a Residence-Office Mixed-Use District, no building or structure hereafter erected or altered shall exceed 30 feet or 2 1/2 stories.

## **§ 213-144.6. Lot area.**

In a Residence-Office Mixed-Use District, no building or structure shall hereafter be erected or altered on a lot having an area of less than 10,000 square feet or upon a lot having a frontage of less than 75 feet.

## **§ 213-144.7. Building area.**

In a Residence-Office Mixed-Use District, the total building area shall not exceed 25% of the total lot area.

## **§ 213-144.8. Front yards.**

- A. In a Residence-Office Mixed-Use District, the required front yard shall be not less than 25 feet.
- B. If the street frontage on the same side of the street between the two nearest intersecting streets shall have been improved with residential dwellings or office buildings or a combination thereof, same having front yard setbacks averaging 15 feet or less, the allowable front yard setback may be decreased to 15 feet.
- C. In a Residence-Office Mixed-Use District, the front yard shall have a maximum of one curb cut.

## § 213-144.9. Double front lots.

In a Residence-Office Mixed-Use District, the required front yard for a building or dwelling on a double-frontage lot shall be provided for on both streets. In the circumstance of a building or dwelling that enjoys the benefit of a reduced front yard setback of 15 feet at its primary front, as provided above, the second front yard setback must be 25 feet.

## § 213-144.10. Corner lots.

In a Residence-Office Mixed-Use District, the required front yard for a building or dwelling on a corner lot shall be provided for on both streets. In the circumstance of a building or dwelling that enjoys the benefit of a reduced front yard setback of 15 feet at its primary front, as provided above, the second front yard setback must be 25 feet.

## § 213-144.11. Rear yard setback.

In a Residence-Office Mixed-Use District, the required rear yard for a building or dwelling shall be not less than 50 feet.

## § 213-144.12. Other setbacks.

In all other regards, required setbacks shall conform to those required in a Residence C District, as set forth hereinbefore in Article IX.

## § 213-144.13. Fences, hedges and shrubbery.

A. In a Residence-Office Mixed-Use District, the following fences, as defined in this chapter, shall be permitted:

- (1) On the rear lot line and side lot lines, enclosing the rear and side yards, fencing may be erected not exceeding six feet in height, provided that it shall not exist in any portion of the front yard, nor shall any fencing six feet in height be permitted at any location front of the rear building line of the main building or structure on the parcel.
- (2) In the front yard, front of the rear building line of the principal structure, fencing may be erected not exceeding four feet in height.
- (3) On a corner lot, within the triangular area bounded by the lot lines connecting at the street corner of the lot and a point 30 feet from that intersection on each of said connecting lot lines, any fencing, which might tend to cause a vision obstruction, may be erected not exceeding three feet in height.
- (4) Within 10 feet of the edge of either side of the ingress and/or egress of a driveway, any fencing, which might tend to cause a vision obstruction, may be erected not exceeding three feet in height.

- (5) In the front yard, beyond the front building line of the principal structure, solid fencing of any type, by whatever name called, shall be prohibited.
- B. In reference to any fence permitted herein, the following shall be strictly prohibited:
  - (1) The existence of any gate which opens onto any street.
  - (2) The use of any fence which delivers an electric shock, charge or current to any animal or human being when contact is made.
  - (3) The use of chain-link fence or stockade fence in the front yard.
- C. The provisions of this section shall also apply to hedges and/or densely growing shrubbery.
- D. For the purpose of this section only, the following terms shall have the meanings indicated:

**FRONT BUILDING LINE**

Refers only to the principal structure, and shall not include patios, porches, stoops, enclosed vestibules protruding from the front of the principal structure and any other non-living-space extensions to the principal structure.

**FRONT YARD**

Refers to the yard which faces the street that is used as the postal or mailing address of the subject property when said property has frontage on two or more streets.

**REAR BUILDING LINE**

Refers only to the principal structure, and shall not include patios, porches, stoops, enclosed vestibules protruding from the rear of the principal structure and any other non-living-space extensions to the principal structure.

- E. Fencing which complies with the provisions of this section shall not require a building permit. Fencing permitted by a variance granted by the Board of Appeals or modifications granted by the Planning Board, pursuant to this chapter, shall require a building permit.
- F. Any fence, hedge or shrubbery existing prior to the adoption of this article is permitted; however, it shall not be replaced except in conforming with the provisions of this article.

## § 213-144.14. Permitted encroachments.

- A. In a Residence-Office District, the following encroachments upon required yard areas are permitted:
  - (1) Cornices, eaves, gutters, chimneys or bay windows projecting not more than 24 inches.
  - (2) One-story open porches and terraces not exceeding three feet in height, projecting not more than four feet into a front or rear yard.
  - (3) One-story enclosed vestibules not greater than six feet wide and five feet into the front yard.
- B. In any case where the Board of Appeals has diminished a required yard by a variance, none of the foregoing encroachments shall be permitted into such diminished yard.

## § 213-144.15. Ground floor area.

- A. In the case of a one-and-one-half-story (expansion attic area) dwelling, no such dwelling shall be hereafter erected unless the ground floor area contains not less than 950 square feet, exclusive of garage, car park, carport, open porches or terraces or any other unheated extensions outside the body of the house; provided, however, that a maximum of 100 square feet of expansion attic area, as hereinafter described, may be used and applied to the area requirements of the ground floor, diminishing said ground floor area requirements to not less than 850 square feet.
- B. In the case of a one-story dwelling not capable of qualifying for expansion attic area, as hereinafter described, no such dwelling shall be hereafter erected unless the ground floor area contains not less than 900 square feet, exclusive of garage, car park, carport, open porches or terraces or any other unheated extension outside the body of the house.
- C. To qualify as expansion attic area, such area shall have or be capable of having a finished ceiling height of not less than seven feet in height and a finished ceiling width of not less than four feet between opposing rafters. Such area shall further have knee walls of not less than four feet in height, with subflooring laid within the area to be computed, and shall have access provided from the floor below by means of a permanent built-in stairway. The expansion attic area shall not be required to be finished except as provided herein.
- D. In the case of a split-level dwelling, any two finished, decorated and heated levels may be combined to qualify for minimum ground floor area requirements; provided, however, that all remaining levels are finished, decorated and heated and are of sufficient square footage when combined with the ground floor area, to total not less than 950 square feet.
- E. In the case of a two-story dwelling, the ground floor area shall contain not less than 660 square feet, exclusive of garage, car park, carport, open porches or terraces or any other unheated extensions outside the body of the house; provided, however, that the second story area shall contain not less than 75% of the ground floor area, with an unobstructed ceiling height of not less than eight feet, and access shall be provided from the floor below by means of a permanent built-in stairway. The second story area shall be finished, decorated and heated for the purpose of qualifying under this section.
- F. For the purpose of this section, "ground floor area" is defined as the area contained within the exterior dimensions of the ground floor.

## § 213-144.16. Size and nature of dwelling units.

- A. No dwelling unit may be contained in any building or structure other than the main dwelling.
- B. No dwelling unit or any part thereof may be contained in a cellar or basement.
- C. Permitted rooms within a dwelling unit. The dwelling unit may contain one kitchen, one dining room, one living room, one or two bathrooms and up to two bedrooms. Rooms designated as dens, libraries, studios, family rooms, bonus rooms, computer rooms, or any similarly named room, shall be deemed to be additional bedrooms. This section shall only apply to dwelling units contained in a residence-office mixed-use dwelling and any residence or structure that is converted to a residence-office mixed-use dwelling. This section shall not apply to any existing dwelling, nor any existing dwelling that is being rebuilt and/or repaired to its prior status because of a fire.

- D. The dwelling must comply with all requirements of the New York State Building Code<sup>[1]</sup> and all the laws and housing regulations of the State of New York and the Town of Babylon and be maintained in a neat and orderly manner.

[1]: *Editor's Note: See Ch. 89, Building Construction.*

## § 213-144.17. Architectural design.

- A. The design and location of all site improvements and all buildings must be consistent with the ultimate purpose of achieving the goals set forth in the "legislative intent" section of this article. Building prototypes and design shall reflect an architectural design and style in conformity with the surrounding community and shall be built with due consideration for the special character of any and all adjacent residential development. The architectural design, scale and mass of buildings and other structures, the exterior building material and color, rooflines and building elevations shall be conservative and dignified and of such character as to harmonize and be compatible with the neighborhood so as to protect property values in the neighborhood and to improve the appearance of the community. All new construction shall adhere to the purposes of this district. Specifically:
- (1) Buildings shall be designed to achieve small scale and residential appearance.
  - (2) Pitched-roofed buildings shall be required. Flat roofs shall not be permitted.
  - (3) Rooftop mechanical equipment shall be prohibited, except for satellite dishes and energy conservation systems such as solar panels. The owner shall attempt to locate rooftop satellite dishes or ground-mounted satellite dishes in areas other than front yards or visible from the front yard.
  - (4) Buildings shall be designed and located on the site so as to retain the existing topography and natural features of the land to the greatest extent possible.
  - (5) Any and all new construction or substantial reconstruction of an existing structure contained within a Residence-Office Mixed-Use District shall be subject to formal architectural review by the Planning Board.
- B. Nothing contained in this section shall be construed to prevent the ordinary maintenance and repair of any exterior architectural features on a premises which does not involve a change in design, material, color or the outward appearance thereof.
- C. There shall be no addition made to, nor shall there be any demolition of, any existing house located within a Residence-Office Mixed-use District without the prior approval of the Planning Board.

## § 213-144.18. Required parking; restrictions.

- A. For a residence-office mixed-use dwelling: Two spaces are required for each dwelling unit in such dwelling, plus one space for each 250 square feet of gross floor area dedicated to office use as defined herein. Fractional spaces shall be rounded up to constitute one whole space.
- B. No parking shall be permitted in any front yard. Parking shall be limited to a side or rear yard only.

## § 213-144.19. Signage.

For residence-office mixed-use dwelling:

- A. Permitted signage. Only one sign shall be permitted on any parcel containing a residence-office use mixed-use dwelling. The permissible sign shall be a ground sign only.
- B. Sign height, width and maximum allowable square footage for sign face. A permitted ground sign shall not exceed four feet in height; nor shall it exceed four feet in total width; it shall contain one sign face which may not exceed six square feet and shall be located at least five feet from the front and side lot lines.
- C. Sign illumination. A permitted ground sign may be illuminated only by indirect illumination by an electric lamp not exceeding 15 watts of power contained on the sign or sign structure.
- D. There shall be no exterior display, nor any interior display visible from the exterior, of merchandise or advertising, no retail trade, no exterior storage of material or equipment and no other exterior indications of use, except in accordance with the Town of Babylon Sign Code, Article **XXXIII** herein.
- E. Any sign contained within a Residence-Office Mixed-Use District shall be subject to formal architectural review by the Planning Board.

## § 213-144.20. Nonconforming uses.

Notwithstanding anything contained in Article XIIA, in a Residence-Office Mixed-Use District, any legal nonconforming use, as defined in § **213-22** of the Babylon Town Code, may continue subject to the provisions set forth in §§ **213-22** through and including 213-27 of the Babylon Town Code.

## § 213-144.21. Fire protection systems.

[Added 11-8-2006 by L.L. No. 38-2006]

A fire protection system which shall include a full fire sprinkler system, smoke and heat detection system shall be installed.

## Article XIII. M-H Planned Motel-Hotel District

[Added 8-4-1981 by Res. No. 2]

## § 213-145. Definitions.

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

### **MOTEL-HOTEL**

A structure in which lodging is provided for transient people and offered to the public for compensation and in which ingress and egress to and from all rooms is made through an inside lobby or office supervised by a person in charge at all hours.

## § 213-146. Permitted uses.

In an M-H Planned Motel-Hotel District, no building or premises shall be used and no building shall hereafter be erected unless as otherwise provided in this chapter, except for use as a motel or hotel and related service use.

## § 213-147. Related service uses.

In an M-H Planned Motel-Hotel District, the following related service uses may be permitted only in conjunction with the motel-hotel use and when contained in the primary structure and when approved by the Town Board:

- A. Banquet rooms.
- B. Restaurant.
- C. Bar.
- D. Gift shop.
- E. Newsstand.
- F. Barbershop/beauty parlor.
- G. Health spa.
- H. Car rental offices (no on-site storage of vehicles permitted).
- I. Other integral related uses.

## § 213-148. Lot area.

In an M-H Planned Motel-Hotel District, no structure shall be erected or altered on a lot having an area of less than three acres.

## § 213-149. Lodging unit density.

In an M-H Planned Motel-Hotel District, there shall be provided 1,500 square feet of land area for each lodging unit. The area devoted to the related service uses, including the parking and loading requirements for same, shall be excluded from the calculation for the lodging unit density.

## § 213-150. Off-Street parking areas.

In an M-H Planned Motel-Hotel District, off-street parking area requirements shall be in conformity with those requirements under Article **XXIII**, Off-Street Parking and Loading, provided that no parking or loading areas shall be located within 25 feet of a street nor within 25 feet of a residentially zoned district or use.



## § 213-151. Building height

[Amended 5-15-1990]

In an M-H Planned Motel-Hotel District, no building or structure hereafter erected or altered shall be more than three stories above average ground level, nor exceed 35 feet in height unless expressly permitted by the Town Board and subject to any covenants and restrictions the Town Board may place on the parcel.

## § 213-152. Street frontage.

In an M-H Planned Motel-Hotel District, the minimum street frontage shall be 200 feet.

## § 213-153. Front yards.

In an M-H Planned Motel-Hotel District, the required front yard depth shall be not less than 75 feet.

## § 213-154. Rear yards.

In M-H Planned Motel-Hotel District there shall be a rear yard having a minimum depth of 50 feet. The rear yard may be used for the purpose of off-street parking and loading space, provided that it conforms to § **213-150**.

## § 213-155. Side yards.

In an M-H Planned Motel-Hotel District, there shall be two side yards; and no one side yard shall be less than 40 feet.

## § 213-156. Minimum floor area per lodging unit.

In an M-H Planned Motel-Hotel District, the minimum floor area for each lodging unit shall not be less than 250 square feet.

## § 213-157. Accessory structures.

All accessory structures shall be prohibited unless otherwise approved by the Town Board and subject to Planning Board specifications during site plan review.

## § 213-158. Landscaping requirements.

In an M-H Planned Motel-Hotel District, all areas of the site except for the building areas and paved areas shall be planted with grass and shrubs, trees, screening, sprinkler systems and bermed in conformance with a landscape plan approved by the Department of Planning and Development and Planning Board during the site plan review. Such landscaped areas shall be regularly maintained so as to assure the viability of all required plant material and the lack of such maintenance shall constitute a violation of this article. All parking areas that are visible from the front property line, as determined by the Planning Board, shall be concealed from the street by an earthen landscaped berm with a number of dense trees and/or shrubs planted along the berm in much a manner as to screen parked vehicles as seen from the front property line. The landscaping and construction of the berm shall be approved by the Planning Board.

## **§ 213-159. Alteration of existing motel-hotels.**

A motel-hotel may be altered or reconstructed only by special permission of the Town Board.

## **§ 213-160. Cooking facilities in individual units.**

Individual lodging units may not have cooking facilities.

## **§ 213-161. Fire protection systems.**

A fire protection system which shall include a sprinkler system, smoke detectors and self-activated public address and alarm systems shall be required and approved by the Town Board.

## **§ 213-162. Building exteriors.**

All walls of buildings shall be finished with face brick, stone, modern metal paneling, wood, glass, precast concrete finished with an attractive surface or their equivalent. No unpainted or unfinished metal or galvanized metal sidings shall be permitted for any exterior walls or roofs. All building exteriors, including but not limited to precast concrete, tilt-up concrete, metal or wood partitions, shall be painted in a color approved by the Planning Board and Architectural Review Board as indicated on the required rendering of the building. Preengineered buildings are prohibited unless the building exterior is finished with face brick, stone, modern metal paneling, wood, glass, precast concrete finished with an attractive surface or their equivalent.

## **§ 213-163. Filing of environmental assessment.**

Each applicant will be required to prepare an environmental assessment [similar to that required by the New York State Environmental Quality Review Act (SEQRA)] and file this assessment with the Planning Board, and it shall accompany the site plan application.

## **§ 213-164. Signs.**

- A. In an M-H Planned Motel-Hotel District, there shall be:
- (1) One wall sign per building side permitted. The type, location and size of the wall sign shall be approved by the Town Board.
  - (2) One freestanding sign with a maximum square footage size of 32 square feet. The type and location of the freestanding sign shall be approved by the Town Board.
  - (3) Directional signs permitted. The number, size, type and location of the directional signs shall be approved by the Town Board.
- B. All signs on the site are to be approved by the Town Board.

## § 213-165. Buffer strips.

[Added 9-15-1981 by Res. No. 9]

Wherever an M-H Planned Motel-Hotel zoned parcel shall abut upon a residential zoned parcel or any parcel used for residential purposes (except for cemeteries), there shall be a buffer strip five feet wide erected, planted and thereafter maintained on the plot pursuant to Planning Board requirements, unless the Planning Board shall require a greater or larger buffer strip.

## Article XIV. G Industrial District

### § 213-166. Permitted uses; exclusions.

[Amended 7-7-1970]

- A. In a G Industrial District, buildings and premises may be used for any use permitted under the E Business District and for any other lawful use, except for the following prohibited uses:

Abattoirs

Acetylene, natural or any type of gas manufacture or storage

Acid manufacture, all types and kinds, as a principal industry

Airfield, airport or airpark

Ammonia, bleaching powder or chlorine manufacture

Arsenal

Asphalt manufacturing or refining, except as provided in Subsection **D** below.

[Amended 5-21-2001 by L.L. No. 6-2001]

Bag cleaning

Blast furnace

Boiler works

Brick, tile or terra cotta manufacture

Burlap manufacture

Candle manufacture

Celluloid manufacture

Cement, lime, gypsum or plaster of paris manufacture

Chemical works and manufacture  
Coal tar products manufacture  
Coke ovens  
Crematory (not connected with a cemetery)  
Creosote treatment or manufacture  
Disinfectant manufacture  
Distillation of bones, coal or wood  
Dwellings (all types)  
Dyestuff manufacture  
Emery cloth and sandpaper manufacture  
Explosives manufacture or storage  
Exterminator and insect poisons manufacture  
Fat rendering  
Fertilizer manufacture and bone grinding  
Fireworks or explosive manufacture or storage  
Fish smoking and curing  
Forge plant  
Fuel tanks  
Garbage, offal or dead animals reduction, dumping or incineration  
Gas manufacture (all types)  
Gasoline service station  
Glue, size or gelatine manufacture  
Gunpowder manufacture or storage  
Ink manufacture  
Incineration or reduction of garbage, dead animals, offal or refuse  
Iron, steel, brass or copper foundry  
Lampblack manufacture  
Multiple residence  
Oilcloth or linoleum manufacture  
Oiled, rubber or leather goods manufacture  
Oil reduction  
Paint, oil, shellac, turpentine or varnish manufacture  
Paper and pulp manufacture  
Petroleum products, refining or wholesale storage of petroleum  
Plastic compounds manufacture  
Plating works  
Potash works  
Printing ink manufacture  
Public garages, unless permitted by the Board of Appeals as provided in Article II  
Pyroxylin manufacture  
Retail use, unless permitted by the Board of Appeals as provided in Subsection F.  
[Added 6-18-2002 by L.L. No. 13-2002]  
Rock crusher  
Rolling mill  
Rubber or gutta-percha manufacture or treatment

Sand, gravel or cement plants, structures, hoppers, buildings, machines or mechanisms of any nature

Sauerkraut manufacture

Sausage manufacture

Shoe blacking manufacture

Smelters

Soap manufacture

Soda and compound manufacture

Stone mill or quarry

Stockyards

Storage or baling of scrap paper, iron, bottles, rags or junk

Stove polish manufacture

Tallow, grease or lard manufacture or refining from animal fat

Tanning, curing or storage of rawhides or skins

Tar distillation or manufacture

Tar roofing or waterproofing manufacture

Tobacco (chewing) manufacture or treatment

Vinegar manufacture

Wood pulling or scouring

Yeast plant

- B. No use shall be permitted which shall be noxious or offensive by the emission of odor, dust, fumes, gas, vibration or noise.
- C. The use of G Zone property as a place of amusement for purposes of bungee jumping shall be allowed as a special exception by the Zoning Board of Appeals, subject to such conditions, restrictions and safeguards as may be imposed by the Zoning Board of Appeals and/or the State of New York. Any special exceptions granted by the Zoning Board of Appeals for said use shall be for a term of one year only.  
[Added 3-23-1993 by L.L. No. 2-1993]

- (1) In addition to a special exception use permit granted by the Zoning Board of Appeals, a yearly permit for the use must be obtained from the Town Clerk. An annual fee of \$250 shall be charged for said permit. Applicants for said permit must furnish to the Town Clerk an application, in writing, and shall include the following:
- (a) The application shall supply the names, addresses and telephone numbers of two authorized officers or directors who will be responsible for and can be contacted during the period for which the permit is issued and who shall both sign said application.
  - (b) The hours of operation shall be set forth, but in no event may operation of the bungee jumping amusement be permitted before 9:00 a.m. or later than 8:00 p.m.
  - (c) A notarized letter of consent signed by the property owner acknowledging that the owner is aware of the proposed use of the property for bungee jumping purposes.
  - (d) A certificate of public liability insurance of not less than \$2,000,000 for bodily injury, naming the Town of Babylon as an additional insured. Said certificate of insurance shall be noncancelable without 10 days prior written notice to the Town Clerk.
  - (e) A notarized letter certifying the bungee jumping apparatus to be safe, signed by a certified

professional engineer.

- (f) A copy of the special exception permit issued by the Zoning Board of Appeals, together with proof of compliance with any conditions, restrictions or safeguards imposed by the Zoning Board of Appeals and/or the State of New York.

- (2) Upon the due filing of the application and information as required in § **213-166C(1)** above, the Town Clerk may, upon his approval of said application, grant said permit for a period not to exceed one year, with the permit's expiration to coincide with the approval granted by the Zoning Board of Appeals.

D. (Reserved)<sup>[1]</sup>

[1]: *Editor's Note: Former Subsection D, regarding asphalt manufacturing plants, as added 5-21-2001 by L.L. No. 6-2001, was repealed 6-21-2005 by L.L. No. 15-2005.*

E. Self-storage facilities.

[Added 3-12-2002 by L.L. No. 3-2002]

- (1) Definition. Self-storage facilities shall be defined as a building divided into two or more individual spaces, which may be rented to one or more tenants, for the storage of materials and equipment of the tenant. This shall include, but not be limited to, buildings known as "mini-storage," "public storage," and the like. This shall not apply to the storage spaces of shopping centers, apartment houses, and similar buildings when such spaces are used to store materials and equipment incidental to the tenant's primary occupancy.
- (2) Applicability. The criteria set forth in this section shall apply to applications received after September 24, 2001.
- (3) Self-storage facilities shall be permitted when authorized by special permit from the Planning Board subject to the following criteria:
  - (a) Minimum lot size of one acre;
  - (b) Buildings and structures shall not exceed two stories in height except for gables, hip or gambrel roofs 25 feet in height or less;
  - (c) Exterior signage and building siding material shall be of flat finishes only; bright, vivid and/or reflective colors shall not be permitted;
  - (d) Storage unit doors shall be screened from visibility from adjoining residentially zoned or residentially developed properties and from public streets, to the maximum extent practicable;
  - (e) Walls exceeding one story in height which are visible from off site shall be architecturally enhanced with pilasters, corbelled cornices, or similar ornamentation;
  - (f) Decorative walls or fencing shall be provided along all setback lines; decorative opaque walls and/or fencing shall be provided along all site property lines which are contiguous with residentially developed and/or zoned properties; other types of fencing may be permitted elsewhere on site subject to Planning Board review and approval;
  - (g) Street frontages shall be fully landscaped and/or shall remain natural with enhancing landscaping and/or revegetation;
  - (h) An evergreen buffer at least 20 feet wide consisting of at least two species of evergreens, which may include natural vegetation, shall be provided along all site boundary lines contiguous with

residentially developed and/or residentially zoned properties;

- (i) Exterior lighting, including security lighting, shall be specifically designed to avoid direct and/or reflective spillage onto neighboring residentially developed or zoned properties and shall be directed to the site interior;
- (j) Parking requirements specific to this use as follows:
  - [1] One parking space shall be provided for every 2,000 square feet of storage building;
  - [2] Parking stalls and loading areas adjacent to a storage building may encroach on an interior roadway 30 feet or wider (exclusive of required parking stalls for office(s) or living quarters);
  - [3] Parking stalls shall not be permitted in required front yards;
- (k) No outdoor storage shall be permitted;
- (l) Dead storage only shall be permitted;
- (m) Landscaping shall be provided adjacent to all public streets;
- (n) There shall be no outside storage nor overnight parking of vehicles except to accommodate the manager's residence;
- (o) Property shall not be used in any way that would be considered a nuisance to, or that may harm other occupants;
- (p) The following items are prohibited:
  - [1] Tires;
  - [2] Gasoline or any other flammable or combustible items;
  - [3] Chemicals;
  - [4] Paints;
  - [5] Rags;
  - [6] Piled clothing;
  - [7] Food capable of spoilage or attracting rodents;
  - [8] Any item which produces toxins, gases or odors;
  - [9] Animals;
  - [10] Dangerous materials;
- (q) There shall be no business conducted from any storage unit;
- (r) There shall be no residing, cooking, sleeping or consumption of alcoholic beverages in any storage unit.

- F. The use of G Zone property as retail use shall be allowed as a special exception by the Zoning Board of Appeals, subject to such conditions, restrictions and safeguards as may be imposed by the Zoning Board of Appeals.

[Added 6-18-2002 by L.L. No. 13-2002]

- G. The use of G Zone property as a car wash shall be allowed as a special exception by the Zoning Board of Appeals subject to such conditions, restrictions and safeguards as may be imposed by the Zoning Board of Appeals.

[Added 3-6-2007 by L.L. No. 2-2007]

- H. The use of G Zone property as a scrap metal processing facility shall be allowed, subject to such conditions, restrictions and safeguards as may be imposed by the Sanitation Commission.

[Added 11-17-2011 by L.L. No. 25-2011]

- I. The use of G Zone property as a puppy store shall be allowed as a special exception by the Zoning Board of Appeals, subject to § **213-145**.

[Added 11-17-2011 by L.L. No. 21-2011<sup>[2]</sup>]

[2]: *Editor's Note: This ordinance contained a scrivener's error, which was corrected by a resolution adopted 2-21-2012.*

## § 213-167. Building heights.

[Amended 11-18-1975; 5-15-1990]

In a G Industrial District, no building or structure hereafter erected or altered shall exceed 35 feet in height.

## § 213-168. Lot area; street frontage.

In a G Industrial District, no building shall be erected or altered on a lot having an area of less than 15,000 square feet or upon a lot having a street frontage of less than 50 feet.

## § 213-169. Front yards.

- A. In a G Industrial District, except in the case of double front lots, the required front yard depth shall be 10 feet measured from the front property line (after widening, if any, of the abutting street) to the front of the building, and it shall be suitably shrubbed, landscaped and neatly maintained, and there shall be no parking permitted in said front yard. In the case of double front lots, one front yard shall have a required depth of 10 feet and the other front yard shall have a depth of at least 10 feet, measured in both instances from the front property line (after widening, if any, of the abutting street) to the front of the building, and the entire area of both front yards lying within 10 feet of the property lines shall be suitably shrubbed, landscaped and neatly maintained, and there shall be no parking permitted in the front yards within 10 feet of the front property lines.
- B. If the street frontage on the same side of the street within 150 feet of the foundation line of the proposed building and the foundation line of an existing building or of a building for which a building permit has already been issued and upon which construction has already physically progressed to the stage of a complete footing and foundation, then and in such case the front yard shall be increased to 20 feet in depth and the rear yard may be eliminated.
- C. In a case where a new street line with respect to a lot has been created by the acceptance by the Town or



the County of Suffolk of the dedication of an area designed for public off-street parking, the required depth of front yard along such new street line shall be not less than 10 feet; provided, however, that such dedicated area shall be not less than 50 feet in depth for a distance of at least 80% of the width of that lot.

- D. In the case of facade or facade-related improvements in Town Board designated commercial facade improvement areas, there shall be no minimum front yard setback requirement.

[Added 5-15-1984]

## § 213-170. Double front lots.

In a G Industrial District, the required front yard for double front lots shall be provided for on both streets.

## § 213-171. Corner lots.

In a G Industrial District, a corner lot shall have a front yard on each street as is provided for in § **213-169**. There need be no rear yard on such corner plot, but there shall be one side yard opposite the second front yard.

## § 213-172. Side yards.

There shall be at least one side yard having a minimum width of 19 feet, and the same may be used for driveway purposes, except that the portion thereof which may be paved between the front of the building and the front property line shall not be included in the computation of the required off-street parking area. When the said side yard or portion is used for driveway purposes, there shall be erected along the edge of said driveway and bordering the landscaped portion of the front yard from the front of the building to the street curbline an unbroken curb of dimensions and design approved by the Babylon Town Planning Board.

## § 213-173. Rear yards.

- A. In a G Industrial District, there shall be a rear yard having a minimum depth of 10 feet, except as otherwise provided herein. The rear yard may be used for the purpose of off-street parking and loading space up to and within three feet of all side and rear property lines.
- B. Notwithstanding the foregoing, in the case of a lot held in single and separate ownership on September 3, 1957, which had a depth of not more than 120 feet, the rear yard may be reduced to 10 feet.

## § 213-174. Building area.

Notwithstanding any other provisions or ordinances, the total building area and outside storage area, when combined, shall not exceed 40% of the total lot area. All drainage, paving, landscaping and seeding shall be as required by the Planning Board.

[1]: *Editor's Note: Amended at time of adoption of Code; see Ch. 1, General Provisions, Art. I.*

## § 213-175. Outside storage.

In a G Industrial District, outside storage of materials will be permitted only in the rear yard and in conjunction with and as accessory to the use of a main building or structure erected on the premises, and provided that the area used for that purpose shall be completely enclosed by a chain link fence at least six feet in height. Said outside storage area shall not occupy parking area.

## § 213-176. Number of buildings on premises.

In a G Industrial District there shall be erected upon the premises only one building, and no other building or detached accessory building will be permitted.

## § 213-177. Buffer strips.

[Amended 11-8-2006 by Res. No. 9]

Wherever a G Industrial zoned parcel shall abut upon a residential zoned parcel or any parcel used for residential purposes (except for cemeteries), there shall be a buffer strip five feet wide erected, planted and thereafter maintained on the plot pursuant to Planning Board requirements unless the Planning Board shall require a greater or larger buffer strip.

## § 213-178. Applicability to Ga and GB Districts.

Notwithstanding any of the provisions contained within this article controlling a G Industrial District, if a plot zoned G Industrial is nevertheless built and used in accordance with all the provisions of Article **XV**, §§ **213-181** through **213-193**, or Article **XVI**, §§ **213-195** through **213-210**, then, in that case, the provisions which apply to the respective articles may be applied as though the subject premises were in fact zoned Ga or GB and thereafter said Ga or GB zoning shall apply to the parcel.

## § 213-179. Garage doors; driveways.

Where a parcel in the G Industrial Zone is developed in accordance with this article and has a front yard setback of 10 feet and a width of not less than 150 feet, then, and in that case, there may be permitted one overhead garage door having a maximum width not exceeding 20 feet, together with a curbed and surfaced driveway approach thereto, in addition to one other driveway not exceeding 20 feet in width so that the landscaped area shall not be less than 110 feet as measuring parallel to the abutting street. Such paved driveway approach to said overhead door may not be used for the parking of vehicles nor for outdoor storage purposes, but must be kept in a neat and orderly and unobstructed condition at all times except during the actual loading or unloading of vehicles, and at no time shall any vehicle protrude into the street beyond the line of the street curb.

## § 213-180. Outside storage and display.

[Added 1-18-1977; amended 1-17-1978]

In a G Industrial District, the outside storage and display of merchandise intended for retail sale and which is displayed for that purpose is hereby prohibited; however, a forty-five-day temporary permit may be issued in the discretion of the Chief Building Inspector.

## Article XV. GA Industrial District

### § 213-181. Permitted uses; exclusions.

[Amended 7-7-1970; 11-17-2011 by L.L. No. 21-2011]

In any Ga Industrial District, buildings and premises may be used for any use permitted in the G Industrial District and the E Business District, as amended, except for dwellings of all types and puppy stores.

### § 213-182. Building heights.

[Amended 5-15-1990]

In a Ga Industrial District, the height of buildings and structures shall be the same as provided for in § **213-167** in the G Industrial District.

### § 213-183. Lot area; street frontage.

In a Ga Industrial District, no building shall be erected or altered on a lot having an area of less than 40,000 square feet or upon a lot having a street frontage of less than 100 feet.

### § 213-184. Front yards.

A. In a Ga Industrial District, the required front yard depth shall be not less than 30 feet measured from the front property line (after the widening, if any, of the abutting street) to the front of the building, and it shall be suitably shrubbed, landscaped and neatly maintained. There shall be no parking permitted in said front yard, except for no more than four parking spaces located in front of the front of the building for the first 100 feet of road frontage, and there may be, in addition, one additional parking space for each additional 25 feet of road frontage, all provided that the minimum landscaping requirements are met.

[Amended 7-9-1996 by L.L. No. 10-1996]

B. If the street frontage on the same side of the street between the two nearest intersecting streets shall have been improved with two or more industrial or business buildings or in the event that building permits shall have been issued therefor and work commenced thereon, not less than the average front yard depth as so established by such existing or permitted buildings shall be maintained; provided however, that any such front yard depth shall not be required to be more than 30 feet.

C. In a case where a new street line with respect to a lot has been created by the acceptance by the Town or the County of Suffolk or the dedication of an area designed for public off-street parking, the required depth of a front yard along such new street line shall be not less than 10 feet; provided, however, that such

dedicated area shall be not less than 50 feet in depth for a distance of at least 80% of the width of the lot.

- D. In the case of facade or facade-related improvements in Town Board designated commercial facade improvement areas, there shall be no minimum front yard setback requirement.

[Added 5-15-1984]

## § 213-185. Double front lots.

[Amended 8-6-1974]

In a Ga Industrial District, in the case of double front lots, the front yard shall have a required depth of not less than 30 feet measured from the front property line (after widening, if any, of the abutting street) and shall conform to the requirements for front yards contained in § **213-184** and the yard abutting the other street shall have a required depth of not less than 30 feet measured from the property line abutting such streets (after widening, if any, of the abutting street) and 18 feet from the property line abutting such street shall be suitably shrubbed, landscaped and neatly maintained and there may be paved parking in remaining setback areas abutting such street.

## § 213-186. Corner lots.

In a Ga Industrial District, corner lots shall have a front yard on each street as is provided for in § **213-184**, one of which front yards may be included in the computations of available parking area. There need be no rear yard on such corner plot, but there shall be one side yard opposite the second front yard.

## § 213-187. Side yards.

In a Ga Industrial District, there shall be at least one side yard of a minimum of 19 feet, and the same may be used for driveway purposes, except that the portion thereof which may be paved between the front of the building and the front property line shall not be included in the computation of the required off-street parking area. When the said side yard or portion is used for driveway purposes, there shall be erected along the edge of said driveway and bordering the landscaped portion of the front yard, from the front of the building to the street curblin, an unbroken curb of dimensions and design approved by the Babylon Town Planning Board.

## § 213-188. Rear yards.

In a Ga Industrial District, there shall be a rear yard having a minimum depth of 30 feet, except as otherwise provided herein.

## § 213-189. Building area.

[Amended 5-7-1985 by L.L. No. 1-1985]

In a Ga Industrial District, notwithstanding any other provisions or ordinances, the total building area shall not exceed 45% of the total lot area.

## § 213-190. (Reserved)

[1]: *Editor's Note: Former § 213-190, Signs, was repealed 9-25-1990.*

## § 213-191. Landscaping.

Notwithstanding anything to the contrary elsewhere in this chapter contained, in a Ga Industrial District, there shall be at least 1,800 square feet for the first 100 feet of street frontage and 18 square feet for each additional foot of street frontage, suitably shrubbed and landscaped, and any amount of additional land in the front yard landscaped in excess of said minimum but not exceeding nine square feet for each foot of street shall be credited against any required parking area. All drainage, paving, landscaping and seeding shall be as required by the Planning Board.

## § 213-192. Number of buildings on premises.

In a Ga Industrial District, there shall be erected upon the premises only one building, and no other building nor detached accessory building will be permitted.

## § 213-193. Buffer strips.

[Amended 9-15-1981 by Res. No. 9]

Wherever a Ga Industrial zoned parcel shall abut upon a residential zoned parcel or any parcel used for residential purposes (except for cemeteries), there shall be a buffer strip five feet wide erected, planted and thereafter maintained on the plot pursuant to Planning Board requirements, unless the Planning Board shall require a greater or larger buffer strip.

## § 213-194. Outside storage and display.

[Added 1-18-1977; amended 1-17-1978]

In a Ga Industrial District, the outside storage and display of merchandise intended for retail sale and which is displayed for that purpose is hereby prohibited; however, a forty-five-day temporary permit may be issued in the discretion of the Chief Building Inspector.

## Article XVI. GB Industrial District

## § 213-195. Permitted uses; exclusions.

[Amended 7-7-1970; 11-17-2011 by L.L. No. 21-2011]

In any GB Industrial District, buildings and premises may be used for any use permitted in the G Industrial District

and the E Business District, as amended, except for dwellings of all types and puppy stores.

## § 213-196. Building heights.

[Amended 11-18-1975; 5-15-1990]

In a GB Industrial District, no building or structure hereafter erected or altered shall exceed 35 feet in height.

## § 213-197. Lot area; street frontage.

In a GB Industrial District, no building shall be erected or altered on a lot having an area of less than 20,000 square feet or upon a lot having a street frontage of less than 100 feet.

## § 213-198. Front yards.

A. In a GB Industrial District, the required front yard depth shall not be less than 30 feet measured from the front property line (after the widening, if any, of the abutting street) to the front of the building, and it shall be suitably shrubbed, landscaped and neatly maintained. There shall be no parking permitted in said front yard, except for no more than four parking spaces located in front of the building for the first 100 feet of road frontage, and there may be, in addition, one additional parking space for each additional 25 feet of road frontage, all provided that the minimum landscaping requirements are met.

[Amended 7-9-1996 by L.L. No. 11-1996]

B. In the case of facade or facade-related improvements in Town Board designated commercial facade improvement areas, there shall be no minimum front yard setback requirement.

[Added 5-15-1984]

## § 213-199. Double front lots.

[Amended 8-6-1974]

In a GB Industrial District, in the case of double front lots, the front yard shall have a required depth of not less than 30 feet measured from the front property line (after widening, if any, of the abutting street) and conform to the requirements for front yards contained in § **213-184** and the yard abutting the other street shall have a required depth of not less than 30 feet measured from the property line abutting such street (after widening, if any, of the abutting street) and 18 feet from the property line abutting such street shall be suitably shrubbed, landscaped and neatly maintained, and there may be paved parking in remaining setback areas abutting such street.

## § 213-200. Corner lots.

In a GB Industrial District, corner lots shall have a front yard on each street as is provided for in § **213-198**, one of which front yards may be included in the computation of available parking area. There need be no rear yard on such corner plot, but there shall be one side yard opposite the second front yard.

## § 213-201. Side yards; driveway usage.

In a GB Industrial District, there shall be at least one side yard of a minimum of 19 feet, and the same may be used for driveway purposes, except that the portion thereof which may be paved between the front of the building and the front property line shall not be included in the computation of the required off-street parking area. When the said side yard or portion shall be used for driveway purposes, there shall be erected along the edge of said driveway and bordering the landscaped portion of the front yard, from the front of the building to the street curbline, an unbroken curb of dimensions and design approved by the Babylon Town Planning Board.

## § 213-202. Rear yards.

In a GB Industrial District, there shall be a rear yard having a minimum depth of 10 feet, except as otherwise provided herein.

## § 213-203. Building area.

[Amended 5-7-1985 by L.L. No. 1-1985]

In a GB Industrial District, notwithstanding any other provisions or ordinances, the total building area and outside storage area shall not exceed 40% of the total lot area.

## § 213-204. (Reserved)

[1]: *Editor's Note: Former § 213-204, Signs, was repealed 9-25-1990.*

## § 213-205. Landscaping.

Notwithstanding anything to the contrary elsewhere in these ordinances contained, in a GB Industrial District, there shall be at least 1,800 square feet for the first 100 feet of street frontage and 18 square feet for each additional foot of street frontage, suitably shrubbed and landscaped, and any amount of additional land in the front yard landscaped in excess of said minimum, but not exceeding nine square feet for each foot of street, shall be credited against any required parking area. All drainage, paving, landscaping and seeding shall be as required by the Planning Board.

## § 213-206. Outside storage.

In a GB Industrial District, outside storage of materials will be permitted only in the rear yard and in conjunction with and as accessory to the use of the main building or structure erected on the premises, and provided that the area used for that purpose shall be completely enclosed by a chain link fence at least six feet in height. Said outside storage area shall not occupy parking area.

## § 213-207. Drainage, paving, landscaping, seeding.

In a GB Industrial District, all drainage, paving, landscaping and seeding shall be as required by the Planning Board.

## § 213-208. Number of buildings on premises.

In a GB Industrial District, there shall be erected upon the premises only one building, and no other building nor detached accessory building will be permitted.

## § 213-209. Buffer strips.

[Amended 9-15-1981 by Res. No. 9]

Wherever a GB Industrial zoned parcel shall abut upon a residential zoned parcel or any parcel used for residential purposes (except for cemeteries) there shall be a buffer strip five feet wide erected, planted and thereafter maintained on the plot pursuant to Planning Board requirements, unless the Planning Board shall require a greater or larger buffer strip.

## § 213-210. Applicability of Ga District provisions.

Notwithstanding any of the provisions contained within this article controlling a GB Industrial District, if a plot zoned GB Industrial is nevertheless built and used in accordance with all the provisions of Article **XV**, §§ **213-181** through **213-193**, then, in that case, the provisions which apply to the Ga Industrial zone may be applied as though the subject premises were in fact zoned Ga and thereafter said Ga zoning shall apply to the parcel.

## § 213-211. Outside storage and display.

[Added 1-18-1977; amended 1-17-1978]

In a GB Industrial District, the outside storage and display of merchandise intended for retail sale and which is displayed for that purpose is hereby prohibited; however, a forty-five-day temporary permit may be issued in the discretion of the Chief Building Inspector.

# Article XVII. H Heavy Industrial Districts

## § 213-212. Permitted uses; exclusions.

[Amended 10-12-1971]

A. In an H Industrial District, buildings and premises may be used for any purpose whatsoever not in conflict



with any ordinance of the Town; provided, however, that no building or occupancy permit shall be issued for any of the following uses until and unless the location of buildings and all other appurtenances of the use shall have been approved by the Planning Board, Board of Appeals and also approved by the Town Board, as hereinafter provided:

Acetylene, natural or any type of gas manufacturing or storage

Acid manufacture

Arsenal

Auto shredder

[Added 9-7-1977]

Bars, taverns, restaurants and on-premises food consumption establishments, unless permitted by special exception by the Town Board, subject to such conditions, restrictions and safeguards as may be imposed by the Town Board

[Added 12-20-2006 by Res. No. 6]

Blast furnace

Boiler works

Cement, lime, gypsum or plaster of paris manufacture

Chemical works and manufacture

Coal tar products manufacture

Coke ovens

Distillation of bones

Dwellings (all types)

Explosives, manufacture or storage

Fat rendering

Fertilizer manufacture

Fireworks or explosive manufacture or storage

Fuel tanks

Garbage, offal or dead animal reduction, dumping or incineration

Gas manufacture (all types)

Glue manufacture

Gunpowder manufacture or storage

Ink manufacture

Paint, oil, shellac, turpentine or varnish manufacture

Petroleum products, refining or wholesale storage of petroleum

Plastic compounds manufacture

Public garages and filling stations, unless permitted by the Board of Appeals and subject to the following provisions:

- (1) No repair work shall be performed in the open.
- (2) Pumps, lubricating and other devices shall be located at least 25 feet from the line of any street or highway rights-of-way.
- (3) All fuel, oil or similar substances shall be stored at least 35 feet distant from any street or lot line.
- (4) No automobile parts, dismantled vehicles and similar articles shall be stored in the open.

Retail use

[Added 6-18-2002 by L.L. No. 13-2002]

Smelting of tins, copper, zinc or iron ores

## Stockyards or slaughter of animals

- B. No use shall be permitted which is found by the Town Board to be detrimental to the health, welfare and safety of the residents of the Town.
- C. The procedures governing hearings before the Town Board pursuant to this section and Article **XXXII** and the standards and conditions governing the issuance of special exception use permits under this section and Article **XXXII** by the Town Board are set forth in §§ **213-383** through **213-385** of Article **XXXII**.  
[Added 4-8-1988 by L.L. No. 2-1988]

## § 213-213. Loading space.

In an H Industrial District, where no off-street parking is provided for or on the same lot or plot on which the structure is to be erected, no building shall hereafter be erected or altered or added to in excess of 50% of its floor space area prior to July 7, 1954, unless such building shall be provided with one loading space, either as a part of the building or accessory thereto on the same lot, for each 8,000 square feet or fraction thereof. Such loading space shall be not less than 12 feet in width, 25 feet in length and 15 feet in height.

## § 213-214. Building height.

[Amended 11-18-1975; 5-15-1990]

In a H Industrial District, no building or structure hereafter erected or altered shall exceed 35 feet in height.

## § 213-215. Lot area; frontage required.

In an H Industrial District, no building shall be erected or altered on a lot having an area less than two acres or upon a lot having a frontage of less than 200 feet.

## § 213-216. Front yards.

- A. In an H Industrial District, the required front yard depth shall be not less than 100 feet. If the street frontage on the same side of the street between the two nearest intersecting streets shall have been improved with two or more industrial or business buildings, or in the event that building permits shall have been issued therefor and work commenced thereon, not less than the average front yard depth as so established by such existing or permitted buildings shall be maintained; provided, however, that any such front yard depth shall not be required to be more than 100 feet.
- B. In a case where a new street line with respect to a lot has been created by the acceptance by the Town or the County of Suffolk of the dedication of an area designed for public off-street parking, the required depth of front yard along such new street line shall be not less than 50 feet; provided, however, that such dedication area shall be not less than 50 feet in depth for a distance of at least 80% of the width of the lot.
- C. In the case of facade or facade related improvements in Town Board designated commercial facade

improvement areas, there shall be no minimum front yard setback requirements.  
[Added 6-18-2002]

## § 213-217. Double front lots.

In the H Industrial District, the required front yard for double front lots shall be provided for on both streets.

## § 213-218. Corner lots.

In an H Industrial District, corner lots shall have a front yard on each street as is provided for § **213-216**, and notwithstanding anything to the contrary therein contained, each such front yard shall be not less than 50 feet.

## § 213-219. Rear yards.

In an H Industrial District, there shall be a rear yard having a minimum depth of 50 feet. The rear yard may be used for the purpose of off-street parking and loading space up to and within three feet of all rear and side property lines.

## § 213-220. Building area.

In an H Industrial District, the total building area shall not exceed 30% of the total lot area.

## § 213-221. (Reserved)

[1]: *Editor's Note: Former § 213-221, Signs, as amended 12-21-1976, was repealed 9-25-1990.*

## § 213-222. Uses not permitted.

[Amended 5-3-1983 by Res. No. 4]

In an H Industrial District, the following uses shall not be permitted:

- A. Multiple residences.
  - B. Hotels, motels, lodging and boarding houses.
  - C. Puppy stores.
- [Added 11-17-2011 by L.L. No. 21-2011]

## § 213-223. Outside storage and display.

[Added 1-18-1977; amended 1-17-1978]

In an H Industrial District, the outside storage and display of merchandise intended for retail sale and which is displayed for that purpose is hereby prohibited; however, a forty-five-day temporary permit may be issued in the discretion of the Chief Building Inspector.

## § 213-224. Buffer strips.

[Added 9-15-1981 by Res. No. 9]

Wherever an H Industrial zoned parcel shall abut upon a residential zoned parcel or any parcel used for residential purposes (except for cemeteries), there shall be a buffer strip five feet wide erected, planted and thereafter maintained on the plot pursuant to Planning Board requirements, unless the Planning Board shall require a greater or larger buffer strip.

## Article XVIII. Supplementary Regulations

### § 213-225. Continuation of nonconforming uses.

The lawful use of a building existing on July 25, 1954, may be continued although such use does not conform to the provisions of this chapter.

### § 213-226. Discontinuation of nonconforming uses.

A nonconforming use which shall be discontinued for more than six months shall thereafter be determined to be illegal and in violation of the ordinances, notwithstanding the provisions of § **213-225** herein. Upon the expiration of the aforesaid six-month period, the said use may not be reinstated, and any structure which shall be in violation of the then controlling ordinances by virtue of this section shall be razed at the expense of the owner.

### § 213-227. Compliance with Town-approved statement.

No owner, lessee or person, firm or corporation having possession and control of a premises shall build, alter or use any building, structure or land, nor permit any building, structure or land to be built, altered or used in a manner contrary to any statement, representation, application, plan or specification submitted to and approved by the Town.

### § 213-228. Buffer strips.

[Amended 9-15-1981 by Res. No. 9]

Wherever an industrial, business or motel-hotel zoned parcel or nonconforming gas station shall abut upon a residential zoned parcel or any parcel used for residential purposes (except cemeteries) or wherever a multiple residence or senior citizen M.R. shall abut upon a residential parcel (except for another M.R. parcel or

cemeteries), there shall be a buffer strip five feet wide erected, planted and thereafter maintained on the plot pursuant to Planning Board requirements, unless the Planning Board shall require a greater or larger buffer strip.

## § 213-229. Obscuring view on corner lots.

[Amended 11-1-1988]

On a corner lot, no wall, fence, hedge, shrub, advertising or identification sign or other structure or growth more than three feet in height from the ground nor less than eight feet of clearance from above the adjacent pavement, nor any other obstruction to vision, shall be erected, altered, planted or maintained within the triangular area bounded by the lot lines of said lot connecting at the street corner of the lot and a point 20 feet from that intersection on each of said connecting lot lines. Such obstructions shall not include public utility poles, traffic control devices, natural grades or signposts.

## § 213-230. Subdivision into substandard size plots.

It shall be unlawful and deemed a violation of this chapter for the owner of a parcel of ground to subdivide the same, whether by sale, devise, gift or otherwise, into smaller plots which will result in the creation of one or more undersized or substandard sized plots with relation to area and street frontage requirements of this chapter in force at the time of such subdivision, and any plot so created shall be deemed to be in violation of this chapter, and said violation shall be deemed to extend and apply to all newly created lots out of the original plot subdivided, whether or not one or more of the newly created plots is technically in conformity with the then-existing chapter.

### § 213-230.1. Amendment of lot lines.

[Added 4-5-1994 by L.L. No. 4-1994]

- A. Notwithstanding any other provision of this chapter or sections thereof, a procedure is hereby established to allow the amendment and/or varying of a lot line between the owners of two contiguous lots. Under no circumstances shall the amendment or varying of the lot line create a substandard lot or create any situation which will require a variance to be issued to either one of the properties. Application for an amendment of a lot line shall be made to the Planning Board by application and shall not obviate the necessity of filing a subdivision map if the amendment affects three or more lots.
- B. Provided that all conditions are met by the applicants, the application shall be made jointly by the contiguous owners and shall not require the filing of a subdivision map but shall require the submission of survey and deed in accordance with the terms of the survey. Upon approval, said document shall be recorded in the County Clerk's office and the survey shall be filed in the Assessor's office of the Town of Babylon.
- C. Amendment and/or varying lot line applications shall be permitted only if the contiguous lots are wholly within the same zoning classification.
- D. The fee for the application shall be established by Town Board resolution.

## § 213-231. Merger of substandard lots with adjacent lots.

Notwithstanding any other provisions of this chapter or the sections thereof, where reference is made to lot area or street frontage requirements in any and all use zones and, further, reference to exceptions as to a lot in single and separate ownership as of a certain date, which lot by the present or future lot area or street frontage requirements is substandard in size, any right so given a parcel in single and separate ownership as of a certain date shall be deemed to be lost by the owner of said substandard lot or its grantees, heirs, successors and assigns, when an owner of said substandard lot shall acquire an adjacent and abutting lot or where an owner of an adjacent and abutting lot shall have acquired the substandard lot, thereby merging the title of the substandard lot into the abutting and adjoining lot. When such merger shall have been so effected, then the single and separate ownership exceptions to the requirements of this chapter, as set forth in this chapter, shall no longer apply to a previously substandard sized plot, and this interpretation shall apply in all zones.

## § 213-232. Effect of street widening on building plots.

- A. Notwithstanding any other provision of this chapter, any building plot in any district shall be credited in reduction of overall lot area requirements and front yard requirements with the footage dedicated to the Town of Babylon for the widening of streets, when approved by the Planning Board and upon the acceptance of the deed of dedication by the Town Board.
- B. Notwithstanding any other provision of this chapter, any building plot in any district shall be credited in reduction of overall lot area requirements and front yard requirements with the footage taken by the Town through eminent domain proceedings for the widening of a street, provided that such does not reduce the overall lot area or front yard to less than 90% of what is otherwise required by this chapter.  
[Added 10-5-1999 by L.L. No. 19-1999]

## § 213-233. Location of accessory buildings.

Notwithstanding any other provision of this chapter, on all lots held in single and separate ownership on July 7, 1954, of a frontage of 50 feet or less, an accessory building may be erected not less than three feet from any side lot line.

## § 213-234. Side yards on certain lots.

Notwithstanding any other provision of this chapter, on all lots held in single and separate ownership on July 7, 1954, of a frontage of 50 feet or less, a building may be erected with 16 feet in side yards, and neither side yard less than six feet.

## § 213-235. Sprinkler systems.

[Added 10-16-2001 by L.L. No. 10-2001]

All buildings constructed, or which incur 40% or more reconstruction, after the effective date of this section and

located in either the M.R. (Multiple Residence) District, E Business District, Ea Business District, Eb Business District, M-H Planned Motel-Hotel District, G Industrial District, GA Industrial District, GB Industrial, H (Heavy) Industrial District or PIP-1 (Planned Industrial Park) District shall have such sprinkler system or systems fully installed in accordance with National Fire Protection Association Standards 13 and 13R (1999 Edition).

[1]: *Editor's Note: Former § 213-235, Measurement of building plot width, was repealed 7-20-1999 by L.L. No. 14-1999.*

## § 213-236. Repair of damaged buildings; abandoned or vacant buildings; registration of vacant buildings; fees.

[Amended 9-21-2004 by L.L. No. 27-2004; 10-6-2009 by L.L. No. 22-2009]

The Town Board finds that the proliferation of vacant and abandoned buildings, structures and dwellings in the Town of Babylon causes a deterioration of communities and areas within the Town of Babylon and has a negative impact on the value of property in close proximity to the vacant and abandoned buildings, structures and dwellings. Furthermore, the Town Board finds that vacant and abandoned buildings, structures and dwellings have caused a serious threat to the safety and welfare of the residents of the Town and had eroded the quality of life of all who live and work in the Town. Abandoned and vacant buildings, structures and dwellings are places of infestation of rodents, vermin, insects, wild animals and other health-threatening creatures and diseases, provide shelter to criminals and vagrants who use such places to evade the police and to conduct illicit activities, and are an attractive nuisance to children and adults alike.

- A. No building or other structure which has been damaged by fire or other causes to the extent of more than 50% of its value, exclusive of foundation, shall be repaired or rebuilt except in conformity with the regulations of this chapter and the Building Code.
- B. Vacant or abandoned buildings, structures and dwellings may not be boarded up, or have the doors, windows, entrances and exits concealed, covered, obscured or hidden in any manner, except in an emergency and then for a period not to exceed 30 days.
- C. Annual registration of vacant buildings and registration fees.
  - (1) Purpose. The purpose of this section requiring the registration of all vacant buildings, including dwellings as referenced below, and the payment of registration fees is to assist the Town in protecting the public health, safety and welfare, to monitor the number of vacant buildings in the Town, to assess the effects of the condition of those buildings on nearby businesses and the neighborhoods in which they are located, particularly in light of firesafety hazards and unlawful, temporary occupancy by transients, including illicit drug users and traffickers, and to require of the owners of such vacant buildings their registration and the payment of related fees, and to promote substantial efforts to rehabilitate such vacant buildings. The provisions of this section are applicable to the owners of such vacant buildings as set forth herein and are in addition to and not in lieu of any and all other applicable provisions of this chapter, the health and sanitation code, and any other applicable provisions of the Babylon Town Code.
  - (2) Definitions and applicability; registration statement and fees.
    - (a) Definitions. For purposes of this section, the following words and phrases shall have the meanings respectively ascribed to them as follows:

### **BOARDED**

A building or structure subject to the provisions of this section shall be deemed to be

boarded if in place of one or more exterior doors, other than a storm door, or of one or more windows, there is a sheet or sheet of plywood or similar material covering the space for such door or window.

### **EXTERIOR MAINTENANCE AND MAJOR SYSTEMS**

The safe and lawful maintenance of the facade, windows, doors, roof, and other parts of the exterior of the building and the maintenance of its major systems consisting of the roof, the electrical and plumbing systems, the water supply system, the sewer system, and the sidewalk, driveway, if any, and area of the lot.

### **OCCUPIED**

Any building or structure shall be deemed to be occupied if one or more persons actually conducts a lawful business or resides in all or any part of the building as the licensed business occupant, or as the legal or equitable owner/occupant(s) or tenant(s) on a permanent, non-transient basis, or any combination of the same. For purposes of this section, evidence offered to prove that a building is so occupied may include, but shall not be limited to, the regular receipt of delivery of regular mail through the United States Postal Service; proof of continual telephone, electric, gas, heating, water and sewer services; a valid town business license, or the most recent, federal, state, or city income tax statements indicating that the subject property is the official business or residence address of the person or business claiming occupancy; or proof of pre-rental inspection.

### **OPEN**

A building or structure subject to the provisions of this section shall be deemed to be "open" if any one or more exterior doors other than a storm door is broken, open and/or closed but without a properly functioning lock to secure it, or if one or more windows is broken or not capable of being locked and secured from intrusion, or any combination of the same.

### **OWNER**

An owner of the freehold of the premises of any lesser estate therein, a mortgagee, a vendee-in possession, assignee of rents, receiver, executor, trustee, lessee, agent or any other person, firm or corporation that is directly or indirectly in control of a building subject to the provisions of this section, and as set forth below.

### **VACANT**

A building or structure shall be deemed to be vacant if no person or persons actually currently conducts a lawfully licensed business, or lawfully resides or lives in any part of the building as the legal or equitable owner(s) or tenant-occupant(s), or owner-occupant(s), or tenant(s) on a permanent, non-transient basis.

- (b) Applicability. The requirement of this section shall be applicable to each owner of any building that is not a dwelling that shall have been vacant for more than 45 consecutive days and to each owner of residential property consisting of one or more vacant dwellings that shall have been vacant for more than 45 consecutive days. Each such owner shall cause to be filed a notarized registration statement, which shall include the street address and parcel number of each such vacant building, the names and addresses of all owners, as hereinafter described, and any other information deemed necessary by the Town Clerk. The registration fee(s), as required herein, shall be billed by the Town Clerk and shall be paid by January 1 of each year. For purposes of this section, the following shall also be applicable:

[1] If the owner is a corporation, the registration statement shall provide the names and



residence addresses of all officers and directors of the corporation and shall be accompanied by a copy of the most recent annual franchise tax report filed with the Secretary of State;

- [2] If an estate, the name and business address of the executor of the estate;
  - [3] If a trust, the name and address of all trustees, grantors, and beneficiaries;
  - [4] If a partnership, the names and residence addresses of all partners with an interest often 10% or greater;
  - [5] If any other form of unincorporated association, the names and residence addresses of all principals with an interest of 10% or greater;
  - [6] If an individual person, the name and residence address of that individual person.
- (c) Registration statement and fees; local agent. If none of the persons listed, as above, is shown at an address within the state, the registration statement also shall provide the name and address of a person who resides within the state and who is authorized to accept service of process on behalf of the owners and who shall be designated as a responsible, local party or agent, both for purposes of notification in the event of an emergency affecting the public health, safety or welfare and for the purposes of service of any and all notices or registration statements as herein authorized and in connection herewith. Registration shall be required for all vacant buildings, whether vacant and secure, vacant and open or vacant and boarded, and shall be required whenever any building has remained vacant for 45 consecutive days or more. In no instance shall the registration of a vacant building and the payment of registration fees be construed to exonerate the owner, agent or responsible party from responsibility for compliance with any other building code or housing code requirement. One registration statement may be filed to include all vacant buildings of the owner so registering. The owner of the vacant property as of November 1 of each calendar year shall be responsible for the payment of the nonrefundable registration fee. Said fee shall be billed by the Town Clerk and based on the duration of the vacancy as determined by the following scale:
- [1] For properties that are vacant for less than one year: \$100.
  - [2] For properties that are vacant for more than one year on the anniversary, but less than two years: \$500.
  - [3] For properties that are vacant for at least two years on the anniversary, but less than three years: \$1,000.
  - [4] For properties that are vacant for at least three years on the anniversary, but less than five years: \$2,000.
  - [5] For properties that are vacant for at least five years on the anniversary, but less than ten years: \$3,500; and
  - [6] For properties that are vacant for at least 10 years on the anniversary: \$5,000; plus an additional \$500 for each year in excess of 10 years.
- (3) Appeal rights. The owner shall have the right to appeal the imposition of the registration fees to the Commissioner of Planning and Development, upon filing an application in writing with the applicable nonrefundable filing fee of \$50 to the Town Clerk no later than thirty 30 calendar days from the date of the billing statement. On appeal, the owner shall bear the burden of providing satisfactory objective

proof of occupancy, as defined herein.

- (4) One-time waiver of registration fee. A one-time waiver of the registration fee for up to 90 days may be granted by the Chief Building Inspector upon application of the owner and upon review and advice of the Town Attorney's Office, within 30 calendar days from the date of the bill for the registration fee, or if denied by the Chief Building Inspector, upon appeal to the Commissioner of Planning and Development, if the owner:
  - (a) Demonstrates with satisfactory proof that he/she is in the process of demolition, rehabilitation, or other substantial repair of the vacant building; and
  - (b) Objectively demonstrates the anticipated length of time for the demolition, rehabilitation, or other substantial repair of the vacant building; or
  - (c) Provides satisfactory proof that he/she was actively attempting to sell or lease the property during the vacancy period;
  - (d) Has paid all past due vacant registration fees and all other financial obligations and/or debts owed to the Town which are associated with the vacant property.
- (5) Two-year waiver. Upon application by the owner and satisfaction of Subsection **C(4)** above, the licenses and inspection review board may grant a one-time two-year waiver of the registration fee, or if denied by the Chief Building Inspector, upon appeal to the Commissioner of Planning and Development, if the owner meets the criteria for nonprofit organizations as defined by section 501(c)(3) of the Internal Revenue Code.
- (6) Delinquent registration fees as a lien. After the owner is given notice of the amount of the registration fee due, except for those owners that have properly perfected an appeal as provided above, and the owner fails to pay the amount due, said amount shall constitute a debt due and owing to the Town, and the Town may commence a civil action to collect such unpaid debt.
- (7) Delinquent registration fees as a lien.
  - (a) After the owner is given notice of the amount of the registration fee due, except for those owners that have properly perfected an appeal as provided above, and the owner fails to pay the amount due, said amount shall constitute a debt due and owing to the Town;
  - (b) Duty to amend registration statement. If the status of the registration information changes during the course of any calendar year, it is the responsibility of the owner, responsible party or agent for the same to contact the Town Clerk within 30 days of the occurrence of such changes and advise the Town Clerk in writing of those changes;
  - (c) Exceptions. This section shall not apply to any building owned by the United States, the state, the county, nor to any of their respective agencies or political subdivisions;
  - (d) Violations; penalties:
    - [1] The failure or refusal for any reason of any owner, or agent of an owner acting on behalf of the owner, to register a vacant building or to pay any fees required to be paid pursuant to the provisions of this section, within 30 days after they become due, shall constitute a violation punishable upon conviction thereof by a fine in the amount of not less than \$1,000 nor more than \$15,000 for each failure or refusal to register, or for each failure or refusal to pay a required vacant building fee, as applicable; however, the minimum mandatory fine for a violation of this section shall not be less than double the amount of the registration fee due

and owning. There shall be no unconditional discharges or suspended sentences upon conviction or a plea of guilty to a violation of this section and the minimum fines are mandatory and must be imposed.

## **§ 213-237. Floor area per unit for two-family dwellings.**

When two-family dwellings are allowed, provisions shall be made therein for compliance with the required size of the building, as set forth in the particular zoning classification, and in no event shall there be less than 500 square feet of habitable floor area for each family unit.

## **§ 213-238. Floor area per unit for multiple-family dwellings.**

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

## **§ 213-239. Second floor as habitable floor area.**

To qualify as habitable floor area for the purpose of this chapter, a second floor shall have or permit a finished ceiling height of at least seven feet, to be not less than four feet in width between opposing rafters, shall have a rough flooring laid thereon and shall have or permit knee walls of not less than four feet in height, between which the habitable floor area shall be computed, and further, such floor area, to so qualify, shall have access from the floor below by a permanent built-in stairway. The second story shall not be required to be finished except as provided herein.

## **§ 213-240. Alteration of existing carports.**

Notwithstanding any other provision of this chapter, an existing dwelling with an attached carport, on a plot held in single and separate ownership on July 25, 1954, may be altered to provide for the addition to or the enclosure of the existing carport, provided that said alteration does not, in any manner, diminish the affected side yard, and provided further that said alteration does not extend beyond the rear line of the existing dwelling.

## **§ 213-241. Erection of detached garages.**

Notwithstanding any other provisions of this chapter, on all lots held in single and separate ownership, with a dwelling erected thereon, on July 7, 1954, of a frontage of 60 feet or less, a detached garage may be erected not less than three feet from any side lot line.

## **§ 213-242. Front doors.**

[Added 6-18-2002 by L.L. No. 12-2002]

There shall be only one front door permitted in all residence districts.

[1]: *Editor's Note: Former § 213-242, Location of public garages; service stations, was repealed 5-24-1994 by L.L. No. 6-1994. For current provisions, see Art. **XXXV**, Gasoline Service Stations.*

## § 213-243. Public parking places.

No public parking place shall be conducted in any district except as a special exception by the Board of Appeals.

## § 213-244. Land leveling operations.

A. Land leveling operations shall be permitted in any district, when approved by the Town Board as a special exception after public hearing and subject to such conditions and special safeguards and posting of such financial security as to the Board may seem appropriate in order to protect the public health and safety and to promote the general welfare, and said uses shall further be subject to the provisions contained in Chapter **117**, Excavations, Art. **II**, Land Resource Excavations, adopted November 9, 1949, as the same may be amended from time to time.<sup>[1]</sup>

[1]: *Editor's Note: This article was amended in its entirety 5-11-1993 by L.L. No. 4-1993.*

B. In connection with the above, the Board may grant temporary and conditional permits for a period of two years or less for uses and buildings which, but for such permission, do not comply with the requirements of this chapter.

C. The fee for the above application shall be the same as for a change of zone.

## § 213-245. Exterior lighting standards.

[Added 11-9-1993 by L.L. No. 11-1993; amended 7-15-2008 by L.L. No. 18-2008]

A. Purpose.

- (1) The general purpose of this section is to protect the environment, protect and promote the public health, safety and welfare, the quality of life, and the ability to view the night sky by establishing provisions and a process for review of exterior lighting.
- (2) This section establishes provisions for exterior lighting in order to accomplish the following:
  - (a) To provide safe roadways for motorists, cyclists and pedestrians.
  - (b) To protect against direct glare and excessive lighting.
  - (c) To ensure that sufficient lighting can be provided where needed to promote safety and security.
  - (d) To prevent light trespass in all areas of the Town.
  - (e) To protect and reclaim the ability to view the night sky.
  - (f) To allow the flexibility in the style of lighting fixtures.

- (g) To provide lighting guidelines.
- (h) To discourage the wasting of energy used to produce excessive lighting.
- (i) To provide assistance to property owners and occupants in bringing nonconforming lighting into conformance with this section.
- (j) To minimize the impact of stray lighting on human health, habitat and environment.

B. Definitions. As used in this section, unless otherwise expressly stated, the following terms shall have the meanings indicated:

**AREA LIGHT**

A luminaire designed for illumination of a broad area. Area lights include, but are not limited to, streetlights, parking lot lights and yard lights over 1,800 (100 watts incandescent) lumens.

**AVERAGE HORIZONTAL FOOTCANDLE**

The average level of illuminance for a given situation measured at ground level with the light meter placed parallel to the ground.

**ESSENTIAL LIGHTING**

Lighting that is used for a specified period of time, which is necessary for a specific task or purpose while said task or purpose is actively being performed. This includes lighting that is necessary to promote public safety or facilitate public circulation.

**EXCESSIVE LIGHTING**

Illuminance levels beyond that which is required for safety, as is indicated on the Table of Limits of Illumination Levels. (See Table 3 at the end of this chapter).<sup>[2]</sup>

**EXTERIOR LIGHTING**

Temporary or permanent lighting equipment that is installed, located or used in such a manner with the intention to cause light rays to shine outdoors. Luminaires located indoors that are intended to light something outside are considered exterior lighting for the purposes of this section.

**FIXTURE (also called "luminaire")**

The bulb, the assembly that holds the bulb (or lamp) in a lighting system, and the mounting apparatus, including reflecting elements, shielding elements, cover glass or lenses, the ballast, and the housing.

**FLOODLIGHT**

A fixture rated to produce over 1,800 lumens (100 watts incandescent), regardless of the number of bulbs, and is designed to flood an area with light.

**FOOTCANDLE (FC)**

The American unit of illuminance (the amount of light falling on a surface). One footcandle is approximately equal to the illuminance produced by a light source of one candle, measured on a surface one foot away from the source. Horizontal footcandles measure the illumination striking a horizontal plane. Footcandle values can be measured directly with certain handheld incident light meters.

**FULL CUTOFF (FCO)**

A classification for a luminaire designed and installed where no light is emitted at or above a horizontal plane running through the lowest point on the luminaire. In addition, the luminous intensity (as

measured in candelas) emitted at any angle from 80° up to 90° cannot exceed a numerical value equal to 10% of the lumen rating of the lamp, as reported in a photometric report from the manufacturer as produced by an independent lab. A cutoff, or semicutoff, design allows a restricted amount of light emitted above the horizontal, and a noncutoff provides no restriction against light emitted above the horizontal.

**FULLY SHIELDED**

A luminaire constructed, lamped, and installed in such a manner that all light emitted by it, either directly from the lamp or a diffusing element, or indirectly by reflection or refraction from any part of the luminaire, is projected below the horizontal. A full cutoff fixture is also fully shielded, but without any restrictions on light distribution below the horizontal plane, and it can be identified without a manufacturer's report.

**GLARE**

Stray, unshielded light striking the eye that may result in:

- (1) Nuisance or annoyance, such as light falling across property lines;
- (2) Discomfort, such as bright light causing squinting of the eyes;
- (3) Disability, such as bright light reducing the ability of the eyes to see into shadows and visual performance; or
- (4) Distracting light which diverts the eye from a visual task.

**HID LIGHTING**

A family of bulb types known as "high-intensity discharge," including high-pressure sodium, mercury vapor, and metal halide. These types require a warmup time, usually require a ballast, and have a higher lumen output per watt than incandescent or halogen lamps.

**HOLIDAY LIGHTING**

Temporary lights used to celebrate holidays. Holiday lighting includes, but is not limited to, strings of small individual lights, illuminated menorahs, illuminated nativity scenes, illuminated candles, and various yard decorations seasonal in nature.

**IESNA**

Illuminating Engineering Society of North America (IES or IESNA), an organization that establishes updated standards and illumination guidelines for the lighting industry.

**IESNA RECOMMENDED PRACTICES**

The publications of the IESNA setting forth illuminance levels for different task areas, e.g., walkways, streets, sportslights, etc.

**ILLUMINANCE**

The density of light falling on any point of a surface, usually measured in footcandles in the United States. See "footcandle."

**LAMP**

The generic term for an artificial light source, to be distinguished from the whole assembly (see "fixture"); commonly referred to as the "light bulb."

**LIGHT**

The form of radiant energy acting on the retina of the eye to make sight possible.

**LIGHTING ASSEMBLY**

Any or all parts of a luminaire that function to produce light, including the bulb, assembly, ballast, mounting features and/or pole.

**LIGHT POLLUTION**

Any adverse effect of man-made light, including but not limited to glare, light trespass, skyglow, visual clutter, wasted energy due to excessive or unnecessary lighting, or any man-made light that unnecessarily diminishes the ability to view the night sky or is disruptive to flora and fauna.

**LIGHT TRESPASS**

Light projected onto the property of another or into the public right-of-way when it is not required or permitted to do so.

**LUMEN**

A unit used to measure the actual amount of light that is produced by a bulb. The lumen quantifies the amount of light energy produced by a lamp at the lamp, not by the energy input, which is indicated by the wattage. For example, a seventy-five-watt incandescent lamp can produce 1,000 lumens, while a seventy-watt high-pressure sodium lamp produces 6,000 lumens. Lumen output is listed by the manufacturer on the light bulb packaging.

**LUMINAIRE**

The complete lighting assembly (including the lamp, housing, ballasts, photocells, reflectors, lenses and shields), including the support assembly (pole or mounting bracket); a light fixture. For purposes of determining total light output from a luminaire or light fixture, lighting assemblies which include multiple unshielded or partially shielded lamps on a single pole or standard shall be considered as a single unit.

**LUMINANCE**

The brightness of a source of light.

**MOUNTING HEIGHT**

The distance from natural grade to the lowest light-emitting part of the luminaire.

**NONCONFORMING LIGHTING**

Lighting which does not meet the requirements and specifications contained herein.

**NONESSENTIAL LIGHTING**

Lighting which is unnecessary and not generally useful (e.g., decorative and landscape lighting). This includes lighting intended for a specific task or purpose when said task or purpose is not being actively performed (e.g., parking lot illumination and wall-mounted perimeter lights after business hours).

**PARTIALLY SHIELDED**

A luminaire which is not fully shielded but incorporates a partial shield around the lamp.

**PHOTOMETRICS**

Technical test reports that indicate light distribution and performance from a luminaire. Photometric reports may include candlepower distribution data, cutoff classifications, footcandle charts, etc. These are generally available from the luminaire manufacturers.

**REPAIR OF A LUMINAIRE OR SIGN**

Any service normally provided by a licensed electrician upon a luminaire or sign. Repair shall be considered to include replacement or modification of any of the following: poles, mounting arms,

housings, hardware, wiring, ballasts, lenses, reflectors, diffusers, baffles, shields, sensors, switches, relays, power supplies, and lamp replacement modules which contain any of the items listed above. Replacement of a user-serviceable lamp will not by itself be considered a repair.

### **SKYGLOW**

The overhead glow from light emitted sideways and upwards, including light reflected upward from the ground or other surfaces. Skyglow is caused by the reflection and scattering of various forms of light by dust, water, and other particles suspended in the atmosphere. Among other effects, skyglow reduces one's ability to view the night sky. Different sources of light, in equal quantities, can contribute differently to skyglow.

### **TEMPORARY LIGHTING**

Lighting that is intended to be used for a specific event and removed within seven days thereafter.

### **UNIFORMITY RATIO (U RATIO)**

A ratio that describes uniformity of illuminance across an area. The uniformity ratio may be a ratio of the maximum-to-minimum illuminance or the average-to-minimum illuminance. For example, if the Illuminating Engineering Society recommends an average-to-minimum ratio of 4:1 for a parking lot, the minimum illuminance should be no less than 1/4 of the average illuminance across the parking lot.

### **UNSHIELDED FIXTURE**

A fixture which, as designed or installed, emits all or part of the light emissions above the lowest light-emitting part of the fixture.

[2]: *Editor's Note: Table 3 is available in the Town offices.*

#### **C. Applicability; nonconforming lighting; exceptions.**

- (1) All exterior lighting installed, replaced, altered, changed, repaired or relocated after the effective date of this section shall conform to the provisions established by this section except as provided hereto.
- (2) Existing exterior lighting in conflict with this section shall be classified as "nonconforming." All exterior lighting existing or installed prior to the date of the adoption herein, which does not conform with the provisions of the article, shall be exempt, provided that the following requirements are met:
  - (a) Upon adoption of this section, with any installation, replacement, alteration, change, repair, or relocation of any nonconforming luminaire, such luminaire shall be brought in compliance with the terms of this section.
  - (b) To the extent that preexisting residential exterior floodlights can accommodate lamps of a total of less than 1,800 lumens (100 watt incandescent), said exterior lighting shall be equipped with a lamp or lamps of a total of less than 1,800 lumens (100 watt incandescent) per fixture and, to the extent possible, be angled downward, such that the center beam is not directed above a forty-five-degree angle measured from the vertical line drawn from the center of the lamp to the ground and so as not to cause glare, light trespass, or beam spread beyond the intended target or across property lines. Operable photocells, motion sensors, timers that allow a light to go on at dusk and off by 11:00 p.m., as well as retrofit shields, are encouraged to alleviate nuisance and disability glare.
- (3) Exceptions. Any outdoor lighting, whether residential, commercial, institutional and privately or publicly owned, which is lawfully in existence prior to the effective date of this section, shall be exempt from the provisions of this section under the following conditions:
  - (a) Unshielded residential luminaires. Unshielded residential luminaires equal to one sixty-watt



incandescent lamp per fixture, regardless of number of lamps, are allowed, provided light trespass limitations are met.

- (b) Vehicular lights and all temporary emergency lighting needed by the fire, ambulance, police departments or other emergency services are exempt.
- (c) Residential sensor-activated luminaires, provided:
  - [1] The luminaire is operational and located in such a manner, or shielded, to prevent glare and light trespass;
  - [2] The luminaire is set to only go on when activated and to go off within five minutes after activation has ceased; and
  - [3] The sensor shall not be triggered by activity off the property.
  - [4] The luminaire output, regardless of the number of lamps, does not exceed 1,800 lumens (100 watts incandescent).
- (d) Illumination of signs permitted pursuant to the Town of Babylon, Chapter **213**, Zoning, Article **XXXIII**, Signs, and any amendments made hereto.
- (e) In situations of lighted flags which are not illuminated with "downward" lighting, upward lighting may be used in the form of a single ground-mounted narrow cone spotlight which confines the illumination to the flag, provided the lumen output is no more than 1,300 lumens, regardless of the number of lamps. The Town encourages the tradition of lowering flags at sunset to avoid the need for lighting.
- (f) Lighting of radio, communication and navigation towers is allowed, provided the owner or occupant demonstrates that the Federal Aviation Administration (FAA) regulations can only be met through the use of lighting that does not comply with this section and that the provisions of this section are otherwise met to the fullest extent possible. Tower lighting shall not be permitted unless required by the FAA, in which case, required lighting shall be of the lowest allowed intensity and red, unless specifically forbidden under FAA requirements. Towers which are constructed no higher than 199 feet are preferable to avoid the need for FAA lighting.
- (g) Installation and replacement of municipal streetlights which are designated as "historic" or are decorative in nature, if part of a continuous lighting design scheme where the replacement of the luminaire on a piecemeal basis with compliant luminaries would unacceptably degrade or destroy the aesthetic character of the existing lighting design.
- (h) Existing luminaries used for lighting of municipal playing fields are exempt from the mounted height and shielding requirements of this section, provided that the lights are illuminated only when the field is in use. All new installations shall use shielded luminaries that control light trespass, glare and upward light (skyglow). The maximum allowable upward light from the luminaire shall be 5%.
- (i) Lighting used in the undertaking of emergency roadwork, emergency repair or maintenance of utility lines, or of sewer or water mains shall be exempt.
- (j) Lighting used for a special event either sponsored by or by virtue of a contract or permit with the Town of Babylon or otherwise permitted to take place by the Town of Babylon. Such lighting may be installed up to seven days before the event and shall be removed no later than three days of the end of the event, unless otherwise provided by the Town Board or other designated town

officer.

- (k) Lighting of monuments or memorials erected by or with the approval of the Town.
- (l) Illumination of the United States flag.
- (m) Where federal or state laws, rules or regulations take precedence.

D. Placement and height of fixtures for residential and nonresidential exterior lighting.

- (1) No residential or nonresidential luminaires shall be taller than 20 feet from the natural grade to the lowest light-emitting part of the fixture. Parking area lights are encouraged to be greater in number, lower in height and lower in light level, as opposed to fewer in number, higher in height and higher in light level.
- (2) All exterior lighting rated to be lamped at 1,800 lumens (100 watts incandescent) and greater shall use full cutoff luminaires, as determined by photometry test or certified by the manufacturer, and installed as designed with the light source directed downward. All exterior lighting 1,800 lumens (100 watts incandescent) and less shall use fully shielded fixtures and shall be installed as designed.

E. Illumination levels and prohibited effects for residential and nonresidential exterior lighting.

- (1) All residential and nonresidential exterior lighting shall not cause light trespass and shall protect adjacent properties from glare and excessive lighting.
- (2) All lighting in the Town of Babylon shall not exceed recommended light levels as listed in Table of Illumination Limits, Table 3.<sup>[3]</sup>

[3]: *Editor's Note: Table 3 is available in the Town offices.*

F. Illuminance and type of lamp for all nonresidential exterior lighting.

- (1) Permissible luminaire location and effects.
  - (a) No luminaire shall be located or concentrated so as to produce glare or direct illumination across the boundary property line, nor shall any such light be of such intensity as to create a nuisance or detract from the use and enjoyment of adjacent property. See Table 1 and Table 2 for setback, height, and maximum light output recommendations for guidance.<sup>[4]</sup>
- [4]: *Editor's Note: Tables 1 and 2 are available in the Town offices.*
- (b) The maximum illuminance at or beyond the property line that adjoins a residential parcel or public right-of-way may not exceed 0.05 fc horizontal on the ground or 0.05 fc vertical measured at a five-foot height above the ground, unless another applicable law supersedes. Maximum horizontal or vertical illuminance allowed between adjacent commercial properties is 0.1 fc.
- (2) Permissible levels of illuminance.
  - (a) The average illuminance levels listed in the Illumination Levels for Various Common Tasks, as provided in Table 3,<sup>[5]</sup> shall not be exceeded for nonresidential exterior lighting unless otherwise specified or approved by the Zoning Board of Appeals.
- [5]: *Editor's Note: Table 3 is available in the Town offices.*
- (b) The Town of Babylon recognizes that not every situation will require lighting, including situations which may utilize the installation of reflectorized markers, lines, signs or other passive means, and excessive or unnecessary light shall be avoided.

- (c) Illuminance level measurements for parking lots, sidewalks, and other walkways shall include light contributions from nearby side-mounted building lights, freestanding sidewalk lights affected by side-mounted building lights, and streetlights.
- (d) In no instance may any lighted surface, as installed, exceed the maximum values listed in Table 3 for the appropriate task, as measured horizontally or vertically by a light meter.
- (3) High-pressure sodium, compact fluorescent, or low-pressure sodium shall be used for all light sources rated over 1,800 lumens (100 watts incandescent). Metal halide (MH) rated over 3,000K and mercury vapor (MV) light sources are not permitted.

G. General standards for nonresidential exterior lighting.

- (1) All exterior lighting shall be designed, located, and lamped in order to prevent:
  - (a) Overlighting;
  - (b) Energy waste;
  - (c) Glare;
  - (d) Light trespass;
  - (e) Unnecessary skyglow;
  - (f) Interference with pedestrian or vehicular travel on streets, roadways and highways; and
  - (g) A public hazard or nuisance.
- (2) All nonessential exterior lighting shall be turned off within one hour after the close of business or the end of the activity and no later than 11:00 p.m. for those businesses that are closed to the public on or before 9:00 p.m. Lights that are controlled by photocells and timers are encouraged, as is the use of sensor-activated lights to replace existing lighting which may be needed for safety or emergency purposes.
- (3) Under-canopy lights, such as service station lighting, shall be full cutoff and fully recessed to prevent glare and light trespass. Illuminance levels at gas stations shall not exceed those established in Table 3.  
**[6]**  
*[6]: Editor's Note: Table 3 is available in the Town offices.*
- (4) Area exterior lights. All area exterior lights shall be full cutoff luminaries.
- (5) After the adoption of this section, no person, firm, owner, tenant, person in possession, partnership, corporation or other business entity shall install, replace, relamp, or repair any luminaire that lights a public right-of-way within the Town of Babylon, under the Town's jurisdiction, without first receiving a building permit for such installation from a building inspector.
- (6) Automatic teller machine (ATM) and other bank lighting shall be full cutoff and shall not cause glare or light trespass. Light levels shall not exceed those established by the New York State ATM Lighting Law as enacted in 2006.
- (7) Unshielded wall packs and floodlights are prohibited.

H. Procedures for review of nonresidential exterior lighting.

- (1) Any application submitted to the Department of Planning and Development, Building Division, of the Town of Babylon shall include exterior lighting plans, luminaire and controls specifications and additional documentation if any exterior lighting is to be used, regardless of whether the exterior lighting is preexisting or proposed, showing the following, in order to verify that exterior lighting conforms to the provisions of this section:
  - (a) Location of each current and proposed outdoor exterior lighting fixture indicated on a site plan.
  - (b) Type of proposed luminaire equipment, including cutoff characteristics, indicating manufacturer and model number.
  - (c) Lamp source type, lumen output, and wattage.
  - (d) Mounting height indicated, with distance noted to nearest property line, for each proposed and existing luminaire.
  - (e) Shielding and all mounting details, including pole foundation description.
  - (f) Initial illuminance levels as expressed in footcandle measurements on a grid of the site showing footcandle readings in every five-foot square. The grid shall include light contributions from all sources (i.e., pole-mounted lights, wall-mounted lights, and signs, including streetlights).
  - (g) Schedule of the proposed hours when each luminaire will be operated.
  - (h) Total exterior lighting lamp lumens for proposed property.
  - (i) Lighting manufacturer specifications ("cut sheets") with photographs of the fixtures, indicating the cutoff characteristics of the luminaire.
  - (j) Detailed-IES formatted photometric data for each fixture at mounting height and lumens proposed. (Note: This is computer-generated data which is supplied by all manufacturers, describing the light output of a fixture, upon which lighting plans are based. This will allow the Planning Department to fully assess the suitability of a fixture in a lighting plan, should it wish to double-check the submission.)
  - (k) Types of timing devices used to control on/off or motion sensors, if any are to be used.
  - (l) If necessary, documentation by a licensed lighting engineer showing that the provisions can only be met with a design that does not comply with this section.
- (2) No exterior lighting shall be installed, replaced, altered, changed, repaired, relocated, enlarged, moved, improved, or converted unless it conforms to a lighting plan approved by the Department of Planning and Development, Building Division, of the Town of Babylon.
- (3) The following guidelines will be made available to applicants to facilitate compliance:
  - (a) Illustrations of full-cutoff and full-shielded fixtures.
  - (b) Diagrams of generally acceptable and generally unacceptable light fixtures.
  - (c) Diagrams of recommended fixture placement in relation to the property line to control light trespass.
  - (d) Table for mounting height and maximum light output recommendations.

(e) Table of limits of illumination targets for various common tasks, including parking lots, gas stations, walkways, and signs.

I. Guidelines for Exterior Lighting. The Guidelines for Exterior Lighting, as set forth at the end of this section, and any amendments thereto, are hereby incorporated and made part of this section.<sup>[7]</sup>

[7]: *Editor's Note: Said guidelines are available in the Town offices.*

J. Illegal exterior lighting.

- (1) Any Building Inspector shall cause a notice of such violation to be served on the owner or person in possession of the building, structure or lot where said exterior lighting is located or the lessee or tenant of the part of or of the entire building, structure or lot where said exterior lighting is located requiring such owner, person in possession, lessee or tenant to remove such illegal exterior lighting within 30 days. Such notice may be served personally or by certified mail, return receipt requested, and shall notify the owner, lessee or tenant that the failure to remove said exterior lighting may result in the issuance of an appearance ticket and/or an action in Supreme Court seeking the removal of said exterior lighting.
- (2) Any person, firm, owner, tenant, person in possession, partnership, corporation or other business entity which fails to comply with a written order of the Building Inspector of the Town of Babylon within 30 days from the date of notice or fails to comply with any lawful order, notice, directive, permit or certificate of the Building Inspector made hereunder shall be deemed in violation of this section. Failure to comply may result in actions and proceedings, either legal or equitable, to enjoin, restrain or abate any violation of this section.

K. Prohibited acts. It shall be unlawful for any person, firm, owner, tenant, person in possession, partnership, corporation or other business entity to install, alter, repair, move, equip, use or maintain any exterior lighting in violation of any of the provisions of this section or to fail in any manner to comply with a notice, directive or order of the Building Inspector of the Town of Babylon.

L. Penalties for offenses.

- (1) Residential exterior lighting. Violation of any of the provisions of this section by any person, firm, owner, tenant, person in possession, partnership, corporation or other business entity related to residential exterior lighting shall be guilty of a violation, punishable by a fine not exceeding \$250 or imprisonment not to exceed 15 days, or both; a person, firm, owner, tenant, person in possession, partnership, corporation or other business entity which violates this section, after being convicted of a violation of this section within the preceding year, shall be guilty of a violation, punishable by a fine not to exceed \$500 or imprisonment for a period not to exceed 15 days, or both; a person, firm, owner, tenant, person in possession, partnership, corporation or other business entity which violates this section, after being convicted two or more times of a violation of this section within the proceeding three-year period, shall be guilty of a misdemeanor and shall be punished by a fine not to exceed \$1,000 and/or imprisonment for a period not to exceed 30 days.
- (2) Nonresidential exterior lighting. Violation of any of the provisions of this section by any person, firm, owner, tenant, person in possession, partnership, corporation or other business entity related to nonresidential exterior lighting shall be guilty of a violation, punishable by a fine not exceeding \$500 or imprisonment not to exceed 15 days, or both; a person, firm, owner, tenant, person in possession, partnership, corporation or other business entity which violates this section, after being convicted of a violation of this section within the preceding year, shall be guilty of a violation, punishable by a fine not to exceed \$1,000 or imprisonment for a period not to exceed 15 days, or both; a person, firm, owner, tenant, person in possession, partnership, corporation or other business entity which violates this

section, after being convicted two or more times of a violation of this section within the proceeding three-year period, shall be guilty of a misdemeanor and shall be punished by a fine not to exceed \$3,000 and/or imprisonment for a period not to exceed 30 days.

- M. Severability. If any clause, sentence, paragraph or section of this section shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not impair or invalidate the remainder hereof, but such adjudication shall be confined in its operation to the clause, sentence, paragraph or section directly involved in the controversy in which judgment shall have been rendered.

[1]: *Editor's Note: Former § 213-245, Use of tidal lands, was repealed 4-8-1988 by L.L. No. 2-1988.*

## § 213-246. Noncommercial boathouses.

A noncommercial boathouse may be erected in any residence district without a rear yard; provided, however, that said boathouse is erected or structurally altered immediately contiguous to and has egress and ingress from a navigable waterway.

## § 213-247. Violations of covenants and restrictions.

[Added 4-11-1995 by L.L. No. 10-1995<sup>[1]</sup>]

A violation of a covenant and restriction imposed as a condition to the granting of a change of zone, variance, special exception permit or building permit shall constitute a violation punishable pursuant to § **213-8** of this chapter.

[1]: *Editor's Note: Former § 213-247, Public utility structures, was repealed 4-8-1988 by L.L. No. 2-1988.*

## § 213-248. Real estate sales office on residential subdivision.

In any residence district, not more than one real estate sales office building, accessory to and exclusively used for the conduct of the sale of buildings erected or to be erected upon subdivided premises, may be constructed upon a portion of such subdivided premises; provided, however, that such building shall not be less than 800 square feet in area; shall not be used for habitation purposes in whole or in part during such real estate sales office use thereof; shall, unless erected in conformity with the Building Code and in accordance with all of the provisions of this chapter regulating the construction of buildings within the use district wherein such building shall be erected, be removed completely and entirely by the permittee within 30 days after the sale of the last of the buildings erected upon said subdivided premises or within 30 days after suspension or abandonment of building activities or operations thereon, and, in such event, shall also be the subject of a temporary building permit which may be issued therefor by the Building Inspector upon the payment of a fee of \$50 and the deposit with him of a proper surety company bond in the amount of \$1,000 for each building to assure to the Town Board the proper use and ultimate removal of such building in accordance with the provisions of this section.

## § 213-249. (Reserved)

[1]: *Editor's Note: Former § 213-249, Summer and day camps, was repealed 4-8-1988 by L.L. No. 2-1988.*

## § 213-250. Discontinuation of junkyards in residential districts.

Notwithstanding any other provision of this chapter, any automobile or other junkyard in existence at the effective date of this chapter in a residence district shall, at the expiration of two years from such date, be discontinued.

### § 213-250.1. Outside placement of dumpsters.

[Added 5-1-1984; amended 1-20-1987]

A. Definitions. As used in this section, the following terms shall have the meanings indicated:

**DUMPSTER**

A large container for the storage of refuse, which container is in excess of a one-hundred-gallon capacity or one-half-cubic-yard capacity, and which container is mechanically emptied or removed.

**RESIDENCE DISTRICT**

A Residence A, Residence B, Residence C or Residence D District.

- B. Prohibition. The outside storage of dumpsters is prohibited in a residence district. This prohibition shall not apply to property which has a valid, existing nonconforming use, special permit or variance for use as a multifamily (three or more) or nonresidential use.
- C. Temporary permit. A temporary permit for the outside storage of a dumpster on property located in a residence district may be issued in the discretion of the Chief Building Inspector for a period of up to 60 days. In determining whether such a temporary permit shall issue, the Chief Building Inspector shall consider:
- (1) The purpose of the request.
  - (2) The reason the use of a dumpster became necessary.
  - (3) The length of time the dumpster will remain on the premises.
  - (4) The effect of the granting of the permit on the surrounding neighborhood.
- D. Emergencies. In an emergency situation, such as a fire in a residence, a dumpster may be immediately placed in the residential district by the owner or his agent, provided that the owner of the property or his agent makes application to the Chief Building Inspector within three business days thereafter.
- E. Regulations. A dumpster in a residential district shall have a cover which shall cover the dumpster when it is not in active use. A dumpster which is allowed in a residential district as a result of a variance, special permit or nonconforming use status also must be surrounded on three sides by a solid fence or plantings which screen the dumpster from view.
- F. It shall be unlawful for any person to store, deposit, place, maintain or cause or permit to be stored, deposited, placed or maintained any dumpster upon any portion of any street, lane, sidewalk, roadway or highway located within the corporate limits of the Town.
- G. Any dumpster left in violation of § **213-250.1F** of this chapter which shall unlawfully obstruct or impede

traffic or remain on any street, lane, sidewalk, roadway or highway shall be deemed to have been abandoned, and such dumpster may be removed and stored in the manner set forth in Chapter **6** of the Uniform Code of Traffic Ordinances.

[Amended 6-6-2000 by L.L. No. 14-2000]

- H. Any person who shall violate this section or who shall refuse to remove any dumpster or who shall resist or obstruct the duly authorized officer, agent or employee of the Town in the removal thereof shall, upon conviction, be subject to the penalties provided in §§ **1-15** through **1-17** of this Code.

## Article XIX. Advertising

[1]: *Editor's Note: Former Art. XIX, Signs, added 12-21-1976, as amended, was repealed 6-5-1990. For current provisions, see Art. XXXIII, Signs.*

### § 213-251. Advertising properties for illegal use prohibited.

[Added 6-20-1995 by L.L. No. 13-1995]

- A. It shall be a violation of this article to solicit or advertise for purposes of selling or renting property or portions of property in the Town of Babylon, that such property or portions thereof that may be used for purposes which would constitute a violation of this article.
- B. The use of any of the following phrases in a solicitation or advertisement for the purpose of selling or renting property or portions of property in the Town of Babylon shall constitute a violation of this article:
- (1) Income producer.
  - (2) Income possible.
  - (3) Can be converted.
  - (4) Extra income possible.
  - (5) Six over three.
  - (6) Mother/daughter with new permit.
  - (7) Second kitchen.
  - (8) Separate entrance to basement.
- C. Notwithstanding the foregoing, it shall not be a violation of this article if such advertisement for a second kitchen or separate entrance to basement contains a caveat that zoning must be verified.

## Article XIXA. Tobacco Advertising

[Added 4-18-2000 by L.L. No. 10-2000]



## § 213-252. Tobacco advertising restrictions.

### A. Legislative intent and findings.

- (1) The Town Board and the staff of the Town of Babylon reviewed land use studies of the location of tobacco advertising in proximity to schools, parks and child day-care centers. In addition, the Town has examined the actions and codes of other municipalities including the City of New York and the City of Long Beach.
- (2) The Town Board of the Town of Babylon finds that restricting the exposure of minors to advertising regarding tobacco and tobacco products is constitutional when achieved through reasonable targeted limitations on such advertising in the vicinity of schools and other locations where it is well established that children tend to congregate. It is the intention of the Town Board to enhance and augment compliance with and enforcement of federal, state and local laws prohibiting the sale or distribution of tobacco products to minors, and to protect such minors against such illegal sales.
- (3) The Center for Disease Control and Prevention has reported that while the rate of adult smoking of tobacco products has decreased nationwide by 50% between 1971 and 1993, the rate of smoking among all high school students has increased by 26% during the years 1991 and 1996, and now stands at the highest rate since 1981. It is further noted that this dramatic increase has occurred contrary to and at variance with the laws of all 50 states prohibiting sale and distribution of tobacco products to minors, and the pledge of all tobacco product manufacturers to adhere to a voluntary industry code prohibiting advertising of such products in a manner appealing to minors.
- (4) In 1991, a study of the Journal of the American Medical Association concluded that "...cigarette advertising encourages youth to smoke and should be banned." In 1994, a report of the National Institute of Medicine stated that, "...the substantial convergent evidence that advertising and promotion increase tobacco use by youth is impressive and...provided a strong basis for legal regulation." In 1995, a report of the federal Center for Disease Control and Prevention found that "...cigarette marketing practices appeared to be the most likely account for [the] increase in teen smoking initiation rates."
- (5) In 1997, Liggett & Myers, Inc., a cigarette manufacturer, made the following acknowledgement in executing a settlement agreement with the Attorney Generals of 17 states, including the State of New York, "...Liggett acknowledges that the tobacco industry markets to 'youth,' which means those under 18 years of age...."
- (6) Based upon the preponderance of the evidence that tobacco products are advertised and promoted to minors, and that the rate of use of tobacco products by minors has drastically increased contrary to legislation prohibiting the sale or distribution of such products to minors, the Town Board of the Town of Babylon hereby finds and declares it to be in the best interests of minors residing and/or otherwise present within the Town to enact affirmative, reasonable and constitutionally permissible restrictions on the advertising of tobacco products.
- (7) By enacting this legislation, it is the intent of the Town Board to promote compliance with an enforcement of federal, state and local laws prohibiting sale or distribution of tobacco products to minors, and therefore, in deference to the protections afforded by the First Amendment to the Constitution of the United States, this legislation has been narrowly crafted to place reasonable time, place and manner restrictions on such advertising in those locations where it is well established that minors tend to congregate, while not imposing restrictions on such advertising clearly directed to

adults.

B. Definitions and word usage.

- (1) Definitions. For the purposes of this article, the following terms shall have the meanings indicated herein, unless specifically indicated otherwise:

**CHILD-CARE CENTER**

Includes the following:

- (a) Any child-care arrangement, public, private or parochial child-care center, school-age child-care program, day nursery school, kindergarten, play school or other similar school or service operating pursuant to authorization, license or permit of New York State.
- (b) Any facility that provides child-care services as defined in § 410-p of the New York State Social Services Law.
- (c) Any child day-care center as defined in § 390 of the New York State Social Services Law.  
Said definition shall apply whether or not care is given for compensation, but shall not include child day-care centers located in private dwellings and multiple dwelling units.

**CIGARETTE**

Includes the following:

- (a) Any roll of tobacco wrapped in paper or any other substance not containing tobacco.
- (b) Any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco contained therein, or its packaging and labeling is offered for use or purchase as a cigarette as described in Subsection (a) of this definition.

**DWELLING**

Includes the following:

- (a) **MULTIPLE DWELLING**  
Any building or group of buildings designed for or occupied exclusively by three or more families living independently of each other.
- (b) **MULTIPLE DWELLING UNIT**  
Any separated, independent unit of residential accommodation in a multiple dwelling.
- (c) **PRIVATE DWELLING**  
Any building or structure or portion thereof that may lawfully be occupied for residential purposes by not more than two families, including the grounds of such building or structure.

**PARK**

Includes active and passive public lands designated for park purposes by the Town of Babylon, County of Suffolk, State of New York, United States of America or any other subdivision of government.

**PERSON**

Any natural person, partnership, copartnership, firm, company, corporation, limited-liability corporation, association, joint-stock association or other legal entity.

**SCHOOL**

Includes buildings, structures, premises or places, together with the grounds thereof, which are used primarily for public or private educational facilities at or below the 12th Grade level, as recognized and defined by the New York State Department of Education, including but not limited to preschool, kindergartens, nursery, elementary, primary, intermediate, junior high, middle, secondary, high, vocational and special.

## **TOBACCO**

Includes the following:

(a) **CIGARETTE TOBACCO**

Loose tobacco intended for use in what is commonly advertised as a cigarette.

(b) **SMOKELESS TOBACCO**

Includes any cut, ground, powdered, or leaf tobacco that is intended to be place in a person's oral cavity.

(c) **TOBACCO PRODUCT**

Includes a cigarette, smokeless tobacco or cigarette tobacco.

## **TOBACCO PRODUCT ADVERTISEMENT**

Includes any written word, picture, logo, symbol, motto, selling message, poster, placard, sign, photograph, device, graphic display or visual image of any kind, recognizable color or pattern of colors, or any other indicia of product identification identical or similar to, or identifiable with, those used for any brand of tobacco product, or any combination thereof, the purpose or effect of which is to promote the use, sale or distribution of a tobacco product through such means as, but not limited to, the identification of a brand of tobacco product, a trademark of a tobacco product or a trade name associated exclusively with a tobacco product.

- (2) Word usage. Words used in the singular in this article shall include the plural and vice versa. The word "shall" is always mandatory.

C. Restrictions. It shall be unlawful for any person to place, cause to be placed, maintain or cause to be maintained a tobacco product advertisement in the following manner:

- (1) In any outdoor area within 1,000 feet in any direction, of any child day care center, park or school.
- (2) In the interior or a building or structure which is within 1,000 feet, in any direction, of any child day-care center, park or school when such advertisement is within five feet of any exterior window or any door which is used for entry or egress to the building or structure by the public; except that such advertisement may be placed or maintained in the interior of any such premises where it is parallel to said windows or entryways and face inward, or affixed to a wall panel or similar fixture that is perpendicular to said windows or entryways.

D. Exceptions.

- (1) Nothing in this section shall prevent a tobacco product manufacturer, distributor or retailer from placing, causing to be placed, maintaining or causing to be maintained its corporate or other business name on a building or structure, in any location, where such building or structure or a portion thereof is owned, operated or leased by it as its principal place of business; provided, however, that said corporate or other business name is properly registered or filed in the United States and/or it is duly authorized to do business in any state, and said corporate or business name does not include any tobacco product advertisement as defined in this section.

- (2) Nothing contained in this subsection shall be construed to authorize the placement of any sign, advertising device or tobacco product advertisement in any location where such placement is otherwise prohibited by the Code of the Town of Babylon or other applicable law.
- E. Compliance. The owner, operator and/or lessee of any location or premises where tobacco product advertisement is prohibited or restricted pursuant to the requirements of this section shall have 30 days from the effective date of this article to remove any noncompliant tobacco product advertisements.
- F. Injunctions. In addition to any other remedy provided by law, the Town may bring an injunction proceeding to enforce this article.

## § 213-253. Severability.

If any clause, sentence, paragraph, subdivision, section or other part of this article shall for any reason be adjudged by any court of competent jurisdiction to be unconstitutional or otherwise invalid, such judgment shall not affect, impair or invalidate the remainder of this article, and it shall be construed to have been the legislative intent to enact this article without such unconstitutional or invalid parts therein.

## § 213-254. When effective.

This article shall take effect immediately upon filing in the Office of the Secretary of State of New York.

## § 213-255. (Reserved)

# Article XX. Mobile Dwellings

[Amended 4-7-1976 by L.L. No. 15-1976;<sup>[1]</sup> 7-22-1986]

[1]: *Editor's Note: Local Law No. 15-1976 created the Department of Planning and Development, in which Department the Division of Building replaced the former Building Department. For the text of this local law, see Ch. 49.*

## § 213-256. Definitions.

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

### **MOBILE DWELLING**

Includes, but is not necessarily limited to, a house trailer, mobile home or any other residential structure or vehicle originally designed, built, constructed or manufactured to be conveyed upon highways or streets, whether the same is situated or located upon wheels, jacks, foundations (temporary or permanent), slabs or otherwise, and/or whether or not added to or made a part of another building or structure, and which does not come within the definition of a modular home, but is suitable for year-round occupancy and containing the same water supply, waste disposal and electrical conveniences as in immobile housing.

### **MOBILE DWELLING PARK**

Any lot, parcel, tract of land or plot of ground upon which 10 or more mobile dwellings, occupied for dwelling or sleeping purposes, are located, regardless of whether or not a charge is made for such accommodations.

### **MOBILE DWELLING SPACE**

A plot of ground within a mobile dwelling park designed for the accommodation of one mobile dwelling.

## **§ 213-257. Location of mobile dwelling park restricted.**

No mobile dwelling park shall be erected, established, maintained or operated in an A Residence, B Residence or C Residence District. A mobile dwelling park may be erected, established, maintained or operated in a D Residence or E Business District, only upon the granting of special permission by the Town Board, after a public hearing as provided for in the case of amendments to this chapter, as provided in §§ **213-28** through **213-37**. No mobile dwelling may be erected, established, maintained or operated unless it is within a duly authorized mobile dwelling park.

## **§ 213-258. Permit application.**

- A. An applicant to the Town Board for use of any land or premises as a mobile dwelling park shall first obtain from the Department of Health a permit for the establishment and operation of such mobile dwelling park. The Department of Health permit or a certified copy thereof, together with the plan upon which it was issued, showing clearly the extent and area to be used for said park purposes and a legal description of the property, must be filed with the application.
- B. The applicant shall be required to give written notice of the hearing before the Town Board on such application to all owners of property situated within 800 feet of the proposed mobile dwelling park and to file at such hearing proof that such notice was so given. Such notice shall be given by registered mail, posted at least 10 days prior to the hearing, and proof of mailing of such notice shall be filed with the Town Board.

### **§ 213-258.1. Grant of permit.**

- A. The Town Board may grant such special permit after public hearing and provided that all other ordinances have been complied with. Such permit shall be constructed, maintained and operated in accordance with the ordinances, rules and regulations of the Department of Health, the Building Department and the Town Board.
- B. The Town Board, in action upon a special permit hereunder, shall consider the standards and guidelines provided in § **213-259.1** hereof and may attach such conditions and requirements to the granting of such permits as it deems necessary.

### **§ 213-258.2. Duration of permit.**

Every special permit or application granted by the Town Board pursuant to the provisions of this article shall be

and become null and void and of no effect, unless within 180 days after the filing with the Town Clerk of the resolution of the Town Board granting said special permit or application, the use so granted shall actually have commenced or the erection, construction, alteration, expansion, modification or reconstruction of a mobile dwelling or mobile dwelling park shall have actually commenced.

### § 213-258.3. Revocation of permit.

The Town Board may revoke any permit to maintain and operate a mobile dwelling park when the permittee has been found guilty, by a court of competent jurisdiction, of violating any provision of this article. After such conviction, the permit shall be reissued if the circumstances leading to conviction have been remedied and the park is being maintained and operated in full compliance with the law.

### § 213-258.4. Expiration of permit.

All permits issued under § **213-258** of this article shall expire on the 31st day of December, next ensuing the plate of issuance thereof.

### § 213-258.5. Permit fees.

The following fees prescribed herein shall be paid to the Town Clerk, and no permits shall be issued by the Town Board until such fees shall have been paid. For a mobile dwelling park, the fee for a permit shall be at the rate of \$50 for each unit therein, but in no event less than \$1,000.

### § 213-259. Placement.

It shall be unlawful for any person, firm or corporation to place, keep or maintain any mobile dwelling on any land within the Town, outside of incorporated villages, without written permission of the owner of such land; and no person shall allow, suffer or permit any mobile dwelling to be placed, kept or maintained on any land owned, leased or controlled by him, except in a mobile dwelling park for which a permit has been issued by the Town Board.

### § 213-259.1. Authorization of permissive uses.

Whenever a use or the location thereof is permitted, only if the Town Board shall approve thereof, the Town Board may, in a specific case and after notice and public hearing, authorize such permissive use and its location within the district in which this chapter specifies the permissive use may be located, subject however to the following:

- A. Before such approval shall be given, the Town Board shall determine:
  - (1) That such use is reasonable, necessary and will be in harmony with and promote the general interest and welfare of the surrounding community.

- (2) That the neighborhood character and surrounding property values are reasonably safeguarded.
- (3) That the proposed use will not prevent the orderly and reasonable use of adjacent properties.
- (4) That the site is particularly suitable for the location of such use in the community.
- (5) That the access facilities are adequate for the estimated traffic from public streets, so as to assure the public safety and to avoid traffic congestion.

## § 213-260. Mobile dwelling park plan.

The mobile dwelling park shall conform to the following requirements:

- A. The park shall be located on a well-drained site, properly graded to ensure rapid drainage and free from stagnant pools of water and shall be a minimum of 1 1/2 acres.
- B. Each park shall provide mobile home spaces, and each such space shall have an area of not less than 5,000 square feet, except that the Site Plan Review Board is authorized to permit a cluster arrangement of said mobile homes to enable and encourage flexibility of design and development of the land in such a manner as to promote the most appropriate use of land and to preserve the natural and scenic qualities of open land; provided, however, that the number of mobile dwellings shall in no case exceed the number which could be permitted under the terms of this article; and be it further provided, however, that mobile dwelling parks which, at the time of the adoption of this article, existed lawfully with mobile dwelling spaces that do not comply with any of the foregoing minimum area and width or minimum average area and average width requirements may continue to operate and shall be excused from such compliance.
- C. Mobile dwellings shall be so located on each space so that there shall be at least a twenty-foot clearance between mobile dwellings. No mobile dwelling shall be located closer than 10 feet to any building or roadway within the park. No mobile dwelling shall be located closer than 25 feet to any property line of the park abutting upon a public street or highway, except for such other distance as may be established by ordinance as a front yard or setback requirement with respect to conventional buildings in the district in which the mobile dwelling park is located.
- D. All roadways and walkways within the park shall be hard-surfaced and lighted at night.
- E. An electrical outlet supplying at least 100-115/220-250 volts, 100 amperes, shall be provided for each mobile dwelling space.
- F. Each mobile dwelling space shall be provided with two off-street parking spaces, and no on-street parking shall be permitted. Accessory camper vehicles, travel vehicles, boats or other vehicles and cars shall not be stored or parked on individual mobile home spaces or in any street or roadway, public or private, but shall be stored or parked in a screened central storage area within the boundaries of the park.
- G. An adequate supply of pure water for drinking and domestic purposes shall be supplied by pipes to all buildings and mobile dwelling spaces within the park.
- H. Metal garbage cans with tight-fitting covers shall be provided in quantities adequate to permit disposal of all garbage and rubbish. Garbage cans shall be located on the mobile dwelling space. The cans shall be kept in a sanitary condition at all times. Garbage and rubbish shall be collected and disposed of as frequently as may be necessary to ensure that the garbage cans shall not overflow.
- I. Every park shall provide and be equipped with fire extinguishing equipment in good working order, such as

hydrants, fire extinguishers, warning and alarm signals, to the satisfaction of the Chief Fire Prevention Officer of the Town of Babylon.

- J. All roadways in every park must be maintained in a passable and dust-free condition at all times and shall have a minimum width of 24 feet. Said roadways shall be kept unobstructed at all times.
- K. Waste from showers, bathtubs, flush toilets, urinals, lavatories and slop sinks in service and other buildings within the park shall be discharged into a public sewer system in compliance with applicable ordinances or into a private sewer and disposal plant or septic tank system of such construction and in such manner as will present no health hazard and which is approved by the Suffolk County Department of Environmental Control and the Suffolk County Department of Health.
- L. Service buildings.
  - (1) If provided, housing sanitation facilities shall be permanent structures complying with all applicable ordinances and statutes regulating buildings, electrical installations and plumbing and sanitation system.
  - (2) The service buildings shall be well-lighted at all times of the day and night; shall be well-ventilated with screened openings; shall be constructed of such moisture-proof material, which may be painted woodwork, as shall permit repeated cleaning and washing; and shall be maintained at a temperature of at least 68° F. during the period from October 1 to May 1. The floors of the service buildings shall be of water-impervious material.
  - (3) All service buildings and the grounds of the park shall be maintained in a clean, sightly condition and kept free of any condition that will menace the health of any occupant or the public or constitute a nuisance.

## § 213-260.1. Deviations from approved plan.

No structural alteration or deviations from the approved site plan or application, which shall affect the outer appearance or capacity of a mobile dwelling or mobile dwelling park, shall be permitted without permission of the Town Board.

## § 213-260.2. Permit required for alteration.

An existing mobile dwelling park may be altered, expanded, modified or reconstructed by special permit issued by the Town Board, pursuant to the provisions of this article.

## § 213-261. Applicability of C Residence District regulations.

Anything in this chapter to the contrary notwithstanding, in a mobile dwelling park located in either a D Residence District or E Business District, no mobile dwelling or mobile dwelling space shall be used and no mobile dwelling shall be erected or altered for any of the uses which are prohibited in a C Residence District pursuant to § 213-92 of this chapter. The following specifications, applicable to a C Residence District pursuant to the following sections of this Code, shall apply equally to a mobile dwelling park located in either a D Residence District or an E Business District:



- A. Height of buildings, pursuant to § **213-93**.
- B. Lot area, pursuant to § **213-94**.
- C. Front yard depth, pursuant to § **213-95**.
- D. Corner lots, pursuant to § **213-96**.
- E. Double front lots, pursuant to § **213-97**.
- F. Side yards, pursuant to § **213-98**.
- G. Rear yards, pursuant to § **213-99**.
- H. Building area, pursuant to § **213-100**.
- I. Accessory buildings, pursuant to § **213-101**, except that no accessory buildings shall be built within three feet of any side or rear lot line or nearer than 45 feet to any street line.
- J. Fences, hedges and shrubbery, pursuant to § **213-102**.
- K. Permitted encroachments, pursuant to § **213-103**.
- L. **[1]**Size of buildings, pursuant to § **213-105**.

*[1]: Editor's Note: Former Subsection L, regarding specifications for signs, was repealed 9-25-1990, which ordinance also redesignated former Subsection M as Subsection L.*

## § 213-262. Penalties for offenses.

Any violation of this article shall be deemed to be an offense punishable as provided in §§ **1-15** through **1-17** of Chapter **1**, General Provisions, of this Code, said penalties to be in addition to the suspension or revocation of any permit issued under the provisions of this article.

## Article XXI. Swimming Pools

[Amended 11-1-1988]

## § 213-263. Compliance required.

It shall be unlawful to use, construct, maintain, install or enlarge any swimming pool, as defined in this article, in any zoning district in the Town, including all buildings, structures, equipment, appliances, appurtenances and other facilities appurtenant to, intended for, and commonly used in the operation and maintenance of swimming pools, except in compliance with all of the provisions of this article.

## § 213-264. Definitions.

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

**ABOVEGROUND SWIMMING POOL**

Any swimming pool, as defined herein, located in or upon the ground, which is at no point more than 18 inches below grade.

**IN-GROUND SWIMMING POOL**

Any swimming pool, as defined herein, located in or upon the ground, which extends more than 18 inches below grade.

**SWIMMING POOL**

Any body of water in an artificial or semiartificial receptacle or other container, whether located indoors or outdoors, designed, arranged, used or intended to be used for public, semipublic or private swimming by human beings, whether or not any charge or fee is imposed upon the users.

## § 213-265. Permits required.

- A. Permits for the construction, installation, enlargement or alteration of any swimming pool, as defined in this article, including all buildings, structures, equipment, appliances, appurtenances and other facilities appurtenant to, intended for, and commonly used in the operation and maintenance of swimming pools, shall be issued by the Building Department, subject to all applicable provisions of this chapter.
- B. Every aboveground swimming pool which employs the use of any electrical device in connection therewith shall be equipped with a ground fault interrupter. This and all other electrical devices used in connection with any swimming pool must be approved by Underwriters' Laboratories, Inc. and shall have a valid certificate issued by the New York State Fire Underwriters Board or Long Island Electrical Inspections Services.  
[Amended 3-21-1989]
- C. If a swimming pool is abandoned, all voids and depressions shall be immediately filled, and a demolition permit from the Building Department shall be required, requiring restoration of the premises to the same grade and condition as prior to construction of the swimming pool. Failure to comply with these requirements shall entitle the Building Department to proceed under the Unsafe Buildings and/or Excavations Ordinances of the Code of the Town of Babylon.<sup>[1]</sup>

[1]: *Editor's Note: See Ch. 92, Unsafe Buildings, and Ch. 117, Excavations, respectively.*

## § 213-266. Submission of plans and drawings for approval.

- A. Required. All plans and drawings for the construction, installation, enlargement or alteration of any swimming pool shall be submitted to the Building Department for examination and approval as to proper location and construction.
- B. Contents. Plans and drawings shall show lot lines and shall include information pertinent to the swimming pool, enclosures, water supply system, drainage, water disposal system and all appurtenances, as well as detailed plans and vertical elevations.
- C. Effect. Swimming pools, appurtenances, water supply, drainage systems and enclosures shall be constructed in conformity with the approved plans.

## § 213-267. Fence required.

Every outdoor water pool having a depth of 18 inches or more shall be completely surrounded by a fence or wall not less than four feet in height, which shall be so constructed as not to have openings, holes or gaps larger than four inches in any dimension except for doors and gates; and if a picket fence is erected or maintained, the horizontal dimension shall not exceed four inches. A dwelling house or accessory building may be used as part of such enclosure.

## § 213-268. Gates and doors in fence.

[Amended 3-21-1989]

All gates or doors opening through the enclosure required by this article shall conform to the fence requirements of this article in all ways and shall be equipped with a self-closing and self-latching device for keeping the gate or door securely closed at all times when not in use or unattended.

## § 213-269. Location and construction.

[Amended 3-19-2008 by L.L. No. 7-2008]

No outdoor swimming pool shall be situated in the required front yard, nor within six feet of any side or rear lot line of any yard, said distance being measured from the outer edge of the swimming pool. In all other respects, swimming pools shall comply with the requirements of this chapter applicable to accessory buildings.

## § 213-270. Pool water disposal.

[Amended 9-21-2004 by L.L. No. 29-2004]

All water either overflowing or emptying from a swimming pool shall be disposed of on the lot whereon it is located, and the requisite plans submitted to the Building Department<sup>[1]</sup> shall show provisions made for preventing such water from flowing onto the land of any adjoining property owner or into any abutting street.

[1]: *Editor's Note: Local Law No. 15-1976 created the Department of Planning and Development, in which Department the Division of Building replaced the former Building Department. For the text of this local law, see Ch. 49.*

### § 213-270.1. Water disposal.

[Added 9-21-2004 by L.L. No. 29-2004]

All water either overflowing, emptying, being pumped or running from any property shall be disposed of on the lot whereon the water is located or beginning. Failure to prevent such water from flowing onto the land of any adjoining or another property or into any abutting street shall be a violation of this section. Nothing in this section shall prohibit the washing of motor vehicles and the watering of lawns, flowers, plants, etc.

## § 213-271. Treatment of water.

Every owner, purchaser, lessee or tenant of land within the Town upon which is situated a swimming pool which is 18 inches or greater in depth shall be responsible for chemically or mechanically treating the water in a manner sufficient to maintain the bacterial standards established by the provisions of the New York Sanitary Code relating to outdoor swimming pools.

## § 213-272. Maintenance of pools.

Every owner, purchaser, lessee or tenant of land within the Town upon which is situated a swimming pool shall be responsible for said pool being used and/or maintained in accordance with the provisions of the New York State Sanitary Code and the rules and regulations of the Suffolk County Health Department.

## § 213-273. Interference with property rights.

Every owner, purchaser, lessee or tenant of land within the Town upon which is situated a swimming pool shall be responsible for said pool being located, designed, operated or maintained in a manner so as to avoid nuisance or undue interference with the enjoyment of rights of adjoining or nearby property owners.

## § 213-274. Lighting.

Lights used to illuminate any swimming pool shall be so arranged and shaded as to reflect light away from adjoining or nearby premises.

## § 213-275. Noise.

Every owner, purchaser, lessee or tenant of land within the Town upon which is situated a swimming pool shall be responsible for said pool being operated in compliance with the provisions of Chapter **156**, Noise.

## § 213-276. (Reserved)

# Article XXII. Transfer Stations

[Added 3-12-1996 by L.L. No. 4-1996]

[1]: *Editor's Note: Former Art. XXII, Gasoline Service Stations, consisting of §§ **213-277** through 213-285, was repealed 5-24-1994 by L.L. No. 6-1994. For current provisions, see Art. **XXXV**, Gasoline Service Stations.*

## § 213-277. Definitions.

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

**TRANSFER STATION**

A solid waste management facility, including a recyclables handling and recovery facility, or a construction and demolition debris processing facility as such terms are defined in Chapter **133** of this Code, where solid waste is received for the purpose of subsequent transfer to another solid waste management facility for further processing, treating, transfer or disposal.

## § 213-278. Location of transfer station to be restricted.

Notwithstanding anything contained in this Code to the contrary, transfer stations shall only be permitted in any industrial district within the geographical area described in § **213-279A**, and only if a special exception permit is granted by the Zoning Board of Appeals to the operator of the transfer station pursuant to the standards set forth in this article.

## § 213-279. Standards for granting special exception permits for transfer station.

- A. Transfer stations or expansion of existing permitted transfer stations shall only be permitted in the area of the Town north of Edison Avenue, west of Otis Street, east of Plate Avenue (existing and as abandoned) and south of Patton Avenue, West Babylon.  
[Amended 7-9-1996 by L.L. No. 15-1996]
- B. The applicant shall provide proof to the Board that the landowner has consented to the operation of a transfer station.
- C. The applicant, prior to applying for a special exception permit under this article, will have applied for all required federal, state and county permits. The applicant shall have been issued all permits required by the federal, state and county governments for the processing of solid waste at the site prior to the issuance of a permit pursuant to this article.
- D. The applicant shall have obtained site plan approval by the Planning Board.
- E. The requirements of Articles **XIV**, **XV**, **XVI** or **XVII** of this chapter shall be complied with, as applicable with exception of side and rear yard buffers where the minimum shall be 10 feet. Notwithstanding the foregoing, the Board shall have the authority to grant such area variances as it shall deem appropriate, pursuant to Town Law § 274-b(3).
- F. Such use is reasonable, necessary and will be in harmony with and promote the general interests and welfare of the surrounding community.
- G. The neighborhood character and surrounding property values are reasonably safeguarded.
- H. The proposed use will not prevent the orderly and reasonable use of adjacent property.
- I. The site is particularly suitable for the location of such use in the community.
- J. The access facilities are adequate for the estimated traffic from public streets so as to ensure the public safety and to avoid traffic congestion.
- K. There is room for creation of off-street parking and truck-loading spaces at least in the number required by

the applicable provisions of this chapter, but in any case, adequate for the actual anticipated number of occupants of the proposed use, whether employees, patrons or visitors and, further, that the layout of the spaces and related facilities can be made convenient and conducive to safe operation.

- L. The proposed use will not pose risks to the public health or safety.
- M. The characteristics of the proposed use are not such that its proposed location would be unsuitably near to a church, school, theater, senior citizens' residence, recreational area or other place of public assembly.
- N. Adequate buffer yards and screening can be provided to protect adjacent properties and land uses from possible detrimental impacts of the proposed use.
- O. Adequate provision can and will be made for the collection and disposal of stormwater runoff, sewage, refuse and other liquid, solid or gaseous waste which the proposed use will generate.
- P. The natural characteristics of the site are such that the proposed use may be introduced there without undue disturbance or destruction of important natural features, systems or processes and without significant negative impact to groundwater and surface water on and off the site.
- Q. The lot area is sufficient, appropriate and adequate for the use, as well as reasonably anticipated operation expansion thereof.
- R. The proposed use can and will comply with all provisions of this chapter and of the Code which are applicable to it and can meet every other applicable federal, state, county and local law, ordinance, rule or regulation.
- S. The proposed use will not result in unacceptable levels of noise, vibration, smoke, dust, odor, fumes or noxious gases nor negatively impact upon air quality.
- T. The applicant must provide noise level specifications to the Department of Environmental Control for any machinery to be utilized on the site. In the event that a substantial increase in existing noise levels may occur as a result of the proposal, a noise study may be requested by the Department of Environmental Control. The application will not be considered complete until such report is provided.
- U. A Town of Babylon Environmental Quality Review Act (TOBEQRA) Full Environmental Assessment Form will be provided with each application.
- V. The applicant shall provide a description of all material to be transferred, stored and processed on the site.

## § 213-280. Public hearing.

A public hearing shall be held before the Zoning Board of Appeals pursuant to § **213-15** of this chapter prior to the granting of a special exception permit pursuant to this article.

## § 213-281. Conditions of permit.

- A. The permittee shall at all times be in compliance with all federal, state, county and Town laws, ordinances, rules and regulations, storage, processing and disposal of solid waste.
- B. The Board may limit the term of the permit as it shall determine in its sole discretion.

- C. The Board may limit hours of operation upon a finding that such a limit is necessary to the standards set forth in this article.
- D. The Board may require that the applicant post a bond with sufficient surety upon a finding that such a bond is necessary to protect the value of the property, character of the neighborhood and the public health and safety.
- E. The Board may impose such other reasonable conditions and restrictions as it shall deem appropriate.
- F. Processing of solid waste shall only occur in enclosed structures as approved by the Town of Babylon. Outdoor storage of solid waste and/or processing of solid waste is prohibited. Process residue may be stored in secured containers for which the size and location has been approved by the Town of Babylon. All containers to be covered at all times.

## § 213-282. Applicable fees.

- A. The applicant shall pay the application fee which will be set by Town Board resolution from time to time.
- B. If the Commissioner of the Department of Environmental Control determines that a noise study is necessary as a condition of granting a special exception permit pursuant to this article, the applicant shall pay to the Commissioner of the Department of Environmental Control a noise study fee as shall be established by the Town Board from time to time.

## § 213-283. (Reserved)

## § 213-284. (Reserved)

## § 213-285. (Reserved)

# Article XXIII. Off-Street Parking and Loading

[Added 9-5-1973]

## § 213-286. Number of parking spaces required.

[Amended 10-7-1980]

The following minimum number of off-street parking spaces shall be provided and satisfactorily maintained by the owner of the property for each building, structure or premises which shall hereafter be erected, enlarged or altered for use for any of the following purposes:

- A. One-family and two-family dwellings: two spaces for each dwelling unit and one parking space for each unit with a lot size of less than 5,000 square feet.

- B. Multiple dwellings: See § **213-118**.
- C. Trailer parks: two spaces for each permanent trailer or temporary trailer station.
- D. Hotels, motels, tourist homes, cabins, lodging, rooming and boarding houses: one space for each guest sleeping room or suite plus one space for each two employees on the maximum work shift.
- E. Hospitals, nursing homes and convalescent homes: one space for each two beds, plus one space for each professional staff member, plus one space for each two other employees on the maximum work shift.
- F. Funeral homes: one space for each 100 square feet of gross floor area.
- G. Theaters, auditoriums, stadiums, churches and other places of public assembly not classified elsewhere in this section: one space for each four permanent seats or the equivalent floor area which is or may be made available for four temporary seats.
- H. Elementary schools, nursery schools, day schools and camps: one space for each teacher or instructor, plus one space for each two other employees on the maximum work shift.
- I. Secondary schools and colleges, whether public or private, business or commercial: one space for each six permanent classroom seats or the equivalent floor area which is or may be made available for six temporary classroom seats, plus one space for each teacher or instructor, plus one space for each two other employees on the maximum work shift.
- J. Medical, dental and other professional offices, including business, government, semipublic, sales and general offices, banks and financial institutions: One space for each 150 square feet of gross floor area. In the case of medical, dental and chiropractic offices or other similar professional offices, there shall also be required one space for each professional and staff employee.  
[Amended 6-7-1983]
- K. Bowling alleys: six spaces for each alley.  
[Amended 6-7-1983]
- L. Membership clubs, private clubs and lodges: one space for each 50 square feet of gross floor area.
- M. Marinas: 1 1/2 spaces for each boat slip or mooring station.
- N. Planned shopping center: one space for each 150 square feet of gross floor area.
- O. Retail stores, shops and personal service establishments: one space for each 200 square feet of gross floor area.
- P. Manufacturing establishments, wholesale and distribution establishments, nonretail general service and repair establishments, warehouses, truck depots and storage yards: one space for each 700 square feet of gross floor area, but each building under this category must have a minimum of five parking spaces. The number of available parking spaces to be actually paved shall be determined by the Planning Board.  
[Amended 6-3-1975]
- Q. Any use not otherwise expressly provided for herein: to be determined by the Planning Board during site plan review.
- R. Fractional spaces: For all uses, whenever any fraction of a space is required, a full space shall be provided.
- S. Mixed uses: Where the use of the property shall be mixed, the parking space required shall be the sum of the requirements for the various individual uses computed separately.



- T. Bars, taverns, restaurants and on-premises food consumption establishments:  
[Added 6-7-1983]
- (1) There shall be one parking space for each two stools at counter areas or one space for each three linear feet of counter (whichever is greater); plus
  - (2) One parking space for each two seats at tables; plus
  - (3) One space for each two employees on the maximum work shift.
  - (4) Except when located in a planned shopping center in excess of 350,000 square feet of gross floor area, the parking space required shall be for one space for each 200 square feet of gross floor area for the entire center.  
[Added 10-23-2012 by L.L. No. 15-2012]
- U. Front yard parking requirements: See particular zoning category.  
[Added 6-7-1983]
- V. Planned shopping centers in excess of 350,000 square feet of gross floor area: one space for each 200 square feet of gross floor area except for uses where the Planning Board determines a separate calculation during site plan review.  
[Added 10-23-2012 by L.L. No. 15-2012]

## § 213-287. Number of off-street loading spaces required.

[Amended 7-9-1996 by L.L. No. 13-1996]

If, in addition to the required number of off-street parking spaces, the Planning Board shall determine that loading spaces are required, then the following maximum number of regular off-street loading spaces may be required to be installed and satisfactorily maintained by the owner of the property for each commercial or industrial building, structure or premises which shall be hereafter erected, enlarged or altered: one space for the first 2,500 square feet of gross floor area of building or fractional part thereof, plus one space for each additional 5,000 square feet of gross floor area or fractional part thereof.

## § 213-288. Loading berths to be shown on site plan.

If, in the determination of the Planning Board during its site plan review and prior to the issuance of a building permit, loading berth facilities are required to accommodate truck deliveries or shipments by a vehicle of the tractor-trailer type (having three axles or more), the number, location and type of loading berths to be provided shall be shown on the approved site plan.

## § 213-289. Size of parking spaces, loading spaces and berths.

[Amended 12-19-1978; 7-9-1996 by L.L. No. 16-1996]

The size of parking spaces, loading spaces and berths shall be determined by the Planning Board.

## Article XXIV. Senior Citizens Multiple Residence District

[Added 10-5-1976]

## § 213-290. Permitted uses.

[Amended 9-22-1987; 11-12-1991 by L.L. No. 6-1991]

A. Senior housing; age requirement.

[Amended 3-22-2005 by L.L. No. 3-2005]

- (1) In a Senior Citizens Multiple Residence District, no building or premises shall be used and no building shall hereafter be erected except for use as a multiple residence designed primarily to provide living and dining accommodations for persons over the age of 55. At least one occupant of each dwelling unit must meet this minimum age requirement, and no occupants may be less than 19 years of age.
- (2) The minimum age requirement set forth in § **213-290A(1)** hereof may be waived for occupants who reside alone and are disabled as defined by 42 USCA 12102 and/or the New York State Human Rights Law.

B. All offering plans for senior citizen multiple residence housing required to be filed with the New York State Attorney General must be filed with the office of the Town Attorney not less than 96 hours prior to the time when such offering plan shall be filed with the New York State Attorney General.

## § 213-291. Front yard setback.

In a Senior Citizens Multiple Residence District where a private street or road is provided on the site, the front yard setback shall be measured from the established curbline of the unobstructed right-of-way.

## § 213-292. Height of buildings.

[Amended 5-15-1990]

In a Senior Citizens Multiple Residence District, no building or structure hereafter erected or altered shall be more than 2 1/2 stories above ground level. The roof shall be a peak roof only and shall have a pitch of not less than 4/12.

## § 213-293. Lot area.

In a Senior Citizens Multiple Residence District, no building shall be erected or altered on a lot having an area of less than two acres.

## § 213-294. Front yards.

In a Senior Citizens Multiple Residence District, the front setback in any building unit shall not be less than 30 feet after street dedication, notwithstanding § **213-232** of this chapter. Balconies, porticos or like open areas may

extend not more than 10 feet into the front yard.

## § 213-295. Corner lots.

In a Senior Citizens Multiple Residence District, such lot shall have a front yard along each street as provided in § 213-294.

## § 213-296. Side yards.

In a Senior Citizens Multiple Residence District, there shall be two side yards, one on each side of the main building, each having a minimum width of at least 20 feet, except that where there shall be two or more main buildings on the plot, there shall be a minimum distance between buildings of 20 feet, in addition to the twenty-foot side yard requirement along the side property lines of the entire plot.

## § 213-297. Rear yards.

In a Senior Citizens Multiple Residence District, there shall be a rear yard having a minimum depth of 25 feet.

## § 213-298. Permitted encroachments.

In a Senior Citizens Multiple Residence District, chimneys, cornices, eaves, gutters, bay windows projecting not more than 24 inches and one-story open porches and/or terraces not exceeding three feet in height and hereby permitted encroachments into yard areas, except as otherwise provided herein.

## § 213-299. Dwelling unit density.

[Amended 4-1-1986]

In a Senior Citizens Multiple Residence District, no multiple-family dwelling authorized hereby shall be erected or altered to accommodate or make provision for more than 25 one-bedroom dwelling units per acre or more than a proportionate number of dwelling units on any fractional part of an acre and, for the purpose of this section, a "dwelling unit" shall be such combination of rooms with provisions for living, cooking, sanitary and sleeping facilities arranged for the use of one family, which shall consist of not more than four separate rooms, exclusive of bathrooms and hallways.

## § 213-300. Living accommodations.

[Amended 1-6-1981 by Res. No. 18]

In a Senior Citizens Multiple Residence District, no basement or cellar shall be occupied as living or sleeping quarters. Living or sleeping quarters may be provided for management and/or custodial employees as designated by the New York State Building Code. Each separately owned and operated complex under the provisions of this

article may contain therein living and sleeping facilities for management or custodial employees comprising one additional dwelling unit in addition to the number provided pursuant to § **213-299** of this article. Such unit shall not be a rental unit.

## § 213-301. Minimum floor area per unit.

In a Senior Citizens Multiple Residence District, the minimum habitable floor area for each dwelling unit shall not be less than 500 square feet.

## § 213-302. Landscaping.

In a Senior Citizens Multiple Residence District, there shall be suitable landscaping, shrubbery, trees and screening as determined by the Town of Babylon Planning Board.

## § 213-303. Off-street parking.

In a Senior Citizens Multiple Residence District, an off-street parking area conforming to the requirements of this chapter shall be provided for each building unit at a ratio of one space for each unit. Where garages are provided, they may be substituted for such off-street parking areas and shall conform architecturally to the principle buildings. Ten percent of the required parking shall be designated as "Visitors Parking." Said parking areas must meet the requirements of § **213-289** and must be curbed, striped and have direction of travel lanes painted over the blacktop. Minimum paving specifications shall be designated by the Town of Babylon Planning Board.

## § 213-304. Common recreation areas.

In a Senior Citizens Multiple Residence District, common indoor and outdoor recreation areas shall be provided. The outdoor recreation area shall be in one parcel and a minimum size calculated at 150 square feet of usable area per dwelling unit exclusive of sidewalks, driveways and parking areas. The indoor recreation area provided shall be not less than 25 square feet of usable area per dwelling unit with a minimum of 1,500 square feet per site.

## § 213-305. Accessory buildings.

In a Senior Citizens Multiple Residence District, no garages or storage buildings shall exceed 18 feet in height or be built within six feet of any side or rear lot line or nearer than 50 feet to any street line. All other accessory buildings shall meet the requirements for setbacks of the Senior Citizens Multiple Ordinance.

## § 213-306. Laundry facilities.

In a Senior Citizens Multiple Residence District, a designated utility area shall be provided for laundry purposes.

One washer and dryer for every 10 units must be provided.

## **§ 213-307. Refuse containers.**

In a Senior Citizens Multiple Residence District, commercial-type refuse containers must be provided and enclosed with six-foot slatted chain link fence and gate or other suitable material as designated acceptable by the Town of Babylon Planning Board, to be placed on concrete pads and kept clean at all times. No on-site incinerating shall be permitted.

## **§ 213-308. Sewage disposal facilities.**

In a Senior Citizens Multiple Residence District, no principal building authorized by this article shall be erected, altered or used unless provided with municipal sewage disposal facilities or unless an independent sanitary system or installation approved by the Suffolk County Department of Health, where required, is constructed for the sanitary disposal of the sewage of such dwellings.

## **§ 213-309. Drainage plan to be approved.**

In a Senior Citizens Multiple Residence District, no building shall hereafter be erected unless a drainage plan providing for the collection, storage and disposal of stormwater runoff from the site according to standards established in the subdivision regulations of the Town of Babylon Planning Board has been approved by the Planning Board.

## **§ 213-310. Lighting.**

In a Senior Citizens Multiple Residence District, all parking areas, entries, corridors, passages, utility areas and front landscaping must be provided with adequate lighting for safety purposes. Lights shall be adjusted so as not to shine into adjacent properties. Lights must be controlled by a time clock or positive photo-cell switching so as to ensure adequate lighting during all dark hours.

## **§ 213-311. Construction standards.**

In a Senior Citizens Multiple Residence District, all construction must conform to the New York State Building Code for multiple dwellings, Group B-3, and the New York State Fire Underwriters' Code. Exteriors must have some brick or stone veneer which will be subject to review and approval by the Town of Babylon Planning Board.

## **§ 213-312. Business activity not permitted.**

In a Senior Citizens Multiple Residence District, no business or profession of any type shall be permitted.

## § 213-313. Review of site plans.

In a Senior Citizens Multiple Residence District, the site plans for the erection of a multiple residence shall be subject to the specifications and review of the Town of Babylon Planning Board.

## § 213-314. Buffer strips.

[Added 9-15-1981 by Res. No. 9]

Wherever a Senior Citizen Multiple Residence zoned parcel (except for another M.R. parcel) shall abut upon a residential zoned parcel or any parcel used for residential purposes (except for another M.R. parcel or cemeteries), there shall be a buffer strip five feet wide erected, planted and thereafter maintained on the plot pursuant to Planning Board requirements, unless the Planning Board shall require a greater or larger buffer strip.

### § 213-314.1. Affidavit required.

[Added 3-18-1986; amended 11-12-1991 by L.L. No. 6-1991; 3-22-2005 by L.L. No. 3-2005]

In a Senior Citizens Multiple Residence District, the owner of any building or premises used or erected as a multiple residence designed primarily to provide living and dining accommodations for persons over the age of 55 shall file with the Town Clerk a signed, sworn affidavit, on or before the first day of January of every year, stating that all senior citizen multiple residence housing age requirements mandated by law or regulations of the Town, county, state or federal government or any agencies thereof are being and will continue to be complied with. Should the minimum age requirement be waived pursuant to § **213-290A(2)**, the owner must include the information in the affidavit required herein.

## Article XXV. PIP-1 Planned Industrial Park District-1

[Added 11-8-2006 by Res. No. 9]

## § 213-315. Policy and purpose.

- A. It is hereby declared to be the policy of the Town of Babylon to provide a protective zoning classification for a park-like development of industry that is based on the performance of an industry as well as on the type of industry.
- B. It is the purpose of this article and the regulations contained herein to provide a favorable operating environment for industry and to further provide for the protection and safeguard of such industry from the encroachment of uses which are incompatible and adverse to the operation and expansion of such industry.
- C. In addition, this article is designed to minimize the impact of industries on surrounding nonindustrial land uses, to minimize traffic flow problems and, in general, to help to promote the health, safety, comfort and welfare of the present and future workers of the district and residents and workers of the surrounding neighborhood.

## § 213-316. Definitions and word usage.

- A. Unless otherwise stated expressly, the following words and expressions, where used in this article, shall have meanings as follows:

### **ACCESSORY BUILDING**

A building subordinate to the main building on a lot and used for purposes customarily incidental to those of the main building.

### **BUILDING AREA**

The area of the maximum horizontal cross section of the building on a lot.

### **CORNER LOT**

A lot having a street line along two streets forming an angular or curved corner.

### **DATE OF ADOPTION**

The date that the Zoning Ordinance is formally adopted by resolution of the Town Board and entered in its minutes.

### **DEPTH OF A LOT**

The average of the distance from the street line of the lot to its opposite rear line, measured in the general direction of the sidelines of the lot.

### **DOUBLE FRONT LOT**

A lot having a street line at both ends of the lot.

### **DWELLING**

A building designated for and occupied exclusively as a home or residence for one or more families.

### **EFFECTIVE DATE**

The tenth day after said article is published in a newspaper in the Town and posted in accordance with the provisions of §§ 264 and 265 of the Town Law of the State of New York.

### **FENCE**

Vertically inserted redwood-slatted chain link or a fence fabric approvable by the Planning Board of a specifically designated height to be established by the Planning Board.

### **FRONT YARD**

The required open space extending along the street line of any street on which the lot abuts.

### **FRONT BUILDING LINE**

The line across the entire frontage of the lot at the required front setback distance. Also any part of a building facing the front street line shall be considered the front of the building.

### **GROUND STORY or FIRST STORY**

The lowest story of a building entirely above the level of the ground in front of a building.

### **HEIGHT OF A BUILDING**

The distance measured from the mean average grade of the ground surrounding the building to a point midway between the highest and lowest points of the roof, provided that chimneys, spires, towers, elevator penthouses, tanks and similar projections shall not be included for the purpose of

determining the height.

**LOT AREA**

The area of a lot on which a building and its accessories may be located as permitted by the Town Board, exclusive of land in the bed of any street.

**MINOR GARAGE**

A building, not a private garage, used for the storage only of noncommercial vehicles, and a building, not a private garage, used for the storage of commercial vehicles only for a purpose accessory to the permitted use of the lot.

**OFF-STREET PARKING AREA**

The area of a lot or a building used or designed to be used for the purpose of accessory parking of vehicles. Such area shall be on or part of the same lot on which the principal use is located.

**PARKING SPACE**

The space required for each motor vehicle intended or required to be parked in an off-street parking area.

**PREMISES**

The land and all buildings and structures thereon.

**PUBLIC GARAGE**

A building, other than a private or a minor garage, used for the housing, storage or repair of trucks, trailers and automobiles, whether or not accessory or incidental to another use.

**REAR YARD**

The required open space extending along the rear lot line (not a street line) throughout the whole width of the lot.

**SIDE YARD**

The required open space extending along the side lot line from the front yard to the rear yard.

**SIGN**

Includes every kind of billboard, signboard and other shape or device or display arranged, intended, designed or used to advertise, announce, direct or otherwise inform, including any text, symbol, marks, letters or figures painted on or incorporated in the composition of the exterior surface of a building or structure.

**STREET LINE or FRONT PROPERTY LINE**

The dividing line between the street and a lot.

**STRUCTURE**

A combination of materials other than a building forming a construction that is safe and stable, and includes fences over four feet in height and signs; the word "structure" shall be construed as though followed by the words "or part thereof."

**TENANT**

One who holds property by lease or rent.

**WIDTH OF A LOT**

The average width measured at right angles to the direction of its average depth.



- B. Words used in the singular number shall include the plural, and vice versa; the word "building" includes the word "structure," the word "lot" includes the word "plot" and the word "shall" is always mandatory. All other words or phrases not expressly defined herein shall take on the definition included in Black's Law Dictionary.

## § 213-317. Permitted uses.

- A. No building, structure or land shall be used and no building or structure shall hereafter be erected, structurally altered, enlarged or maintained, except for one or more of the following uses. All of the following operations and activities shall be carried on within fully enclosed structures, and there shall be no outdoor storage of materials, equipment or vehicles, other than as expressly stated in § **213-328** of this article, entitled "Outside storage and display; vehicle storage."

[Amended 11-17-2011 by L.L. No. 21-2011]

- (1) Light industrial use: light industrial establishments in which the principal activity shall be the manufacture, intermediate processing or assembly of goods or similar operations which conform to the performance standards contained in § **213-341** of this article.
- (2) Research and development design laboratories.
- (3) Warehousing and distribution use: warehousing and distribution plants, but not including coal, petroleum or petroleum products.
- (4) Office building use.
- (5) Banks.
- (6) Broadcasting station.
- (7) The following use when allowed as a special exception by the Board of Appeals, subject to conditions, restrictions and safeguards as may be imposed by the Board of Appeals:  
[Added 12-15-2014 by L.L. No. 16-2014]
  - (a) Gymnastics center. Provided however, that the lot line for any gymnastics center shall not be located within a one-thousand-foot radius of the lot line of another such legal gymnastics center within the PIP District.

- B. All other requirements of the Planned Industrial Park District shall apply.

- C. All uses other than those expressly listed above are to be considered as prohibited uses.

## § 213-318. Height of buildings.

[Amended 5-15-1990]

In the PIP-1 District, no building or structure hereafter erected or altered shall exceed 35 feet in height, except as designated by the Town Board, whereby the maximum height shall not exceed 50 feet.

## § 213-319. Lot area; street frontage.

In the PIP-1 District, no building shall be erected or altered on a lot having an area of less than 1 1/2 acres (65,340 square feet) or upon a lot having a street frontage of less than 150 feet.

## § 213-320. Front yards; parking usage.

- A. In the PIP-1 District, the required front yard depth shall be not less than 45 feet measured from the front property line (after the widening, if any, of the abutting streets) to the front of the building. The front yard shall be suitably sodded, shrubbed, landscaped and neatly maintained. There shall be no parking permitted in the front yard, except for no more than four parking spaces located in front of the building line for the first 150 feet of road frontage, and there may be one additional parking space for each additional 50 feet of road frontage, provided that the minimum landscaping requirements are met. In those cases where there exists a double front lot or corner lot, parking shall be permitted in only one designated front yard, and the number of spaces shall be based upon the street frontage of only that front yard. There shall be no parking within the first 45 feet of the front yard, measured from the front property line.  
[Amended 7-9-1996 by L.L. No. 12-1996]
- B. In the case of facade or facade-related improvements in Town Board designated commercial facade improvement areas, there shall be no minimum front yard setback requirement.  
[Added 5-15-1984]

## § 213-321. Overhead doors.

Overhead doors are prohibited along any building frontage facing on any street. Overhead door access shall not be permitted in the front yard.

## § 213-322. Double front lots.

In the PIP-1 District, in the case of double front lots, the front yard shall have a required depth of not less than 45 feet measured from the front property line (after widening, if any, of the abutting street) and shall conform to the requirements for front yards contained in §§ **213-320** and **213-321**; and the yard abutting the other street shall have a required depth of not less than 45 feet measured from the property line abutting such streets (after widening, if any, of the abutting street), and 45 feet from the property line abutting such street shall be suitably shrubbed, landscaped and neatly maintained.

## § 213-323. Corner lots.

In the PIP-1 District, corner lots shall have a front yard on each street as is provided for in § **213-320**; both front yards shall have a required depth of not less than 45 feet measured from the property line abutting such streets (after widening, if any, of the abutting street), and 45 feet from the property line abutting such street shall be suitably sodded, shrubbed, landscaped and neatly maintained. There may be paved parking in remaining setback areas abutting such street. There shall be two side yards as required by § **213-324**. All restrictions contained in §§ **213-320** and **213-321** of this article, entitled "Front yards" and "Overhead doors," shall remain in effect.

## § 213-324. Side yards.

In the PIP-1 District, there shall be required two side yards. The total of the widths of both side yards shall be not less than 60 feet, and neither side yard shall be less than 10 feet wide. No primary structures shall be erected within 30 feet of an adjoining primary structure on an abutting parcel. There shall be a landscaped area with a minimum depth of 10 feet running along the entire side of each side property line. The landscaped area shall be suitably shrubbed, landscaped and neatly maintained pursuant to approval by the Planning Board. Where the side yard abuts a residential property, the landscaped area shall have a minimum depth of 30 feet and the side yard shall have a minimum width of 50 feet.

## § 213-325. Rear yards.

In the PIP-1 District, the required rear yard depth shall be not less than 30 feet measured from the rear property line to the rear of the building. There shall be a landscaped area with a minimum depth of 10 feet running along the entire rear property line. The landscaped area shall be sodded and neatly maintained. Where the rear yard abuts a residential property, the rear yard shall have a minimum width of 50 feet and the landscaped area shall have a minimum depth of 30 feet.

## § 213-326. Building area.

The maximum building area shall not exceed 42% of the total lot area; and the maximum impervious area (building plus paved area) shall not exceed 70%.

## § 213-327. Parking requirements.

- A. There shall be no on-street parking in a PIP-1 District. All public streets shall be posted with "no parking" signs.
- B. Each parking space shall be a minimum of 9 feet by 19 feet. In addition, there shall be sufficient aisle space for adequate ingress, egress and maneuvering areas as follows:
  - (1) For ninety-degree parking, the minimum width of the aisle shall be 22 feet.
  - (2) For sixty-degree parking, the minimum width of the aisle shall be 18 feet.
  - (3) For forty-five-degree parking, the minimum width of the aisle shall be 14 feet.
  - (4) For thirty-degree parking, the minimum width of the aisle shall be 12 feet.
- C. All parking areas shall have sufficient curb cuts, as determined by the Planning Board, to ensure proper and safe ingress and egress on the site.
- D. Underground parking is permissible.
- E. The following minimum number of off-street parking spaces shall be provided and satisfactorily maintained by the owner of the property for each building hereafter erected for use for any of the following purposes:

- (1) Offices: one space for each 200 square feet of gross floor area of the designated office space, irrespective of the current use of the floor area. When the actual gross floor area designated for office use does not exceed 10% of the gross floor area, a minimum of 10% of the gross floor area shall be calculated as office use in all applications, regardless of the actual gross floor area designated for office use.
  - (2) Light industrial establishments: one space for each designated 600 square feet of gross floor space.
  - (3) Warehousing: one space for each designated 700 square feet of gross floor area.
  - (4) Research, development and design laboratories: one space for each 200 square feet of gross floor area of the laboratory, irrespective of the current use of the floor area.
  - (5) Banks: one space for each 200 square feet of gross floor area of the bank building, plus one space for each two employees.
  - (6) Restaurants and bars: one space for each four seats; plus one space for each three linear feet of counter at stand-at-counter areas; plus one space for each two employees on the maximum work shift.
- F. In each case where a change of use occurs, parking requirements shall be recalculated to reflect the change of use, and a revised site plan shall be resubmitted to the Planning Board for its review.

## § 213-328. Outside storage and display; vehicle storage.

- A. In the PIP-1 District, there shall be no outside storage of materials, equipment or merchandise and/or display of merchandise, materials, equipment or vehicles intended for sale and which are displayed for that purpose. Vehicles used in conjunction with the use of the building may be stored in a designated vehicle storage area. This area is to be enclosed on at least three sides by a minimum ten-foot-high redwood-slatted chain link fence or similar fence fabric approvable by the Planning Board. In addition, a buffer zone, five feet wide with densely planted fifteen-foot high shrubs and trees, shall be located along the perimeter of the fence. The vehicle storage area may not be located in the front yard.
- B. At the discretion of the Planning Board, the applicant may be required to enclose the entire vehicle storage area with a ten-foot-high redwood-slatted chain link fence, permitting entrance into the vehicle storage area through a ten-foot-high slatted chain link gate.

## § 213-329. Accessory structures.

In the PIP-1 District, there shall be erected upon the premises only one primary building, and no other buildings will be permitted other than a gatehouse or similar structure approved in advance by the Planning Board, and which shall be located not forward of the front building line.

## § 213-330. Fence heights.

Fences shall not encroach in the area designated as the front yard. No fence shall exceed 10 feet in height, except in designated vehicle storage areas allowed in § **213-328** of this article. Fence fabric is to be approved by the Planning Board.

## § 213-331. Buffer strips.

Whenever a PIP-1 zoned parcel shall abut a residential zoned parcel or any parcel used for residential purposes, a six-foot redwood-slatted (vertically inserted) chain link fence or similar fence fabric approvable by the Planning Board shall border same, and there shall also be planted living hemlocks five feet tall and three feet on center, planted three feet from the property line within the required ten-foot landscaped area, unless the Planning Board shall require a greater or larger buffer strip.

## § 213-332. Signs.

- A. This section provides for sign alternatives that are both functional and aesthetic. Signs which are allowable are signs that identify the planned industrial park; street signs; directional signs; user identification freestanding signs; and corporate name or logo wall signs. The intent of this sign section is to ensure the consistency (in size, shape, color, lettering, location, lumination, etc.) of allowable types of signs to be utilized uniformly throughout the planned industrial park. In all cases, directional signs shall be a uniform size of two feet and shall not exceed four feet in height; and further, user identification freestanding signs shall be a uniform size of 3 feet by 9 feet and shall not exceed four feet in height. Each specific application of the sign section of this article shall be subject to the approval of the Planning Board in cooperation with the Architectural Review Board.
- B. Any sign authorized by this section is permitted to contain noncommercial copy in lieu of any other copy.  
[Added 9-25-1990]

## § 213-333. Outdoor lighting.

This section provides for outdoor lighting alternatives that are both functional and aesthetic. Outdoor lighting is allowable in the following instances: street lighting; parking lot lighting; sign lighting; exterior building lighting; and walkway lighting. The intent of this outdoor lighting section is to ensure the consistency (in size, style, color, location) of allowable types of outdoor lighting to be utilized uniformly throughout the planned industrial park. Each specific application of the outdoor lighting section of this article shall be subject to the approval of the Planning Board in cooperation with the Architectural Review Board.

## § 213-334. Utility facilities.

- A. All wiring, feed lines, energy sources and all equipment accessory to all utilities shall be placed underground. Alternate energy systems are encouraged and shall be reviewed by the Planning Board on a case by case basis with regards to the restrictions of this article. Alternate energy systems must be indicated on site plans.
- B. All storage tanks shall be installed underground or within the primary structure. All mechanical and other equipment shall not be allowed in the front yard and shall be suitably screened according to Planning Board requirements as indicated on a site plan approvable by the Planning Board.

## § 213-335. Building exteriors.

All walls of buildings, with the possible exception of the rear building wall, shall be finished with face brick, stone, modern metal paneling, wood, glass, precast concrete finished with an attractive surface or their equivalent. No unpainted or unfinished metal or galvanized metal sidings shall be permitted for any exterior walls or roofs. All building exteriors, including but not limited to precast concrete, tilt-up concrete, metal or wood partitions, shall be painted in a color approved by the Planning Board and Architectural Review Board as indicated on the required rendering of the building. Preengineered buildings are prohibited unless the building exterior is finished with face brick, stone, modern metal paneling, wood, glass, precast concrete finished with an attractive surface or their equivalent.

## § 213-336. Required landscaping.

- A. A minimum of 30% of the parcel shall be landscaped with sod, shrubs, trees and other comparable surface cover in accordance with a plan approved by the Planning Board. The required landscaped front, rear and side yards set forth in this article may be included in the computation of the percentage of landscaping required. All front yards shall be suitably shrubbed, landscaped and maintained.
- B. There shall be one street tree for every 30 feet of street frontage, set back no more and no less than 15 feet from the curblin.
- C. All parking areas that are visible from the front property line, as determined by the Planning Board, shall be concealed from the street by an earthen landscaped berm with a number of dense trees and/or shrubs planted along the berm in such a manner as to screen parked vehicles as seen from the front property line. The landscaping and construction of the berm shall be approved by the Planning Board.
- D. Property not utilized for building area but included as expandable undeveloped area shall be screened by earthen berms and appropriate landscaping. This screening line shall be at the front building line, and the front yard shall be suitably landscaped. All undeveloped areas that are planned for future building expansion or other purposes shall be maintained and kept free of unsightly plant growth, stored materials, rubbish and debris and may be left in their natural state.

## § 213-337. Occupancy.

No building or structure erected pursuant to this article, other than predesignated office buildings or financial institutions, shall be occupied or used by more than one tenant or devoted to more than one use authorized by this article, except when expressly authorized by the Town Board.

## § 213-338. Loading berths.

- A. In addition to the required number of off-street parking spaces, the following maximum number of loading berths may be provided and satisfactorily maintained by the owner of the property for each industrial building, structure or premises which shall be hereafter erected, enlarged or altered: one loading berth for the first 5,000 square feet of gross floor area of building or fractional part thereof, plus one loading berth

for each additional 10,000 square feet of gross floor area or fractional part thereof.

- B. The minimum required size of each loading berth shall be 12 feet by 55 feet and shall have a vertical clearance of 14 1/2 feet.
- C. No loading spaces shall be allowed if specifically prohibited by the Planning Board. The Planning Board shall encourage all users to provide loading berths inside the erected structure.

## **§ 213-339. Environmental assessment to be filed.**

Each applicant will be required to prepare an environmental assessment [similar to that required by the New York State Environmental Quality Review Act (SEQRA)] and to file this assessment with the Planning Board, and it shall accompany the site plan application. The regulations of SEQRA shall govern each assessment.

## **§ 213-340. Review of site plans.**

One complete set of the required number of site plans and rendering(s) furnished by the applicant shall be made available by the Planning Board to the Architectural Review Board for its review. This review shall run concurrently with the review of the Planning Board.

## **§ 213-341. Standards of usage.**

It is the intent of these regulations to prevent land and/or buildings within the PIP-1 District zone to be used or occupied in any manner so as to create dangerous, injurious, noxious or otherwise objectionable fire, explosive, radioactive or other hazardous conditions; noise or vibration; smoke, dust, fumes, odor or other forms of air pollution; electrical or other disturbances; glare or heat; or the disposal of liquid or solid wastes or refuse contrary to the environmental regulations of the Town of Babylon; conditions conducive to the breeding of rodents or insects; or other dangerous or objectionable elements in an amount or manner so as to adversely affect the surrounding area. Any use of land permitted under this article may be undertaken and maintained if it conforms to all district regulations of this section.

## **§ 213-342. Property maintenance.**

- A. Each owner and tenant shall keep its premises, buildings, improvements and appurtenances in a safe, sightly, clean, neat and wholesome condition and shall comply in all respects with all governmental requirements. Each owner and tenant (where applicable) shall remove at its own expense any rubbish or trash of any character which may accumulate on its property and shall keep unlandscaped (including paved parking areas) and landscaped areas neat and well maintained. Rubbish and trash shall not be disposed of on the premises by burning in open fires or incinerators.
- B. During construction all building sites (and streets used by construction equipment) shall be kept in a reasonably clean and neat condition, and all trash, rubbish and debris (and, with respect to streets, mud and dirt) shall be kept removed therefrom during any construction work thereon, with final removal to be accomplished promptly after completion of such work.

- C. All buildings, structures, signs, fences and landscaping shall be maintained in accordance with the provisions of this article and all other applicable codes and ordinances of the Town of Babylon, and violations thereof may be prosecuted and enforced in the same manner as provided therein.
- D. All refuse containers are to be stored inside the building structure.
- E. Once construction on-site has been initiated, work shall continue in an expeditious workmanlike manner until the structure is complete and a certificate of occupancy is issued.

## § 213-343. Enforcing officer.

The Commissioner of the Department of Planning and Development or his designee shall act as the code enforcer of all the sections contained within this article. Any person or corporation, including but not limited to the owner, lessee, architect or builder or an agent or employee of any of them who violates or is an accessory to the violation of any section of this article shall be summonsed and fined by the designated Town official in accordance with § **213-345** of this article.

## § 213-344. Alteration of Planning Board requirements.

All existing Planning Board requirements are to remain in effect. No alterations of a Planning Board approved site plan shall be permitted without submitting a revised site plan to the Planning Board and having that site plan approved in writing by the Planning Board.

## § 213-345. Penalties for offenses.

- A. Unless otherwise provided herein, any person who fails or neglects to comply with any section of this article shall be guilty of a violation and, upon conviction thereof, shall be punishable by a fine not exceeding \$250 or imprisonment for a period not to exceed 15 days, or both such fine and imprisonment.
- B. Each day's continued violation shall constitute a separate violation.
- C. Civil penalties, where imposed in a specific ordinance pursuant to the laws of the State of New York, shall be in addition to any fine and/or imprisonment provided for in Subsections **A** and **B** of this section.
- D. In addition to the fine and/or imprisonment and civil penalties as provided for in Subsections **A**, **B** and **C** of this section, the Town Board may also maintain an action or proceeding in the name of the Town in a court of competent jurisdiction to compel compliance with or to restrain by injunction the violation of any section of this article.

# Article XXVI. On-Premises Food and Beverage Consumption Establishments

[Added 10-7-1980 by Res. No. 6]



## § 213-346. Purpose.

To address the problems of overcrowded street parking conditions and the overspillage of cars parking on or disrupting the uses of surrounding properties caused by establishments having too few off-street parking spaces and to better safeguard surrounding properties from these uses, the Town Board has promulgated this article.

## § 213-347. Permits required.

[Amended 9-15-1981; 11-13-1990; 4-18-2000 by L.L. No. 5-2000; 10-23-2012 by L.L. No. 14-2012]

- A. All new bars, taverns, restaurants, cafes and other places for the serving of food or beverages, or both food and beverages, whether such food and/or beverages are served inside a structure or outside a structure, or both inside and outside a structure, shall be permitted only by special exception permit from the Planning Board, after the required public hearing, except when located in a planned shopping center over 350,000 square feet.
- B. Any new bars, taverns, restaurants, cafes and other places for the serving of food or beverages, or both food and beverages, whether such food and/or beverages are served inside a structure or outside a structure, or both inside and outside a structure, shall be excluded from the requirement of a special exception permit from the Planning Board if those establishments have seating for 16 or fewer persons and such establishments shall be primarily in the business of preparing food and beverages for off-premises consumption. "Seating" or "a seat" shall be defined as a physical chair and/or a stool capable of seating one person and/or 1 1/2 feet of counter space or space in a booth or bench seating except when located in a planned shopping center over 350,000 square feet.
- C. All existing bars, taverns, restaurants, cafes and other places for the serving of food or beverages, or both food and beverages, whether such food and/or beverages are served inside a structure or outside a structure, or both inside and outside a structure, that are structurally altered and/or renovated where the occupancy would be increased by greater than 20%, as determined by the Department of Planning and Development, shall be permitted only by special exception permit from the Planning Board, after the required public hearing, except when located in a planned shopping center over 350,000 square feet.

## § 213-348. Parking requirements.

[Amended 2-3-1981; 10-23-2012 by L.L. No. 14-2012]

There shall be one parking space for each two stools at stand-at-counter areas or one space for each three linear feet of counter (whichever is greater) and one parking space for each two seats at tables, plus one space for each two employees on the maximum work shift, except when located in a planned shopping center over 350,000 square feet when § **213-286V** shall apply.

## § 213-349. Application for special exception permit.

[Amended 8-16-1994; 4-18-2000 by L.L. No. 5-2000]

Application for such special exception permit shall be made to the Planning Board in such form as shall be

determined by the Planning Board from time to time by resolution and upon payment of fees as established by the Town Board from time to time.

## § 213-350. (Reserved)

[1]: *Editor's Note: Former § 213-350, Recommendation of Planning Board, was repealed 4-18-2000 by L.L. No. 5-2000.*

## § 213-351. Standards and considerations.

- A. Before such approval shall be given, the Planning Board shall determine:  
[Amended 8-16-1994; 4-18-2000 by L.L. No. 5-2000]
- (1) That such use is reasonable, necessary and will be in harmony with and promote the general interest and welfare of the surrounding community.
  - (2) That the neighborhood character and surrounding property values are reasonably safeguarded.
  - (3) That the proposed use will not prevent the orderly and reasonable use of adjacent properties.
  - (4) That the site is particularly suitable for the location of such use in the community.
  - (5) That the access facilities are adjacent for the estimated traffic from public streets, so as to assure the public safety and to avoid traffic congestion.
- B. In making such determination the Planning Board shall also give consideration, among other things to:  
[Amended 8-16-1994; 4-18-2000 by L.L. No. 5-2000]
- (1) The character of the existing and probable development of uses in the district and the peculiar suitability of such district for the location of any of such permissive uses.
  - (2) The conservation of property values and the encouragement of the most appropriate uses of land.
  - (3) The effect that the location of the proposed use may have upon the creation or undue increase of vehicular traffic congestion on public streets or highways.
  - (4) The availability of adequate and proper public or private facilities for the treatment, removal or discharge of sewage, refuse or other effluent (whether liquid, solid, gaseous or otherwise) that may be caused or created by or as a result of the use.
  - (5) Whether the use of materials incidental thereto or produced thereby may give off obnoxious gases, odors, smoke or soot.
  - (6) Whether the use will cause disturbing emissions of electrical discharges, dust, light, vibration or noise.
  - (7) Whether the operations in pursuance of the use will cause undue interference with the orderly enjoyment by the public of parking or of recreational facilities, if existing, or if proposed by the Town or by other competent governmental agency.
  - (8) To the necessity for bituminous surfaced space for purposes of off-street parking of vehicles incidental to the use, and whether such space is reasonably adequate and appropriate and can be furnished by the owner of the plot sought to be used within or adjacent to the plot wherein the use

shall be had.

- (9) Whether a hazard to life, limb or property because of fire, flood, erosion or panic may be created by reason or as a result of the use, or by the structures to be used therefor, or by the inaccessibility of the property or structures thereon for the convenient entry and operation of fire and other emergency apparatus or by the undue concentration or assemblage of persons upon such plot.
- (10) Whether the plot area is sufficient, appropriate and adequate for the use and the reasonably anticipated operation and expansion thereof.
- (11) Whether the use to be operated is unreasonably near to a church, school, theater, recreational area or other place of public assembly.

## § 213-352. Public hearing; notice.

[Amended 4-18-2000 by L.L. No. 5-2000; 8-11-2000 by L.L. No. 18-2000]

Notwithstanding anything contained in § 213-15 of this chapter to the contrary, the Planning Board shall schedule and hold a public hearing on an application for a special exception permit pursuant to this article in accordance with the requirements of § 213-15 of this chapter.

## § 213-353. Permit conditions.

[Amended 4-18-2000 by L.L. No. 5-2000]

The Planning Board, in action upon a special exception permit hereunder, shall consider the standards and guidelines provided in § 213-351 hereof and may attach such conditions and requirements to the granting of such permits as it deems necessary.

## § 213-354. Savings clause; effect on pending applications.

[Added 4-18-2000 by L.L. No. 5-2000<sup>[1]</sup>]

- A. All special exception permit applications and site plan applications hereunder for which a public hearing has been held by the Town Board and for which a decision is pending as of the effective date of this local law<sup>[2]</sup> shall be decided by the Town Board. All other pending applications for a special exception permit hereunder shall be heard and decided by the Planning Board.

[2]: *Editor's Note: "This local law" refers to L.L. No. 5-2000.*

- B. All applications to amend or modify a special exception permit issued by the Town Board hereunder, or to amend or modify a site plan previously approved by the Town Board hereunder, shall be heard and decided by the Planning Board.

[1]: *Editor's Note: This local law also repealed former § 213-354, Alteration of approved site plan, and former § 213-354.1, Site plan review.*

## Article XXVII. Barbed-Wire Fencing

[Added 1-17-1984 by Res. No. 72]

## § 213-355. Definitions.

[Amended 7-20-1999 by L.L. No. 12-1999]

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

### **BARBED WIRE**

Any wire or metal band, not including razor wire, having one or more sharp points along its length which is used for making barriers.

### **RAZOR WIRE**

Any wire or metal band having one or more sharp points and edges along its length which is used for making barriers.

## § 213-356. Limitations on use.

[Amended 7-20-1999 by L.L. No. 12-1999]

No owner, occupant, tenant, manager, agent or person in charge of any parcel in the Town shall erect, maintain, use or alter or suffer or permit to be erected, maintained, used or altered thereon any barbed wire, except in G Industrial Districts, Ga Industrial Districts, GB Industrial Districts and H Heavy Industrial Districts, and only then after complying with the other requirements contained in this article and only under the following circumstances:

- A. No barbed wire may extend beyond the front building line.
- B. Barbed wire must be securely fastened to a fence or wall of the size, material and construction as may reasonably be required by the Planning Board, but in no event shall any such fence or wall exceed six feet in height.
- C. Any use of barbed wire shall not prevent the reasonable and orderly use of adjacent parcels or adversely affect the health, safety and welfare of the community.
- D. A one-foot-by-one-foot sign must be conspicuously posted on any fence or wall on which barbed wire is fastened in each of such places as may be directed by the Planning Board and shall state in red letters no less than three inches high as follows: CAUTION BARBED WIRE.
- E. No barbed wire shall be permitted on any property adjoining property used or zoned residential.

## § 213-357. Planning Board review.

Any use of barbed wire in districts permitted by this article is subject to review by the Planning Board, which may approve, approve with modifications or disapprove the use of barbed wire as it deems necessary to preserve the health, safety or welfare of the community.

## § 213-358. Application procedure.

- A. Application for review of a proposed use of barbed wire shall be made to the Planning Board in such form as shall be determined by such Board from time to time by resolution.
- B. Such application shall be filed with the Planning Board and reviewed within 45 days from the date such application is filed, and such Board shall render a decision by resolution within 62 days after such review.  
[Amended 7-20-1999 by L.L. No. 12-1999]

## § 213-359. Application fees.

[Amended 7-20-1999 by L.L. No. 12-1999]

Application fees shall be set from time to time by Town Board resolution.

## § 213-360. Permit required; not transferrable; prohibited for razor wire.

[Amended 7-20-1999 by L.L. No. 12-1999]

- A. No barbed wire shall hereafter be erected, maintained, used, altered or suffered or permitted to be erected, maintained, used or altered until a permit authorizing the same shall have been issued by the Building Inspector pursuant to Article III, § 213-17 herein. No such permit shall be issued without the approval of the Planning Board.
- B. Permits granted pursuant to this article are not transferrable by the grantee of the permit.
- C. The use of razor wire is prohibited and no permits for Razor Wire may be granted pursuant to this article or the Building Inspector pursuant to Article III, § 213-17 herein.

## Article XXVIII. Moratorium on Issuance of Building Permits in Barrier and Outer Beach Areas

[Added 6-5-1984 by L.L. No. 5-1984]

## § 213-361. Legislative intent; findings of fact.

- A. The Town Board hereby finds that over the course of many years, development in the areas set forth herein have been haphazard, without common plan or scheme and without appropriate controls.
- B. The Town Board further finds that during said period of time the development set forth above is having and may have in the future deleterious effects upon the properties in question and the community as a whole.
- C. For these reasons, the Town Board finds that consideration must be given to the adoption of a comprehensive plan and implementing regulations in the areas set forth herein, which will control both development and redevelopment of new buildings and structures and redevelopment of existing buildings

and structures.

- D. It is the intention of the Town Board to conduct a coastal zone management program and study which will result in a development of a comprehensive plan and scheme for the future development of the areas set forth herein. The Town Board therefore finds it necessary to adopt a reasonable interim local law to govern the development of the properties in question during the time that the Town is conducting such program and study.
- E. This action is necessary in order to protect the public interest and welfare.

## § 213-362. Area boundaries.

This article shall apply to all barrier and outer beach properties located within the confines of the Town of Babylon (Gilgo, West Gilgo, Oak Island, Oak Beach and Captree). The property to which this article shall apply shall be referred to as "moratorium property."

## § 213-363. Scope of moratorium.

- A. During the period of nine months following the effective date of this article, no building permit shall be issued by the Building Inspector of the Town of Babylon for the construction, reconstruction or addition of any building or structure on any moratorium property within the Town of Babylon.
- B. Nothing contained in this article shall be deemed to affect in any way the granting, issuance and/or approval of building permits on moratorium property by the Building Inspector in connection with:
  - (1) The demolition of existing buildings.
  - (2) The alteration of the interior structure of existing buildings and related improvements to electrical, heating, plumbing and elevator facilities or similar work.
  - (3) Emergency repairs to dwellings and structures required as a result of natural disaster, fire or similar circumstances.
  - (4) Bulkheading or similar embankment improvements.
- C. Nothing contained in this article shall be deemed to affect or otherwise limit the continued construction of any building on moratorium property or the commencement of construction of any building for which site plan and building permit approval has been granted prior to the effective date of this article or for which application for site plan and building permit has been made and a hearing held thereon prior to the effective date of this article.

## § 213-364. Penalties for offenses.

Any person, firm, entity or corporation who shall construct, erect, enlarge or alter structurally any building or structure in violation of the provisions of this article shall be subject to the penalties set forth in Article II, General Penalties, of Chapter 1, General Provisions.

# Article XXIX. Building and Landscape Maintenance

[Added 10-6-1987]

## § 213-365. Intent.

- A. The Town Board and Planning Board of the Town of Babylon have targeted the creation of business, industrial and multiple residence zoned areas with visual qualities which may be characterized as verdant and park-like and to provide quality development, landscaping and attractive streetscapes as an overall objective in the Town of Babylon.
- B. The Town of Babylon has taken numerous measures as part of this overall comprehensive strategy to implement both through regulations of private land use and by the public improvements made in each community.
- C. The Town Board has determined that landscaping, natural plantings, buffer zones, screening, including buffer fencing, grass/sod and the like, which are not maintained in good order and condition, can create hazardous, unsanitary or visual blight offensive to those who reside, work, travel and do business in the Town and can have a negative economic, visual and aesthetic impact upon surrounding properties.
- D. It is the intent of this legislation to promote the conservation of property values by implementing a Town-Wide Building and Landscape Maintenance Code in all business, industrial and multiple residence zones, so that all required building structures and landscaping is maintained in good order and condition.
- E. It is the further intent of the Town Board by this legislation to promote the health, safety and general welfare of the residents of the Town of Babylon through the establishment of standards, guidelines and enforcement mechanisms whereby all landscaped areas required by the Planning Board shall be maintained in good order and condition in accordance with all requirements of this Code.

## § 213-366. Definitions.

Unless otherwise stated expressly, the following words and expressions, where used in this chapter shall have meanings as follows:

### **BUSINESS BUILDING**

A building used or occupied for the transaction of business, for the rendering of professional services, for the display, sale or storage of goods, wares or merchandise, for the supplying of food, drink or other bodily needs or comforts or for the performance of work or labor, including but not limited to office buildings, stores, markets, restaurants, factories, workshops and laboratories.

### **LANDSCAPING**

Required natural landscaping, shrubbery, trees, buffer zone area, screening and planting trips and grass/sod.

### **PREMISES**

The land and all buildings and structures.

## § 213-367. Property maintenance.

- A. Each owner, lessee, tenant or other person having the management or control of or occupying any lot or plot of land in the Town of Babylon located within a business, light or heavy industrial, multiple residence or senior citizens multiple residence district shall keep the premises, buildings, structures, signs, fences and natural landscaping and landscaped areas in a safe, sanitary, clean, neat and wholesome condition and shall comply with all requirements and regulations under this Code or adopted by the Planning Board. Each owner, lessee, tenant or other person having management or control of or occupying any lot or plot of land in the Town of Babylon shall remove, at his own expense, any garbage, rubbish, refuse, trash, litter or any other type of debris which may accumulate on the premises and shall keep all landscaped areas, including paved parking areas, neat and well maintained.
- B. All natural landscaping, including trees, shrubbery, bushes and grass/sod, shall be maintained in a neat and orderly condition at all times.

## § 213-368. (Reserved)

[1]: *Editor's Note: Former § 213-368, Penalties for offenses, was repealed 6-22-2010 by L.L. No. 21-2010. See now Ch. 1, General Provisions, Art. II, General Penalties.*

## Article XXX. Clearing of Land

[Added 10-20-1987]

## § 213-369. Findings; intent.

- A. The Town Board hereby finds that there is a direct relationship between the planting of trees, shrubs and associated vegetation in sufficient number in populated areas and the health, safety and welfare of this community and as related to the natural, scenic and aesthetic values of trees and the physical and visual qualities of the environment which the Town of Babylon is authorized to protect.
- B. Trees and such vegetation stabilize the soil and control water pollution by preventing soil erosion and flooding, yield advantageous microclimatic effects, provide a natural habitat for wildlife, abate noise, preserve the balance of oxygen in the air by removing carbon dioxide and fostering air quality, provide welcome shade to people and add color and verdure to human construction.
- C. The destructive and indiscriminate removal of trees and related vegetation causes increased governmental costs for proper drainage control, impairs the benefits of occupancy of existing residential properties and impairs the stability and value of both improved and unimproved real property in the area of destruction and adversely affects the health, safety and general welfare of the inhabitants of the Town. It is therefore the intent of the Town to enact regulations, special conditions and restrictions regarding the removal or destruction of trees or the substantial alteration of grade level around trees to provide for the protection and conservation of trees and related vegetation in support of the health, safety and general welfare of Town residents.



## § 213-370. Definitions.

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

### **APPLICANT**

The owner of real property or their duly authorized employee, agent or any person or persons acting on their behalf requesting a land clearing permit for the removal of trees, shrubs and associated and related vegetation from private or public property, pursuant to the provisions of this chapter.

### **COMMISSIONER**

The Commissioner of the Department of Planning and Development of the Town of Babylon.

### **DEPARTMENT**

The Department of Planning and Development of the Town of Babylon.

### **PERSON**

Any individual or individuals, corporation, firm, partnership, association, trust, estate, public utility, public authority or any unit of government or agency or subdivision thereof.

### **PRIVATE PROPERTY**

Any real estate or part thereof, yard or driveway, other than that used as a public place, road, street or highway, situated in the Town of Babylon not public property as hereinafter defined and not otherwise exempted by state or federal law.

### **PUBLIC PROPERTY**

All streets, sidewalks and easements that the Town may have over, under or upon any private property located in the Town or other areas dedicated or commonly used by the public, as well as all lands in which title is vested in the Town of Babylon, other political subdivision or agency or public authority thereof located within the Town of Babylon.

### **TREE**

Any woody plant having a diameter of one inch or more at its thickest point, its root system and the environment within the area defined by the outermost limits of its branches, whether living or unliving, standing or downed.

### **VEGETATION**

Including, but not limited to, trees, shrubs, bushes, grasses, flowers and other similar plant life.

## § 213-371. Land clearing permit required.

[Amended 4-9-1996 by L.L. No. 7-1996]

Any person wishing or intending to clear any private or public property of any trees or associated vegetation shall first obtain a land clearing permit from the Town of Babylon, Department of Planning and Development, Building Division, and pay such fee as shall be established from time to time by Town Board resolution.

## § 213-372. Administration.

- A. This chapter shall be administered by the Department, which shall have the authority to promulgate rules and regulations for the effective administration and management of this chapter, consistent with the legislative intent of this chapter.
- B. The Commissioner, after consultation with the Department of Environmental Control, the Chief Building Inspector and any appropriate federal, state or county agencies, may approve, approve with conditions or deny a land clearing permit.
- C. Each permit shall be valid for a period of 90 days from the date of issuance.

## § 213-373. Application for permit.

- A. Every applicant for a land clearing permit required by this chapter shall submit a complete and notarized application to the Department of Planning and Development, Building Division, on forms to be prescribed by the Commissioner, which shall include, but not be limited to, the following items:
  - (1) The name and address of the applicant and owner, if not the same.
  - (2) A statement of consent of the owner of the property that he is aware of the application and agrees to its being made.
  - (3) The physical address and Suffolk County Tax Map Number of the subject property from which any trees or associated vegetation are to be removed.
  - (4) A description of the existing physical and vegetative site conditions on the subject property, including the number and types of trees, types of vegetation, ground cover and any other related information required by the Commissioner.
  - (5) A detailed explanation of the reasons why the applicant is proposing to clear the subject premises of trees and associated vegetation.
  - (6) The zoning classification of the subject property.
  - (7) The proposed use of the subject property subsequent to the clearing of the property.
  - (8) A proposed site development schedule.
  - (9) A true and complete copy of the last deed of record as recorded by the Suffolk County Clerk's office for the subject property.
- B. The Department shall, in administering this chapter, impose such conditions and safeguards as it may deem appropriate, necessary or desirable to preserve the protect the spirit and objectives of this chapter and shall give consideration, among other things, to:
  - (1) The number, size and location of the tree or trees and associated vegetation to be removed.
  - (2) The condition of the tree or trees with respect to disease and the potential for creating hazardous conditions.
  - (3) The proximity of the trees to existing or proposed structures and utility appurtenances.
  - (4) The use or necessity of trees as a buffer between the subject property and adjoining properties.

- (5) The necessity of the removal of a tree or trees.
- (6) The environmental effects of the land clearing.
- (7) Any of the considerations enumerated in the legislative intent of this chapter.

## § 213-374. Performance bond.

- A. Every applicant for a land clearing permit shall be required to post with the Town, as a condition precedent to receiving a land clearing permit, a performance bond approved by the Town Board in the amount of \$2,500 for the completion of such land clearing work.
- B. Said bond shall remain in full force and effect for a period of three years, commencing on the date of the issuance of the land clearing permit. The insurance company carrying the bond shall give a thirty-day notice to the Town of Babylon of any cancellation of the bond.

## § 213-375. Penalties for offenses.

[Amended 10-7-2003 by L.L. No. 26-2003]

- A. Any person who shall violate any of the provisions of this chapter or any person who shall clear land in violation of a condition imposed by the Commissioner on a validly issued land clearing permit shall be guilty of a violation.
- B. Any person convicted of violating the provisions of this chapter must have a fine imposed in an amount fixed by the court of not less than \$250 nor more than \$1,500 or a term of imprisonment not to exceed 15 days, or both, for each violation thereof.
- C. Each day's continued violation shall constitute a separate violation.
- D. Civil penalties, where imposed in a specific ordinance pursuant to the laws of the State of New York, shall be in addition to any fine and/or imprisonment provided for in Subsections **A**, **B** and **C** of this section.
- E. In addition to the fine and/or imprisonment and civil penalties as provided for in Subsections **A**, **B**, **C** and **D** of this section, the Town Board may also take any of the following actions:
  - (1) Maintain an action or proceeding in the name of the Town in a court of competent jurisdiction to compel compliance with or to restrain by injunction the violation of any section of this chapter.
  - (2) If conditions existing on the property violate the provisions of this chapter or violate any condition imposed on a land clearing permit, the Commissioner shall serve or cause to be served a written notice, either personally or by certified mail, return receipt requested, upon the owner, applicant, lessee or occupant of said property. Said notice shall contain substantially the following: the name of the owner, applicant, lessee or occupant of the property; the address or location of the property; the identification of the property as the same appears on the current assessment roll of the Town; a statement of the condition of the property as found on the inspection; a demand that the property be replanted or otherwise restored to the condition in which it existed prior to the clearing of the land on or before 30 days after the service or mailing of such notice; a statement that a failure or refusal to comply with the provisions of this chapter and the notice given pursuant thereto within the time

specified will result in a duly authorized officer, agent or employee of the Town entering upon the property and replanting or restoring the property to the condition in which it existed prior to the clearing of the land; and that the cost and expense of such removal shall be certified to the Assessor of the Town and shall be assessed against the described property and shall constitute a lien thereon to be collected as provided by law.

- F. Nothing contained herein shall require notice as a prerequisite to the issuance of a summons for a violation of any of the provisions of this chapter.

## Article XXXI. Adult Use District

[Added 12-15-1987 by L.L. No. 11-1987; amended 5-24-2005 by L.L. No. 9-2005]

### § 213-376. Legislative intent and purpose.

The Town Board has conducted an extensive review of land use studies concerning secondary effects of sexually oriented businesses in other municipalities, including the Town of Huntington, Town of Islip and the City of New York, and has further prepared maps to set forth the locations where adult uses would be permissible pursuant to certain proposed regulations. From a review of these studies, and the testimony of its residents, the Town Board finds the following:

- A. Some uses, due to their very nature, have characteristics which cause, or tend to cause, secondary adverse impacts upon the community and have a deleterious effect on both surrounding businesses and residential areas, such as increased crime and downgraded property values. Said impacts are heightened by concentration of such uses in any one area, thereby aggravating deleterious effects on adjacent areas and other uses.
- B. Among such uses are sexually oriented businesses, which have serious objectionable characteristics, particularly when operated in close proximity to each other, thereby contributing to crime, lower property values, blight and downgrading of the quality of life in adjacent areas. Special regulation of such uses is necessary to ensure that said adverse secondary impacts do not contribute to blighting or downgrading of surrounding neighborhoods or land uses.
- C. Location of such uses in relation to residential and other areas where youth may regularly assemble and/or congregate, the general atmosphere around their operation and their downward impact of property values, resulting in disinvestment with concomitant social and economic deterioration, is of great concern to the Town of Babylon.
- D. The special regulations set forth hereinbelow are intended to ameliorate adverse secondary impacts of such uses on adjacent areas and other land uses, to prevent concentration of such uses in any one area and to dissuade accessibility to such uses by minors.

### § 213-377. Definitions and word usage.

[Amended 7-19-2005 by L.L. No. 19-2005; 11-8-2007 by L.L. No. 21-2007; 11-17-2010 by L.L. No. 35-2010; 5-22-2012 by L.L. No. 4-2012]

- A. As used in this article, the following shall be adult uses:

**ADULT BOOKSTORE**

Any establishment which offers for viewing, sale or rental, for any form of consideration or gratuity, adult entertainment, through any mediums, as a substantial or significant portion of its business, merchandise and/or stock-in-trade.

**ADULT DRIVE-IN THEATER**

A drive-in theater that customarily presents adult entertainment in the form of motion pictures, which is not open to the public generally but excludes any minor by reason of age.

**ADULT ENTERTAINMENT CABARET**

A public or private establishment which presents adult entertainment in the form of topless dancers, strippers, exotic dancers or other similar entertainments and which establishment is customarily not open to the public generally but excludes any minor by reason of age.

**ADULT LIVE PERFORMANCES**

Adult entertainment in the form of live performances which are characterized by an emphasis on persons who appear in a state of nudity; and/or which are characterized by an emphasis on persons who expose specified anatomical areas or engage in depiction or description of specified sexual activities; and/or conduct by employees who, as part of their employment, expose to patrons specified anatomical areas.

**ADULT MASSAGE**

Adult entertainment in the form of massage or any other treatment or manipulation of the human body which occurs as a part of, or in connection with, specified sexual activities or where any person providing such massage, treatment or manipulation exposes specified anatomical areas of his or her body.

**ADULT NOVELTY SHOPS**

Any establishment which offers for viewing, sale or rental, for any form of consideration or gratuity, adult entertainment and/or adult paraphernalia as a substantial or significant portion of its business, merchandise and/or stock-in-trade.

**ADULT STORE**

An establishment having, as a substantial or significant portion of its merchandise and/or stock-in-trade of adult entertainment, DVDs, CDs or computer games and videotapes, paraphernalia or novelties or adult materials of any type, objects or materials used for sexual purposes, or objects which bear a practical resemblance to human sex organs.

**ADULT THEATER**

A theater that customarily presents adult entertainment in the form of motion pictures, films, videotapes or slide shows, which is not open to the public generally but excludes any minor by reason of age.

**ADULT VIDEO STORES**

Any establishment which offers for viewing, sale or rental, for any form of consideration, adult entertainment, such as adult photographic reproductions, as a substantial or significant portion of its business, merchandise and/or stock-in-trade.

**OTHER ADULT COMMERCIAL FACILITIES**

Business or commercial enterprises, other than those specifically set forth by definition in this section,

that offer or feature, for any form of consideration or gratuity, adult entertainment, through any medium, as a substantial or significant portion of its business, merchandise and/or stock-in-trade.

**PEEP SHOW**

A theater which presents adult entertainment in the form of live shows, films or videotapes, viewed from an individual enclosure, for which a fee is charged and which is not open to the public generally but excludes any minor by reason of age. However, nothing herein shall permit any enclosure to be more than three sides. One side must be open to the view of other customers.

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

**ADULT ENTERTAINMENT**

Includes the causing, permitting or allowing of:

- (1) Offering printed materials, photographic reproductions or live performances which, applying contemporary community standards, and when taken as a whole, appeal to the prurient interest, are patently offensive and lack serious literary, artistic, political or scientific value and which are characterized by an emphasis on persons who appear in a state of nudity; and/or which are characterized by an emphasis on persons who expose specified anatomical areas or engage in depiction or description of specified sexual activities; and/or
- (2) Conduct by employees who, as part of their employment, expose to patrons specified anatomical areas; and/or by two or more persons who congregate, associate or consort for purposes of specified sexual activities, exposure of specified anatomical areas or activities when one or more of them is in a state of nudity; and/or
- (3) Offering paraphernalia designed, used or marketed primarily for stimulation of human genital organs or sadomasochistic use or abuse; and/or massage or any other treatment or manipulation of the human body which occurs as a part of, or in connection with, specified sexual activities or where any person providing such massage, treatment or manipulation exposes specified anatomical areas of his or her body.

**ADULT PARAPHERNALIA**

Includes instruments, devices, gear, equipment, apparatus, accoutrements or other appurtenances which are designed, used or marketed primarily for stimulation of human genital organs or sadomasochistic use or abuse.

**ADULT PHOTOGRAPHIC REPRODUCTIONS**

Includes slides, films, motion pictures, videotapes, videocassettes, compact discs or similar pictorial presentations characterized by an emphasis on depiction or description of specified sexual activities or specified anatomical areas.

**ADULT PRINTED MATERIALS**

Includes books, magazines, periodicals, photographs or other printed matter which are characterized by an emphasis on depiction or description of specified sexual activities or specified anatomical areas.

**EMPLOYEE**

Any person who works or performs in or for an adult establishment, either on a regular basis or on single or multiple separate occasions, regardless of whether or not said person is paid a salary, wage or other compensation by the operator of said business.

**NUDITY**

The appearance, or state of dress, of a person, viewable by one or more other persons, wherein human genitals, pubic region, buttocks, anus, or female breast below a point immediately above the top of the areola are exposed or less than completely and opaquely concealed.

**PARK/PARKS**

Includes all parks, park reserves, playgrounds, athletic fields, swimming pools, beaches, boardwalks, bowling alleys, skating rinks, theaters, game centers, amusement parks and similar places of amusement, entrances, approaches, facilities and other recreational areas, including structures and buildings owned or used by the Town.

**SPECIFIED ANATOMICAL AREAS**

Includes, with regard to the human body:

- (1) Genitals, pubic region, buttocks, anus, or female breast below a point immediately above the top of the areola less than completely and opaquely concealed; and/or
- (2) Male genitals in a discernibly turgid state, even if completely and opaquely concealed.

**SPECIFIED SEXUAL ACTIVITIES**

Includes, with regard to the human body, actual or simulated depictions or descriptions of:

- (1) Genitals in a state of sexual stimulation or arousal; and/or
- (2) Acts of masturbation, sexual intercourse or sodomy; and/or
- (3) Fondling or other erotic touching of genitals, pubic region, buttocks, anus or female breast.

**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 adult entertainment of any type, generally, or as compared to the total floor area and basement space accessible to customers; and/or
  - (b) Amount of adult entertainment 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 adult entertainment of any type, generally, or as compared to total revenues; and/or
  - (d) Advertising devoted to adult entertainment of any type, generally, or as compared to total advertising; and/or
  - (e) Use of the establishment for adult entertainment of any type, generally, or as compared to total use thereof.
- (2) However, notwithstanding the above considerations, the following shall be conclusive in determining substantial or significant portion:
  - (a) Forty percent or more of floor area and basement space accessible to customers allotted to adult entertainment of any type; and/or
  - (b) Forty percent or more of its stock-in-trade in adult entertainment materials of any type; and/or

- (c) Forty percent or more of its gross income derived from adult entertainment of any type; and/or
- (d) Forty percent or more of its advertising devoted to adult entertainment of any type; and/or
- (e) Forty percent or more of its business, generally, engaged in adult entertainment of any kind.

## § 213-378. Restriction on location of adult uses.

The adult uses as defined in § **213-377** above are to be restricted as to location in the following manner in addition to any other requirements of this Code:

- A. Adult uses shall be allowable only in industrial zoned districts and subject to the regulations set forth in this article.
- B. The lot line of any of the above uses shall not be located within a one-thousand-foot radius of the lot line of any lot zoned for residential use. For purposes of this subsection, cemetery property shall be deemed not zoned residential.
- C. The lot line of any of the above uses shall not be located within a five-hundred-foot radius of the lot line of another such legal adult use.
- D. The lot line of any of the above uses shall not be located within a one-thousand-foot radius of any school, library, church or other place of religious worship, park, playground or playing field.

## § 213-379. Density of adult uses on lot.

No more than one of the adult uses as defined above shall be located on any lot.

## § 213-380. Nonconforming adult uses.

- A. Any adult use legally existing with a certificate of occupancy specifically authorizing the adult use prior to the adoption of this article may apply to the Nonconforming Use Board pursuant to Article **III** of Chapter **213** of the Babylon Town Code for nonconforming status.
- B. Any application for an adult use pending as of April 26, 2005, before the Town of Babylon shall be considered using the criteria set forth herein, except the lot line of the adult use shall not be within a five-hundred-foot radius of the lot line zoned for residential use.

## § 213-381. Severability.

- A. The provisions of this article are severable. The invalidity of any word, section, subsection, clause, phrase, paragraph, sentence, part or provision of this article shall not affect the validity of any other part of this article which can be given effect without such invalid part or parts.
- B. If any portion of this article is found to be in conflict with any other provision of any other local law or



ordinance of the Code of the Town of Babylon, the provision which establishes the higher standard shall prevail.

## Article XXXII. Special Exception Use Permits

[Added 4-8-1988 by L.L. No. 2-1988]

### § 213-382. Legislative findings.

- A. It has come to the attention of the Town Board of the Town of Babylon that there are certain uses of land which, by their very nature, can disrupt the peaceful, quiet enjoyment of nearby land use. The Town Board has deemed it necessary to exercise its authority to minimize and soften the impact of certain uses upon areas where they will be incompatible unless conditioned in a manner suitable to a particular location.
- B. The Town Board has articulated the standards it will duly consider in determining the imposition of conditions it may place upon particular uses of land in order to protect abutting landowners and preserve the character of the neighborhood within the Town of Babylon.
- C. It is the opinion of the Town Board of the Town of Babylon, after carefully considering the facts and information supplied to it, that it would be in the best interest of the residents of the Town of Babylon and for the municipality as a whole to set forth the standards which will be considered for the issuance of special exception use permits.

### § 213-383. General standards for issuance.

- A. The conditional uses or special exception uses in this article possess characteristics of a nature such as to require special review and an application of special standards and conditions before locating in districts where they are not permitted by right, in order to assure an orderly and harmonious arrangement of land uses in the district and in the community. Such uses may be permitted conditionally by the Town Board, as specified, after public hearing. A conditional use shall be authorized by a special use permit, and before such permit is issued, the Town Board shall find that:
  - (1) Such use is reasonable, necessary and will be in harmony with and promote the general interests and welfare of the surrounding community;
  - (2) The neighborhood character and surrounding property values are reasonably safeguarded;
  - (3) The proposed use will not prevent the orderly and reasonable use of adjacent property;
  - (4) The site is particularly suitable for the location of such use in the community;
  - (5) The access facilities are adequate for the estimated traffic from public streets, so as to ensure the public safety and to avoid traffic congestion;
  - (6) There is room for creation of off-street parking and truck-loading spaces at least in the number required by the applicable provisions of this chapter, but in any case, adequate for the actual anticipated number of occupants of the proposed use, whether employees, patrons or visitors, and, further, that the layout of the spaces and related facilities can be made convenient and conducive to

safe operation;

- (7) The proposed use will not pose risks to the public health or safety;
- (8) The characteristics of the proposed use are not such that its proposed location would be unsuitably near to a church, school, theater, senior citizens' residence, recreational area or other place of public assembly;
- (9) Adequate buffer yards and screening can be provided to protect adjacent properties and land uses from possible detrimental impacts of the proposed use;
- (10) Adequate provision can and will be made for the collection and disposal of stormwater runoff, sewage, refuse and other liquid, solid or gaseous waste which the proposed use will generate;
- (11) The natural characteristics of the site are such that the proposed use may be introduced there without undue disturbance or destruction of important natural features, systems or processes and without significant negative impact to groundwater and surface water on and off the site;
- (12) The lot area is sufficient, appropriate and adequate for the use, as well as reasonably anticipated operation expansion thereof;
- (13) The proposed use can and will comply with all provisions of this chapter and of the code which are applicable to it and can meet every other applicable federal, state, county and local law, ordinance, rule or regulation; and
- (14) The proposed use will not result in unacceptable levels of noise, vibration, smoke, dust, odor, fumes or noxious gases, nor negatively impact upon air quality.

B. Before any special exception use permit is issued, the Town Board shall determine that all applicable requirements of this chapter have been met and may impose any additional requirements to assure that the standards stated in Subsection **A** will be met. The Town Board may impose such additional conditions as it deems appropriate to ensure the purposes set forth in Subsection **A**, including but not limited to:

- (1) A limit on hours of operation upon a finding that such a limit is necessary to the conditions set forth in this section.
- (2) A requirement that the applicant post a bond with sufficient surety upon a finding that such a bond is necessary to protect the value of the property, character of the neighborhood and the public health and safety.

## § 213-384. Specific standards and safeguards.

No special exception use permit shall be granted unless the Town Board shall specifically find and determine that, in addition to meeting all the general standards for special exception permit uses included in § **213-383** hereof, that the particular proposed special exception use also can and will meet the specific standards and safeguards set forth in this section. Wherever any of the following uses are permitted in any zone under the provisions of this chapter, they shall be deemed special exception uses subject to the provisions of Article **XXXII**. If any other provision of this chapter requires approval by the Planning Board or the Board of Appeals, such approvals shall be in addition to the special exception use permit to be secured from the Town Board under this article.

A. Industrial uses.

- (1) Industrial uses include, but are not limited to:
  - Acetylene, natural or any type of gas manufacturing or storage
  - Acid manufacture
  - Arsenal
  - Auto shredder
  - Blast furnace
  - Boiler works
  - Cement, lime, typosum or plaster of paris manufacture chemical works and manufacture
  - Coal tar products manufacture
  - Coke ovens
  - Distillation of bones
  - Explosives, manufacture or storage
  - Fat rendering
  - Fertilizer manufacture
  - Fireworks or explosive manufacture or storage
  - Fuel tanks
  - Garbage, offal or dead animal reduction, dumping or incineration
  - Gas manufacture (all types)
  - Glue manufacture
  - Gunpowder manufacture or storage
  - Ink manufacture
  - Paint, oil, shellac, turpentine or varnish manufacture
  - Petroleum products, refining or wholesale storage of petroleum
  - Plastic compounds manufacture
  - Public utility buildings or structures
- (2) No special exception permit for such industrial uses shall be issued unless the Town Board shall find the following:
  - (a) Sufficient water resources are available;
  - (b) There is no negative impact upon air quality;
  - (c) Sufficient public need exists; and
  - (d) The lot area shall be determined to be of sufficient size.
- (3) The Town Board, in the event that such a special exception use permit is granted, may impose any of the requirements set forth in the preceding section and, in addition, require:
  - (a) On-site monitoring of groundwater, air emissions, noise and vibrations.

B. Structures over water. When tidal lands are not shown as zoned on the Zoning Map,<sup>[1]</sup> they shall be considered to lie within the residential use district to which they are contiguous. No structure shall be erected over water or upon tidal lands unless the Town Board shall find that and provision shall be made such that:

- (1) No discharges of pollutants or other activities of any kind deleterious to surrounding wetland and surface water shall be permitted to occur on the site; and

(2) There shall be provision made for the safe collection and disposal of waste.

[1]: *Editor's Note: The Zoning Map is on file in the office of the Town Clerk.*

C. Summer and day camps. Summer and day camps may be established and operated in a residence district, provided that the Planning Board shall find that the following conditions are met and that the proposed use will not adversely affect property values in the neighborhood:

(1) The plot shall comprise at least 10 acres;

(2) Permanent dwelling facilities may be provided solely for use of the caretaker, and these shall conform fully to the requirements of the Building Code<sup>[2]</sup> in respect to habitable dwellings;

[2]: *Editor's Note: See Ch. 89, Building Construction.*

(3) Camp buildings, other than the dwelling for the caretaker, shall comply with the minimum requirements of the Building Code for accessory buildings in residence districts; and

(4) No building shall be located nearer than 100 feet from any front, rear or side lot line.

## § 213-385. Public hearing.

The public hearing required pursuant to this article shall be on 10 days' notice to the public. In the event that a public hearing has been held before the Town Board prior to the effective date of this article, pursuant to §§ **213-212, 213-245, 213-247** and 213-249, such a public hearing shall be deemed sufficient to comply with the public hearing requirement of this article.

## Article XXXIII. Signs

[Added 6-5-1990; amended 9-25-1990; 3-14-1995 by L.L. No. 6-1995; 6-24-1997 by L.L. No. 8-1997]

## § 213-386. Legislative purpose.

The purpose of this article is to preserve, protect, promote and advance the public health, safety and welfare by regulating and establishing standards for the erection of outdoor signs within the Town. The Town Board has concluded that the character, quality and appearance of the Town and quality of life of its residents are directly and substantially affected by the location, height, size, construction and general design of the signs contained therein. Those signs which exist in harmony with the surrounding community serve to simultaneously convey the message depicted thereon while not detracting from the public health, safety and welfare. Conversely, signs if misplaced, disproportionate to the surrounding environment, in excessive proliferation or containing excessive lighting or other displaced fixtures, exist in disharmony to the environment of the Town and constitute egregious examples of ugliness, distraction and deterioration. Such signs degrade the aesthetic quality of the environment; detract from natural and scenic beauty, as well as from the character and order of the developed sections of the Town whether residential, commercial or industrial. Further, such signs can cause diminution in property values and do provide visual distractions and obstructions to passing motorists which can cause or contribute to traffic accidents. Also, improperly placed signs cause physical and visual obstructions to vehicular and pedestrian traffic. Finally, unsafe or improperly constructed signs (or signs which could be confused with or mistaken for traffic signals, railroad crossings, aviation landing fixtures, governmental signs or aviation signs) can provide serious

hazards to the health, safety and welfare of persons and property.

## § 213-387. Definitions.

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

### **ABANDONED SIGNS**

Any sign which is located on property which becomes vacant and unoccupied for a period of three months or more; any sign which pertains to an event or purpose which no longer applies or exists; or a sign which no longer advertises a business, product or activity conducted or available on the premises where such sign is located.

### **AVIATION SIGN**

Directional signs used for aviation purposes or otherwise affixed to the flat roofs of buildings or structures.

### **CHANGEABLE COPY SIGN**

Any sign designed to display copy which will be changed or altered more frequently than once per twelve-month period.

### **COPY**

Letters, numbers, symbols, designs or other pictorial matter located on any sign or governmental sign.

### **DIRECTLY ILLUMINATED SIGN**

A sign which gives forth artificial light directly or through a transparent or translucent material from a source of light connected to the sign or part of the sign structure. The light from such sign may not illuminate a residentially zoned or used parcel.

### **DIRECTORY SIGN**

Any sign identifying two or more persons, agencies or establishments located in a location or place common to all.

### **DISPLAY WINDOW**

Any glass or other transparent or translucent material comprising a panel, window or door of a building.

### **ELECTRICAL SIGN**

Any sign containing any electrical device, fixture or accessory.

### **ENTRANCE SIGN**

Any sign affixed to or incorporated into the exterior face of any wall having an entrance facing a public thoroughfare or the subject parcel's parking area.

### **GOVERNMENTAL SIGN**

Any sign erected and maintained by or at the direction of any governmental body, organization, agency or corporation.

### **GROUND SIGN**

Any sign erected on or attached to a freestanding frame, mast, pole or structure. Any sign partially attached to a building and partially attached to a freestanding frame, mast, pole or structure shall be considered a ground sign.

**IDENTIFICATION SIGN**

A sign which identifies a business, industry, service or attraction conducted upon the lot on which the sign is displayed or which attracts attention to a commodity sold or displayed upon the lot or premises.

**ILLUMINATED SIGN**

Any sign which is lighted from within or without.

**INDIRECTLY ILLUMINATED SIGN**

A sign illuminated by a source of light which is detached from the sign structure and which is shielded so that illumination is directed upon the sign and the source of light is not visible from an adjoining property or street and may not illuminate a residentially zoned or used parcel.

**MANSARD ROOF**

A sloping roof where the angle of the roof is no more than 30° from perpendicular.

**MARQUEE SIGN**

A canopy extending more than one foot from a building, with lettering thereon.

**MONUMENT SIGN**

A freestanding identification sign erected upon a masonry base and not supported by columns, girders or other structural elements. A monument sign shall be constructed of material similar in nature or complementary to the building which it identifies and may contain letters, numbers, trademarks and logos.

**MOVEABLE COPY**

Copy that is electronically produced and moves across the face of the sign.

**PORTABLE SIGN**

Any sign not permanently attached to the ground, a building or a vehicle.

**ROOFLINE**

The top edge of the roof or the top of the parapet, whichever forms the top line of the building silhouette.

**ROOF SIGN**

Any sign erected upon, against or directly above a roof or on top of or above the parapet of a building.

**SIGN**

Any identification, description, illustration, symbol, structure, material, statue or device, illuminated or nonilluminated, which is visible from any public place designed or employed to advertise, identify or convey information, but not including governmental signs.

**SIGN FACE**

The entire area of a sign or a governmental sign on which copy is or could be placed.

**SIGN STRUCTURE**

Any structure which supports, has supported or is designed to support a sign. A decorative cover is part of a sign structure.

**STREAMER**

Any piece of cloth, plastic or other flexible material more than 10 feet in length when unfurled and placed on the ground and attached at one or both ends to a mast, pole, building or structure. A streamer must be solid in color, contain no copy and, when unfurled and placed flat on the ground, must have a width of no more than 12 inches. A streamer must be made of weatherproof material, and securely fastened to a mast,

pole, building or structure. A streamer shall be considered a sign. A streamer is permitted only as a temporary sign.

#### **UTILITY SIGN**

The standard signs erected and maintained by or at the direction of a public utility. Such signs are limited in size to 12 inches by 12 inches and shall be placed in an area designed to inform the public of the location or the presence of utility facilities available to or for the service of the general public. Such signs may only be illuminated by illumination not exceeding 40 watts of power. A utility sign may be created or maintained only in a business or industrial district and is not subject to the restrictions found in § 213-398, 213-400 or 213-401.

#### **VEHICULAR SIGN**

Any letter, groups of letters, words or other devices or representations which form or are used as or are in the nature of an announcement, advertisement or other attention-directing device, placed, painted, affixed, annexed or attached upon a motor vehicle, trailer or other vehicle commonly used for transportation, travel or delivery, whether or not such motor vehicle, vehicle or trailer is operable or registered. Excluded herefrom are motor vehicles, vehicles or trailers lawfully registered and insured, regularly used in the business conducted on the premises and not having attached thereto temporary or removable signs.

#### **WALL SIGN**

Any sign, other than an entrance sign, affixed to or incorporated into the exterior face of any wall of any building and which does not extend more than 12 inches beyond such wall at any point of measurement.

#### **WINDOW SIGN**

Any sign that is affixed to or painted on the interior of a window or any sign located within one foot of the inside face of the window, which sign is designed to be visible from the exterior of the window.

### **§ 213-388. Construction and maintenance.**

- A. All signs shall be securely built subject to the approval of a Building Inspector as to the structural safety thereof by recognized engineering standards. All wood portions of signs and sign structures must be painted or treated to prevent decay.
- B. Every sign shall be maintained in good structural condition at all times. All signs shall be kept clean and neatly painted, including all supports and appurtenances. The Building Inspector or his duly authorized representative shall have the authority to order the painting, repair, alteration or removal of a sign which constitutes a hazard to the public health, safety or general welfare by reason of inadequate maintenance, dilapidation or obsolescence.
- C. All electrical signs shall conform and be maintained in accordance with the specification standards of the National Board of Fire Underwriters.

### **§ 213-389. Hazardous signs.**

- A. No sign which is found to be hazardous or dangerous to the public safety by a Building Inspector shall be constructed, erected or maintained. Evidence of such hazard or danger shall include, but is not limited to, signs swinging as a result of wind pressure, hazards to vehicular traffic or pedestrians and signs obstructing any part of a window, doorway, ventilation system, fire exit or any means of ingress or egress.

- B. No sign shall be constructed, erected or maintained which shall use breakable glass or breakable plastic in its construction, except as such is used in illumination.
- C. No sign or any lighting source or reflector connected thereto or used therewith shall be constructed, erected or maintained which shall conflict with or be mistaken for a vehicular or pedestrian traffic signal, railroad crossing, aviation landing fixture, hydrant, governmental sign or aviation sign. No sign (except a utility sign) shall be constructed, erected or maintained which shall conflict with or be mistaken for a utility sign.

## § 213-390. Prohibited locations.

- A. No sign shall be erected, placed or maintained within the right-of-way lines of any public street, sidewalk or public right-of-way. Any sign violating this subsection may be removed by the Building Inspector or any other Town employee or agent duly designated by the Supervisor without prior notice to the owner. Such removal shall include the sign structure. However, nothing herein contained shall be construed as prohibiting any person from erecting and maintaining adjustable awnings, which do not contain any copy, made of cloth, with metal or tube frames and are at least eight feet above the sidewalk.
- B. No sign shall be constructed, erected or maintained on the roof of any building (unless such meets the criteria for aviation signs), on any telephone pole, telegraph pole, electrical pole, lighting pole, traffic device, hydrant, tree, stone or other natural object, balloon, governmental sign, governmental sign structure or the face of any other sign. There shall be a presumption in any proceeding to enforce this article that the business, corporation, establishment, entity, person or facility whose name, address, phone number or any other identifying marking, printing, writing, logo, insignia, or the like, of said business, corporation, establishment, entity, person or facility that appears on said sign is responsible for the violation of this article.  
[Amended 5-10-2005 by L.L. No. 7-2005; 5-24-2005 by L.L. No. 10-2005]
- C. No placard, post or display of show bills, handbills, posters, banners or any printed or written notice or notices or advertisements of any kind whatsoever shall be attached to any tree, pump, hydrant, telegraph, telephone light pole, lighting pole or stone in the Town of Babylon. This prohibition shall apply to any of the foregoing located on any property or facility owned, held or operated by the Town, except for any notice or warning sign placed upon any such pole by a public utility. Any person, including private citizens, may remove and cart away any show bills, handbills, banners, posters or any printed or written notices or advertisements that have been placarded, posted and/or displayed in violation of this § **213-390C**.
- D. No sign shall be constructed, erected or maintained which faces a public waterway.
- E. No sign shall be constructed, erected or maintained which is within 500 feet of a public park, public parking area or public recreational facility when such sign faces such public park, public parking area or recreational facility, unless a public roadway should lie between the public park, recreational facility or public parking area and the property on which the sign is located.
- F. No sign shall cover or obstruct any window, doorway, ventilation system, fire exit or any other means of ingress or egress to any building or structure or any portion thereof with the exception of window signs permitted in § **213-401**.
- G. No sign shall be located on a motor vehicle, trailer or other vehicle such that it is considered to be a vehicular sign. It is the purpose and intent of this subsection to prevent an attempt to circumvent the freestanding sign section of this chapter by utilization of vehicles as a substitute for a permitted



freestanding sign.

- H. No sign shall cover, obstruct or hide from view any governmental sign, utility sign, traffic signal or device, aviation sign, railroad crossing device, aviation landing fixture or hydrant.
- I. No sign shall be constructed, erected or maintained which shall be located less than six feet from any overhead electrical, telephone or cable television wires, wiring, facilities or service, except any electrical wires, wiring, facilities or service supplying energy or power to that sign.

## **§ 213-391. Abandoned signs.**

Abandoned signs are prohibited and the permit for any abandoned sign shall be deemed to have expired at the time of abandonment.

## **§ 213-392. Portable signs.**

Portable signs standing on the ground or attached to vehicles or trailers shall be prohibited. A vehicle or trailer may not be used primarily as a sign or structural support for a sign.

## **§ 213-393. Off-premises advertising.**

No sign shall advertise, announce, refer to or call attention to any business, commercial product or commercial service not performed on or connected with the property or building on which the sign is located.

## **§ 213-394. Obscene signs.**

- A. No sign shall be erected, constructed or maintained which is, in whole or in part, obscene or pornographic in character.
- B. If the copy on any sign is changed to copy which would violate Subsection **A** of this section, the permit for such sign shall be deemed to have expired at the time of such change.
- C. Any person who seeks to erect, construct or maintain such a sign may seek review at a public hearing before the Town Board.

## **§ 213-395. Prohibited designs.**

- A. No sign, with the exception of theater marquee signs, shall be designed, constructed or maintained on which artificial or reflected light is not maintained stationary and constant in intensity and color at all times, except for that part of a sign which displays the time and/or temperature exclusively. No sign shall be designed, constructed or maintained which shall use or employ any visual projection. No sign shall be designed, constructed or maintained which contains any illumination other than direct or indirect illumination.

- B. No sign shall be designed, constructed or maintained which shall move, oscillate or rotate.
- C. No sign shall be designed, constructed or maintained which shall produce any noise, sound, odor, smoke, flame or any other emission.
- D. No sign shall be designed, constructed or maintained which shall be suspended by any rope, chain or other device that will allow the sign to swing or move due to wind action.
- E. No sign shall be designed, constructed or maintained which shall employ a mirror or other reflective device.
- F. Except as otherwise provided in this article, illumination shall not use more than 40 watts per square foot of sign area being illuminated or as specified in the New York State Energy Conservation Construction Code, whichever is more restrictive. Where illumination is permitted, such illumination may only be operated between the hours of sunset and 10:00 p.m. or close of business.
- G. Except as otherwise provided in this article, no sign shall be designed, constructed or maintained which shall use or include any pinwheel, balloon or streamer.
- H. No sign shall be designed, constructed or maintained in which illumination or reflective devices outline a building, structure or part thereof.

## § 213-396. Measurement.

- A. Excluding structural supports from the ground to the bottom edge of the sign, the area of the sign shall be the area of a rectangle, the sides of which completely enclose the face of the sign. A sign may be double-faced, and only one face shall be included in the area measurement; however, if a sign is thicker than 18 inches, all sides shall be included in the area measurement.
- B. Setback measurement is to be measured from the closest point of the sign structure or the sign itself.
- C. The height of a ground sign shall be measured vertically from grade to the top of the sign or its structural support, whichever is greater.
- D. The width of a building wall shall be the distance between the two perpendicular walls establishing that wall.

## § 213-397. Signs in residential districts.

No sign shall be erected, placed or maintained in any residential district except:

- A. Aviation signs.
- B. Not more than one professional nameplate, affixed to a building and indicating the office of a physician, attorney, dentist or other practitioner lawfully using the premises in whole or in part as professional office space; the maximum size of which shall be two square feet. In the alternative, a professional nameplate may be affixed to the ground; in which event, the maximum size thereof shall be one foot by two feet; it shall be erected at a height of not more than four feet from the ground, and it shall be placed at least 10 feet from the nearest property lines. Such sign may be illuminated only by indirect illumination by an electric lamp not exceeding 15 watts of power contained on the sign or sign structure. Any illuminated professional nameplate shall be equipped with shielding devices so that the flow emanating therefrom shall be directed only on and towards such premises.

- C. Not more than one sign in connection with the sale, rental, construction or improvement of the land or premises upon which it is located. The maximum dimensions thereof shall be an area of four square feet and five feet in height to the top of the sign structure. Such signs may only be illuminated by indirect illumination not exceeding 40 watts of power. If affixed to the ground, such signs must be placed at least 10 feet from the nearest property line. Any such illuminated sign shall be equipped with shielding devices so that the flow emanating therefrom shall be directed only on and towards such premises.
- D. House numbers and nameplates not exceeding two square feet in area for each residential building. No more than two house numbers or nameplates shall be allowed for each residential building. Such house number or nameplate may be illuminated only by indirect illumination not exceeding 15 watts of power. If affixed to the ground, such house numbers or nameplates must be placed at least 10 feet from the nearest property line and may be limited to a maximum size of one foot by two feet and a maximum height of four feet from the ground. Any illuminated house number or nameplate shall be equipped with shielding devices so that the flow emanating therefrom shall be directed only on and towards such premises.
- E. A sign containing a cautionary message, such as "Beware Of Dog," "No Trespassing" or "No Peddlers." Such signs are limited in size to 12 inches in length by 12 inches in width. Such signs may only be attached to a building or fence and may be illuminated only by indirect illumination not exceeding 15 watts of power. No more than four such signs may be erected or maintained on any parcel.

## § 213-398. Permit required for signs in business and industrial districts; application; renewal.

- A. Permit required. It shall hereafter be unlawful, except as otherwise provided in this article, for any person to erect, construct, alter, relocate, reconstruct, display, or maintain in any business, manufacturing or industrial district any sign without first having obtained a written permit from a Building Inspector, in compliance with the provisions of this article and the Town Code. All signs shall be subject to the approval of a Building Inspector as to the structural safety thereof in conformity with recognized engineering standards.
- B. Application for permit. Any person who wishes to procure a permit as above required shall file with the Building Inspector a written application accompanied by a scale drawing showing the structural members, the lettering, the pictorial matter or other copy located on the sign face, a location plan showing the position of the sign on the building, structure or plot of land, the material comprising the sign and sign structure, the method of attachment and such other information as a Building Inspector may require to show compliance with the provisions of this article and the Town Code. If the sign is an electrical sign, the applicant must also furnish and indicate the specifications of all electrical wiring and components. The applicant shall also present a written statement showing the name of the owner or of the person in control of the building, structure and plot of land where such sign is to be located and the right or authority of the applicant to obtain a permit.
- C. Fees. Except as otherwise provided, no sign permit shall be issued until the applicable fee, established by the Town Board from time to time, is paid.
- D. Renewal. Every sign permit shall be renewed every two years upon the payment of the renewal fee, and each application for a renewal permit shall be accompanied by a certificate certifying that the sign has been inspected by a Building Inspector and found to be properly hung in a secure and safe position, maintained in good and safe condition, and further certifying that the sign complies with the provisions of this article.
- E. An application to erect a sign on any wall shall be classified as either an entrance sign or wall sign.

- F. An application to erect a sign designed to display changeable copy must be so designated. The initial copy on any changeable copy sign shall be included on the permit application.
- G. An application to erect a theater marquee sign must indicate if the copy is changeable or changeable and moving and must indicate the number of theaters.
- H. The application for a permit for erection of a sign in which electrical wiring and connections are to be used, if it shall comply in all other respects, shall be granted, subject to the applicant furnishing the Building Inspector, within 15 days after the completion of the construction and/or the erection of the illuminated sign, a Board of Underwriters' temporary certificate showing that the sign has been properly installed, insofar as it applies to all wiring connections and other electrical requirements. In the event that said Underwriters' certificate is not filed with the Building Inspector within 15 days after the completion and erection of said sign, the permit therefor shall be deemed null and void. The permanent Underwriters' certificate shall be filed within 60 days from the date of permit, and if not so filed in the office of the Building Inspector, the permit shall be deemed null and void.

## § 213-399. Permit exceptions.

The following operations shall not be considered as creating a sign insofar as requiring the issuance of a sign permit, provided that the sign is in conformance with all other provisions of this article:

- A. Changing of the copy alone on an existing approved sign, provided that the copy has not been changed within one year prior thereto; changing of the copy on a changeable copy sign in conformance with the provisions of § 213-407.
- B. Painting, repainting, cleaning or other normal maintenance and repair of a sign not involving structural alterations or additions.

## § 213-400. Restrictions on signs in business and industrial districts.

Signs shall be permitted in business and industrial districts and are subject to the following additional restrictions and specifications:

- A. There shall be no more than one wall sign or entrance sign per wall. However, in the case of a building which has been divided into separate units, one entrance sign shall be allowed per unit. In addition, there may be erected or maintained a sign containing a cautionary message, such as "Beware of Dog," "No Trespassing" or "No Peddlers." Such signs are limited in size to 12 inches in length by 12 inches in width. Such signs may only be attached to a building or fence and may be illuminated only by indirect illumination not exceeding 15 watts of power. No more than four such signs may be erected or maintained on any parcel.
- B. No sign shall project more than one foot from the wall or lowest point of contact between the sign structure and the building structure.
- C. No wall sign shall be wider than the building or structure to which the sign is affixed or incorporated into.
- D. No wall sign shall exceed 50 feet in length or six feet in height.

- E. No sign shall be painted, colored, etched or carved directly upon any wall without Planning Board approval.
- F. A wall or entrance sign may be erected upon a permanent structural canopy or mansard roof, but may not extend above the standing parapet or roofline.
- G. If a sign is immediately adjacent to a roadway, sidewalk, driveway or right-of-way on the subject parcel's parking area, it shall be not less than eight feet from grade.
- H. If a number designating the address of the property is not included on any sign located at the property, a number designating the address of the property may be included as a separate wall, entrance or window sign. Such a sign shall be limited to four square feet in area. One such sign is permitted for each actual address.
- I. No entrance sign shall exceed 80% of the width of the wall to which the sign is affixed, attached or incorporated into. No wall or window sign shall exceed 50% of the width on the wall to which the sign is affixed, attached or incorporated into.
- J. No entrance sign shall exceed in area two square feet per each horizontal foot of the wall to which the sign is affixed, attached or incorporated into. No wall or window sign shall exceed in area one square foot per each horizontal foot of the wall to which the sign is affixed, attached or incorporated into.
- K. Illuminated signs, directly or indirectly illuminated, shall be illuminated from sunrise to 10:00 p.m., except those signs which identify establishments operating before sunrise and/or after 10:00 p.m. In those exceptions the sign may be illuminated during the hours of operation of the business. At no time may an illuminated sign illuminate a residentially zoned or used parcel.

## § 213-400.1. Standardization of signs on sites used for retail purposes.

- A. All signs on sites used for retail purposes with construction commencing after July 31, 1997, shall be required to be standardized with respect to a uniform size, color, material and lettering for the entire site; such signs shall include ground signs, wall signs, entrance signs and directory signs.
- B. An application for conversion of an existing structure to a retail use or improvements to an existing retail site that involve alterations to the part of the building(s) on which existing wall signs and/or entrance signs are affixed shall include all signs on site or a standardization format for the same to be approved by the Planning Board.
- C. An application for a new bar/restaurant or expansion of an existing bar/restaurant, where said business is the sole business on site, shall include all signs to be used on site or a standardization format for the same, to be approved by the Town Board.
- D. Sign applications for existing retail stores shall also require an application to the Planning Board for approval of sign standardization for the site, e.g., the establishment of a standard for size, color, material and lettering for the entire site. The application fee for the Planning Board shall be established by Town Board resolution. Subsequent sign permits issued for an establishment on the site must conform to the Planning Board's approved standards.

## § 213-401. Window signs.

Window signs shall be permitted in business or industrial districts subject to the following additional restrictions:

- A. There shall be no more than one window sign per wall, except in the case of a building which has been divided into separate units, in which case one window sign per unit shall be allowed.
- B. No window sign shall exceed 25 feet in length or six feet in height.
- C. No window sign shall be painted, colored, etched or carved directly upon any display window.
- D. No window sign shall be erected, constructed or maintained which shall obstruct more than 50% of the total glass area of the building on which it is affixed 50% of any door.

## § 213-402. Ground signs and monument signs.

Ground signs and monument signs shall be permitted in business and industrial districts and are subject to the following additional limitations and specifications:

- A. Such signs shall only be permitted on a plot of ground on which a business or industry is conducted.
  - (1) When the primary use of the parcel is for the purposes of retail sales, there shall only be permitted one ground sign or monument sign on the parcel.
  - (2) When the primary use of the parcel is industrial use, there shall be permitted one ground sign or monument sign on each street frontage of the parcel.
- B. No such ground sign shall exceed 15 feet in height from grade to the top of the sign structure, nor exceed 32 square feet in area; no such monument sign shall be greater than six feet in height above grade, nor more than 60 square feet in area. No monument sign shall be located within 10 feet of a street line.
- C. There are no minimum height requirements for ground signs. However, should the ground sign be located within a radius of 30 feet of the corner formed by an intersecting road or highway, the ground sign shall not exceed 2 1/2 feet in height from elevation of the crown of adjoining roadway or, alternatively, be less than eight feet in height from grade to assure an unobstructed view to pedestrians and motorists.
- D. No such sign shall be erected nearer than 10 feet to any property line.
- E. When located in a nonlandscaped area, all signs shall be protected from vehicular damage by an approved curb and by a suitably shrubbed planting area, acceptable to a Building Inspector, that shall be equal in area to 1 1/2 times the area of the sign face. The sign or any part of the sign may not be located within two feet of the approved curb. All ground signs erected on sites developed after the date of adoption of this article must be located in a landscaped area and approved by the Planning Board at the time of site plan approval.
- F. All ground sign structures shall be self-supporting structures erected on and permanently attached to concrete foundations. Foundations shall be designed to carry weight and wind load of the sign in soil in which it is placed. Such structures or poles shall be fabricated only from painted or galvanized steel or such other materials as may provide equal strength.

## § 213-403. Directory signs.

- A. Each parcel shall, as a whole, be allowed one freestanding directory sign on the premises (in lieu of a

permitted freestanding or ground sign). The maximum square footage and height of the directory sign shall be determined by the following table:

<b>Category</b>	<b>Maximum Number of Tenants</b>	<b>Maximum Square Footage</b>	<b>Height (feet)</b>
A	2 to 5	32	15
B	6 to 10	50	15
C	11 to 20	75	18
D	21 or more	100	20

- B. There are no minimum height requirements for directory signs. However, should the directory sign be located within a radius of 30 feet of the corner formed by an intersecting road or highway, the directory sign shall not exceed 2 1/2 feet in height from elevation of the crown of the adjoining roadway or, alternatively, be less than eight feet in height from grade to assure an unobstructed view to pedestrians and motorists.
- C. Directory signs shall only be permitted on a plot of ground on which the business or industry is conducted and only as an accessory thereto.
- D. No directory sign may be erected nearer than 10 feet to any property line.
- E. When located in a nonlandscaped area, all signs shall be protected from vehicular damage by an approved curb and suitable shrubbed planting area, acceptable to the Commissioner of Planning and Development, that shall be equal in area to 1 1/2 times the area of the sign. The sign or any part of the sign may not be located within two feet of the approved curb.
- F. All directory signs for sites developed after the date of the adoption of this article must be located in a landscaped area and approved by the Planning Board at the time of site plan approval. All directory sign structures shall be self-supporting structures erected on and permanently attached to concrete foundations. Foundations shall be designed to carry weight and wind load of the sign in soil which it is placed. Such structures or poles shall be fabricated only from painted or galvanized steel or such other materials as may provide equal strength.

## § 213-404. Price signs in gasoline filling stations.

Signs in gasoline and/or petroleum filling stations and/or garages respecting the selling price of gasoline, car parts and car accessories shall be permitted subject to the following additional restrictions and specifications:

- A. Signs for the advertisement of the selling price of gasoline, car parts and car accessories used by gasoline filling stations, garages and battery and tire service stations shall be limited to:
  - (1) One price sign not to exceed three feet by four feet or 12 square feet, with changeable uniform letters, together with the grade, if any, of the gasoline. The price sign shall be mounted on the logo-pylon at least eight feet from grade but no more than 15 feet above grade or mounted on the building at least eight feet from grade, but no more than 15 feet above grade or above the building roofline. Such sign shall conform with all other requirements of this chapter.
  - (2) A sign or placard on any pump or dispensing device not less than seven inches in height and eight inches in width, nor larger than 12 inches in width, and stating clearly and legibly in numbers of uniform size the selling price or prices per gallon of such gasoline so sold or offered for sale from that pump or other dispensing device, together with the grade, if any, of the gasoline.

- B. No other sign or placard stating or referring to the price or prices of gasoline shall be placed or maintained on any part of the premises upon which gasoline is sold or offered for sale or upon which any gasoline filling station, garage and battery and tire service station business is conducted.

## § 213-405. Directional signs.

Signs exclusively directing traffic or parking on premises open to the public and not constituting governmental signs shall be permitted in business or industrial districts, subject to the approval of the Commissioner of Planning and Development as to the number and location adequate to provide for a safe and controlled flow of traffic and parking on the premises. Such signs shall not exceed four square feet in area and not exceed 2 1/2 feet in height to the top of the sign structure. Such signs may be double-faced but may not exceed eight inches in depth. Indirect illumination is the only permissible method for illumination of directional signs. Directional signs shall not be subject to the restrictions of § 213-404A, nor shall such signs be counted as ground signs for the purpose of that subsection.

## § 213-406. Theater marquee.

A sign upon the marquee of a theater shall be subject to the requirements of § 213-400C, F, G, I, J and K. Moveable copy shall be permitted on a theater marquee sign. However, when a theater marquee sign is visible from a residentially zoned or used parcel, then moveable copy shall not be permitted.

## § 213-407. Changeable-copy signs.

Changeable-copy signs shall be permitted in business in industrial districts and are subject to the following additional limitations and specifications:

- A. Changeable-copy signs may only be erected as wall, entrance or window signs.
- B. The copy on any changeable-copy sign may not be changed more frequently than once every 30 days. Should the copy or any changeable-copy sign be changed two or more times within a thirty-day period, the permit for such sign shall be deemed to have expired at the time of the second change of copy.
- C. No changeable-copy sign shall exceed 20 feet in length or six feet in height or be located more than 15 feet above ground.
- D. Such signs shall be made of durable material capable of withstanding the wind, rain, snow and other weather conditions and firmly fastened to the building to which it is attached. If a changeable-copy sign is erected as a wall or entrance sign, such sign may not be made of cardboard or any other paper product.
- E. No such sign shall be erected, constructed or maintained where the copy of such sign shall be changed by placing or adhering any new copy over preexisting copy.

## § 213-408. Bonus sign area criteria.

To encourage harmony in design and aesthetics, the maximum sign areas for certain entrance, wall, freestanding



or ground and directory signs, as set forth in this article, may be increased by the percentages as provided for herein. A separate bonus is granted for compliance with each of the criteria and the area is cumulative, but the percentage increase is based on the original sign area limitation:

- A. Entrance or wall signs may be increased as follows:
  - (1) Twenty percent when all the lettering and background is uniform in style and color for signs in a shopping center or for any three consecutive separate establishments.
  - (2) Ten percent if the wall sign is the only sign identifying the establishment.
  - (3) Five percent if the sign is designed to contain only the name or logo of the establishment without advertisement of any products sold on the premises.
- B. Freestanding or ground signs may be increased as follows:
  - (1) Twenty percent when the sign is installed in an approved curb and suitably shrubbed planting area that shall be equal in area to three times the area of the sign and the sign is approved by the Planning Board. The landscaped area must be in addition to any landscaped area required for the specific zone.
  - (2) Ten percent if the ground sign is the only sign identifying the establishment.
  - (3) Five percent if the sign is designed to contain only the name or logo of the establishment without advertisement of any products sold on the premises.
- C. Directory signs may be increased as follows:
  - (1) Twenty percent when the sign is installed in an approved curb and suitably shrubbed planting area that shall be equal in area to three times the area of the sign and the sign is approved by the Planning Board. The landscaped area must be in addition to any landscaped area required for the specific zone.
  - (2) Ten percent when the sign utilizes uniform coloring and lettering for all establishments listed on the directory sign.
  - (3) Ten percent if the directory sign is the only sign identifying the establishment.
- D. This section does not apply to changeable-copy signs, temporary signs or signs in residential districts.

## § 213-409. Temporary signs.

Temporary signs shall be allowed in all districts in addition to any other signs permitted by this article, subject to the following additional restrictions and specifications:

- A. Permit required. It shall hereafter be unlawful, except as otherwise provided herein, for any person to erect, construct, alter, relocate, reconstruct, display or maintain in any business, manufacturing or industrial district any temporary sign, including streamers, banners, vinyl banners, poster, placard, corrugated plastic signs and any similar banners or signs not of a permanent nature, without first having obtained a written permit from a Building Inspector, in compliance with the provisions of this article. All signs shall be subject to the approval of a Building Inspector as to the structural safety thereof in conformity with recognized engineering standards.  
[Amended 5-10-2005 by L.L. No. 7-2005]
- B. Application for permit. Any person who wishes to procure a permit as above required shall file with a

Building Inspector a written application indicating the structural members, the lettering, the pictorial matter or other copy located on the sign face, the position of the sign on the building, the material comprising the sign and sign structure, the method of attachment and such other information as a Building Inspector may require to show compliance with the provisions of this article. The applicant shall also present a written statement showing the name of the owner or of the person in control of the building, structure and plot of land where such sign is to be located and the right or authority of the applicant to obtain a permit.

- C. Fees. Except as otherwise provided, no sign permit shall be issued until the applicable fee established by the Town Board from time to time is paid.
- D. No such sign shall be illuminated.
- E. Any permit granted for such sign shall expire 30 days after issuance and may not be renewed.
- F. Not more than two such sign permits shall be issued respecting any parcel of property within any twelve-month period.
- G. Not more than four such signs, exclusive of streamers, shall be erected or maintained on any parcel in a commercial or industrial district, and no more than one such sign exclusive of streamers, shall be erected in any residential district.
- H. No such sign, exclusive of streamers, shall be larger than 24 feet in area or 15 feet in height in any business or industrial district or four square feet in area and five feet in height when placed in any residential district.
- I. When located in residential districts, such signs shall only be maintained as wall, entrance or window signs.
- J. No streamer shall be erected or maintained which is less than eight feet above grade or more than 15 feet above grade.

## § 213-410. Revocation of sign permit.

A sign permit may be revoked by a Building Inspector for any of the following reasons:

- A. The sign violates § 213-389.
- B. The sign is altered in a manner which would require a new sign permit.
- C. The sign is altered in a manner which would render the sign prohibited under the terms of this article.

## § 213-411. Display of permit sticker.

All signs for which permits are required by the terms hereof shall also be issued a sticker bearing the permit number and expiration date. Said sticker should be prominently and permanently affixed on the exterior face of the front door and all expired stickers must be removed. Failure to so affix the permit number shall constitute grounds for revocation of the permit by the Building Inspector, in addition to any other penalties or remedies prescribed by law.

## § 213-412. Alteration of signs.

No existing sign shall be structurally altered, rebuilt, enlarged, extended, relocated or modified except in conformity with the provisions of this article.

## § 213-413. Nonconforming signs.

All existing signs and devices which do not conform to this article shall be removed on or before December 31, 1997. Thereafter, the permit for each such sign shall be deemed to have expired.

## § 213-414. Special exceptions.

Except as provided in this article, no sign shall be erected or placed upon any premises in any use district except as approved by the Board of Appeals as a special exception, in accordance with the standards and conditions provided in Article II of this chapter.

## § 213-415. Noncommercial copy.

Any sign authorized by this chapter is permitted to contain noncommercial copy in lieu of any other copy.

## § 213-416. Severability; conflicts with other provisions.

- A. The provisions of this article are severable. The invalidity of any word, section, subsection, clause, phrase, paragraph, sentence, part or provision of this article shall not affect the validity of any other part of this article which can be given effect without such invalid part or parts.
- B. If any portion of this article is found to be in conflict with any other provision of any other local law or ordinance of the Code of the Town of Babylon, the provision which establishes the higher standard shall prevail.

# Article XXXIV. Commercial Overlay District

[Added 8-11-2000 by L.L. No. 19-2000]

[1]: *Editor's Note: Former Article XXXIV, Asbestos Monitoring, adopted 3-8-1994 by L.L. No. 1-1994, was repealed 7-20-1999 by L.L. No. 7-1999. See now §§ 89-77 and 89-78.*

## § 213-417. Commercial Overlay District.

[Amended 6-21-2005 by L.L. No. 13-2005]

There is hereby established a Commercial Overlay District, superimposed on parcels as set forth on a particular map entitled "Town of Babylon Commercial Overlay District," dated April 14, 2005, and on file in the office of the Town Clerk, and which map is incorporated herein and made a part hereof.

## § 213-418. Permitted uses.

In the Commercial Overlay District, buildings and premises may be used for any use otherwise permitted and such uses which are permitted in the M-H Planned Motel-Hotel District. Except as otherwise set forth in this article, the provisions of Article **XIII** of this chapter shall apply to motels and hotels.

### § 213-418.1. Height of office buildings, motels and hotels.

Notwithstanding anything contained in this chapter to the contrary, in the Commercial Overlay District, the maximum height of any building shall be four stories or 45 feet if more than 500 feet from residentially zoned property on the west side of State Route 110 and south of Price Parkway, when used as an office building, motel or hotel; four stories or 55 feet on the east side of State Route 110 and south of Sherwood Road, when used as an office building; and five stories or 55 feet on the east side of State Route 110 and south of Sherwood Road, when used as a motel or hotel. For the purpose of this section, cemeteries shall not be considered residentially zoned properties.

### § 213-418.2. Related service uses, motels and hotels.

In the Commercial Overlay District, the following related services may be permitted in conjunction with a motel or hotel use and when contained in the primary structure, and only when a special exception permit for such use is granted by the Planning Board:

- A. Such related uses set forth in § **213-147A** through **I**, inclusive, of this chapter; and
- B. Swimming pools; and
- C. Conference centers.

### § 213-418.3. Lot area.

In the Commercial Overlay District, no building used for a motel or hotel shall be erected on a lot having an area less than 10 acres.

### § 213-418.4. Front yards for office buildings.

In the Commercial Overlay District, the front yard setback for a four-story office building having a height of more than 35 feet and 45 feet or less shall be 60 feet, and the front yard setback for a four-story office building having a height greater than 45 feet and 55 feet or less shall be 70 feet.

### § 213-418.5. Republic Airport Runway Protection Zone.

All development in the Commercial Overlay District shall be consistent with the Republic Airport Runway Protection Zone (RPZ) requirements as established by the Federal Aviation Administration.

## § 213-418.6. Private van and mini-bus shuttle service.

All motels and hotels constructed and operating pursuant to this article shall provide private van and/or mini-bus shuttle service to guests for transportation to MacArthur Airport, Kennedy Airport, LaGuardia Airport and Republic Airport and to the nearest Long Island Railroad station.

## § 213-418.7. Off-street parking areas.

In the Commercial Overlay District, off-street parking requirements shall be in conformity with those requirements set forth in Article **XXIII** of this chapter, except that, notwithstanding anything contained in § **213-150** of this chapter to the contrary, the following shall apply to motels and hotels:

- A. There shall be 1.25 parking stalls for each lodging unit.
- B. There shall be one parking stall for each employee.
- C. There shall be one parking stall for each 75 square feet of floor area of each conference room.

## § 213-418.8. Accessory buildings and accessory structures.

In the Commercial Overlay District, all accessory buildings and all accessory structures shall be prohibited unless used in conjunction with a motel or hotel and only when a special exception permit for such accessory building or accessory structure is granted by the Planning Board.

## § 213-418.9. Landscaping requirements.

In the Commercial Overlay District, all areas within the site, except for the building areas and paved areas, shall be planted with grass, shrubs, trees, screening and sprinkler systems in conformance with a landscape plan approved by the Department of Planning and Development and the Planning Board during site plan review. Such landscaped areas shall be regularly maintained so as to assure the viability of all required plant material, and the lack of such maintenance shall constitute a violation of this article.

## § 213-418.10. Cooking facilities in individual lodging units.

In the Commercial Overlay District, a motel or hotel constructed after the effective date of this article may have cooking facilities in its individual lodging units, only if a special exception permit for such cooking facilities is granted by the Planning Board.

## § 213-418.11. Fire protection systems.

In the Commercial Overlay District, all buildings used for motel, hotel or office use shall have a fire-protection system, which shall include a sprinkler system, smoke detector and self-activated public address and alarm systems.

## § 213-418.12. Building exteriors, motels and hotels.

In the Commercial Overlay District, the exterior walls of buildings used as a motel or hotel shall be finished with face brick, stone, glass, precast concrete finished with an attractive surface or their equivalent. No unpainted or unfinished metal or galvanized metal sidings shall be permitted for any exterior wall or roof. All building exteriors, including but not limited to precast concrete, tilt-up concrete or metal portions, shall be painted in a color approved by the Planning Board as indicated on the required rendering of the building. Pre-engineered buildings are prohibited unless the building exterior is finished with face brick, stone, glass, precast concrete finished with an attractive surface or their equivalent.

## § 213-418.13. Nonapplicability.

Section **213-159** of this chapter shall not apply to motels or hotels in the Commercial Overlay District.

## § 213-418.14. Off-premises advertisement.

- A. Notwithstanding anything contained in this chapter to the contrary, in the Commercial Overlay District, off-premises advertising signs as prohibited by § **213-393** of this chapter may be permitted by special exception permit by the Planning Board for retail uses only.
- B. A special exception permit may be granted by the Planning Board for said sign if the following conditions are met:
  - (1) The sign and the business, commercial product or commercial service which the sign advertises are in the Commercial Overlay District.
  - (2) The subject sign shall be part of a sign otherwise permitted by Article **XXXIII** of this chapter.
  - (3) No increase in the number or size of signs shall be permitted because of the subject sign.
  - (4) There is a special need for the subject sign as the property upon which the business, commercial service or commercial product is located, from where the sign would otherwise advertise, is isolated and/or not visible from a main thoroughfare, and because such location substantially and detrimentally affects the viability of such business, commercial service or commercial product.

## Article XXXV. Gasoline Service Stations

[Added 5-24-1994 by L.L. No. 6-1994]

## § 213-419. Legislative intent.

Gasoline service stations are a necessity for the continued economic function of the Town. However, responsible legislation is necessary to properly integrate such stations into the local community and the Town's land use patterns and to regulate station development and design to preserve and advance the public health, safety and welfare. The Town Board seeks to regulate the location, design and use of current and future gasoline service stations. The regulations are intended to conserve property values, create a more attractive and effective economic and business climate, prevent blight, encourage the most appropriate use of current and future gasoline station sites, improve the aesthetic environment of the Town and fully integrate gasoline service stations into the community.

## § 213-420. Definitions.

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

### **AUTOMOTIVE ACCESSORY ITEMS**

Products directly related to the maintenance of vehicles designed and/or employed, in whole or in part, for travel upon public and private roadways, such as oil, transmission fluid, brake fluid, polish, wax, fuel additives and treatments, wipers, tires, batteries, windshield wiper fluid, cleaning fluids and/or substantially similar items.

### **CONVENIENCE STORE**

An establishment offering the retail sale of household consumer merchandise. A maximum size for a "convenience store" shall be 1,500 square feet and 800 square feet of retail area or such smaller size as the Planning Board determines is suitable to the subject property and surrounding community.

### **FUELING POSITION**

A location at which a single vehicle may be fueled from a product dispenser. The number and precise location of "fueling positions" presented on any site plan shall be determined by the Planning Board.

### **GASOLINE SERVICE STATION**

Any establishment in which the sale or storage of automotive fuel is the principal activity and/or constitutes a substantial or significant portion of the goods offered and/or services rendered.

### **KIOSK**

A building no larger than 10 feet in height and 144 square feet in floor space which is employed exclusively for the retail sales transaction of automotive fuel, kerosene and automotive accessory items and/or storage. If a "kiosk" constitutes the principal building on site, a maximum size of 300 square feet of floor space may be constructed.

### **MAJOR COMMERCIAL THOROUGHFARE**

As employed in this article, designated as any roadway possessing a state and/or county route number. A roadway possessing a state and/or county route number for a portion of its course shall be considered a "major commercial thoroughfare" only with regard to such portion.

### **MINOR REPAIRS**

Aside from the sale of automotive fuel, kerosene and automotive accessory items, incidental maintenance of a vehicle, such as the addition of vehicular fluids, replacement of wiper blades or substantially similar

activity.

**PRODUCT DISPENSER**

A device which dispenses automotive fuel and/or kerosene. A "product dispenser" may contain multiple hoses or be capable of serving more than one fueling position simultaneously.

**PUBLIC GARAGE**

A building or portion thereof, other than a private garage, designed or used for equipping, repairing, renting, parking or storing motor vehicles.

**PUMP ISLANDS**

A concrete platform measuring a minimum of six inches in height from the paved surface on which product dispensers are located.

## § 213-421. Gasoline Service Station Overlay District.

[Amended 1-20-2010 by L.L. No. 1-2010]

- A. No premises may be employed as a gasoline service station except in conformance with this article.
- B. There is hereby established a Gasoline Service Station Overlay District, superimposed on parcels which meet the following criteria:
  - (1) The parcel is located along one of the following major commercial thoroughfares: NYS Route 109, NYS Route 110 or NYS Route 27.
  - (2) The underlying zoning classification for the parcel is E, Ea, Eb, G, Ga, GB and/or H.
  - (3) The parcel possesses the minimum lot area required for the zoning district in which the parcel is located.
  - (4) The parcel located at intersections along major commercial thoroughfares possesses a minimum street frontage of 100 feet along the abutting major commercial thoroughfare and 75 feet along any other abutting thoroughfare.
  - (5) A parcel located at mid block along major commercial thoroughfares possesses a minimum of 125 feet of frontage.
  - (6) The parcel does not exist within 2,000 feet of a parcel containing a currently operating gasoline station, a parcel which has been formerly employed as a gasoline station and which may still enjoy any right to reopen as such or for which a building permit for the construction of a gasoline service station has been issued and remains in effect. However, an exception shall exist for parcels existing on other corners of the same intersection.
  - (7) The parcel may not adjoin any residential-zoned parcel or a parcel that contains a residential use.

## § 213-422. Permitted uses.

- A. Any parcel employed as a gasoline service station shall be prohibited from conducting any use and/or operation except:



- (1) The storage and retail sale of automotive fuel and kerosene.
  - (2) The retail sale of automotive accessory items.
  - (3) Minor repairs.
  - (4) The retail sale of over-the-counter consumer merchandise which shall be limited to 12 square feet of display area.
  - (5) A secondary use(s) duly approved as a special exceptions.
- B. Further, in addition to other nonpermitted uses, the following activities shall be strictly prohibited on any parcel containing a gasoline service station:
- (1) The sale, lease, storage or display of new or used vehicles. However, the outdoor storage of a vehicle awaiting minor repairs is permissible in designated areas for a period of not more than 24 hours.
  - (2) Outdoor storage and/or display of new and/or used automobiles, boats, automobile parts or other merchandise except for small sample displays of automotive accessory items, not including batteries or tires located adjacent to the principal building or on the pump islands.
  - (3) Any outdoor use involving fire, sparks or a high level of heat, or any use involving fuel from portable fuel tanks.
  - (4) The sale and/or display of any merchandise out of a trailer or truck.
  - (5) Junkyards and/or parts scavenging services.
  - (6) Outdoor storage and/or display of vending machines, except those located directly adjacent to the walls of the principal building. A total number of four vending machines shall be permitted per site. Vending machines shall not include public telephones, volumes and/or air dispensers.

## § 213-423. Secondary uses.

- A. Secondary uses(s) shall be permitted only as a special exception granted pursuant to § **213-13**. Such secondary uses shall be limited to:
- (1) Public garages, as duly granted by the Zoning Board of Appeals.
  - (2) Facilities for washing and/or waxing vehicles, as duly granted by the Planning Board.
  - (3) Convenience stores, as duly granted by the Planning Board.
- B. In order to apply to conduct one or more secondary uses on any new gasoline service station, such gasoline service station must contain a minimum lot area of 12,500 square feet. In the case of four existing gasoline service stations which contain a minimum lot area of less than 12,500 square feet, but more than 7,500 square feet, any application to conduct a secondary use shall be limited to one secondary use.
- C. The Zoning Board of Appeals and the Planning Board shall have the authority to impose such reasonable conditions and restrictions as are related to and incidental to the proposed special exception use(s). 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 such relief may have on the neighborhood or community, and to protect, preserve and advance the intent of this chapter.

## § 213-424. Dimension requirements.

Any parcel within the Gasoline Service Station Overlay District Zone must conform to the following restrictions:

- A. There shall be a front yard along each thoroughfare. There shall be a rear yard, which shall be designated as the yard opposite the major commercial thoroughfare. Each other yard shall be designated a side yard.
- B. There shall be a minimum front yard setback of 15 feet along each front yard, with the exception of canopies, which must be set back a minimum of 10 feet.
- C. There shall be a minimum side yard and rear yard setback of 10 feet for each side yard and each rear yard. However, if the parcel borders a residential district or property employed for residential use, there shall be a minimum side yard or rear yard setback of 25 feet along each such side yard and/or each rear yard.
- D. No building shall be greater than one story or 25 feet in height. No structure shall be greater than 20 feet in height, exclusive of freestanding ground signs to which the provisions of Article **XXXIII** shall apply.
- E. The principal building shall occupy no more than 15% of the lot. If a secondary use is performed on the site, the principal building shall occupy no more than 25%. There shall be a total building area limit of 30%. However, the area covered by any canopy shall not be included, provided that the canopy covers only the pump islands, product dispensers, fueling positions, kiosk and/or the area between the fueling positions and the principal building.
- F. Fuel tanks shall be set back a minimum of 10 feet from any building and/or structure, including the product dispensers and pump islands. Fuel tanks shall be set back a minimum of 15 feet from any property line and/or any right-of-way.
- G. All product dispensers shall be setback a minimum of 20 feet from any other product dispenser located on parallel pump islands, as well as from the primary building and any building containing any secondary use. Such distance shall be measured from pump island to parallel pump island, and from pump island to the curbing surrounding the building or to the building itself, whichever is nearer. However, product dispensers need only be set back four feet from a kiosk located on the same pump island.
- H. All product dispensers shall be located a minimum of 20 feet from all product dispensers located along the same line of vehicular flow. Such distance shall be measured from center of product dispenser to center of product dispenser.
- I. If kerosene is sold on premises, the service pump dispensing kerosene shall dispense kerosene and/or diesel fuel only.

## § 213-425. Buffers and landscaping.

- A. The minimum landscaped area shall be a ten-foot wide suitably planted strip running along the front yards of the site. The Planning Board shall have authority to waive or reduce the requirement in approving any site plan, provided that an equivalent area is added to landscaping elsewhere and not otherwise required on site, and the Planning Board finds that such action would further the interests of this chapter and Chapter **186**, Site Plan Review.
- B. There shall be a planted buffer along the border with any parcel zoned or employed for residential purposes. The planted buffer shall be a minimum of 10 feet wide and shall contain evergreens which are at

least six feet in height when planted and set approximately six feet apart. There shall also be a six-foot-high fence of type and design as set by the Planning Board during site plan review. However, if fencing is placed within 20 feet of any right-of-way, said fencing shall be four feet in height and said evergreens planted and maintained at four feet in height.

## § 213-426. Parking and vehicular access.

- A. Driveways shall be offset a minimum of 25 feet from grading or point of intersection with any right-of-way and offset 10 feet from any adjoining property at the curblane.
- B. A parcel which contains no secondary uses shall provide one parking space for each 200 square feet, with a minimum of three parking spaces. A parcel which contains a convenience store shall provide one parking space for each 200 square feet, with a minimum of four parking spaces. A parcel which contains a public garage shall provide one parking space per 200 square feet, with a minimum of five parking spaces. A parcel which contains a convenience store and public garage shall provide one parking space per 200 square feet, with a minimum of six parking spaces. A fully automated car wash shall not require any additional on-site parking. However, a fully automated car wash must provide vehicular stacking spaces in number and layout deemed appropriate by the Planning Board, but in no event fewer than two spaces outside the entrance.
- C. There shall be a minimum of one driveway per front yard and a maximum of two driveways per front yard and four driveways per site. Any one-way driveway shall be 14 feet in width.

## § 213-427. Fueling positions.

There shall be at least one full-service fueling position for each grade of gasoline or other alternative fuel offered. Said full-service fueling position shall be operated solely by station employees, shall be suitably identified and shall be open from 7:00 a.m. through 7:00 p.m., unless the station opens later or closes earlier, in which case full service shall be offered from the time the station opens or until the station closes, respectively.

## § 213-428. Lighting.

Any and all lighting shall be designed to shine away from any other property and/or be suitably shielded. No more than one footcandle from any and all lighting shall intrude into residentially zoned or employed property measured 10 feet onto the residentially zoned or employed property.

## § 213-429. Signs.

The following criteria shall exist as additional requirements on any sign erected or maintained in any gasoline service station:

- A. The price/grade signs must at all times accurately reflect the actual price of automotive fuel and kerosene being offered for sale.
- B. Signs bearing the corporate insignia and/or brand name of the gasoline sold and/or type of services available

on site (i.e., full-service and/or self-service), shall be the only signs permitted on the canopy.

- C. Signs affixed to or incorporated into the canopy shall not face residentially zoned and developed properties.
- D. One additional sign, measuring no larger than 24 inches by 24 inches or four square feet, and having a depth of no more than one inch, shall be allowed at each product dispenser which identifies said product dispenser and/or pump island as providing full service and/or self-service.

## § 213-430. Alteration of certain nonconforming gasoline service stations.

- A. A parcel employed as a gasoline service station and which meets the following criteria, but does not satisfy the criteria specified in § ~~213-421~~, may only be altered, reconstructed and/or modified pursuant to a special nonconforming alteration permit issued by the Zoning Board of Appeals. Such permit shall be issued if the Zoning Board of Appeals finds the following:
  - (1) The underlying zoning classification for such parcels is E, Ea, Eb, G, Ga, GB and/or H;
  - (2) The parcel is located at an intersection along a major commercial thoroughfare or is located mid-block and possesses a minimum of 125 feet of frontage along the major commercial thoroughfare;
  - (3) The parcel is not less than 7,500 square feet in area and located at an intersection along a major commercial thoroughfare or possesses 10,000 square feet and is located mid-block along a major commercial thoroughfare;<sup>[1]</sup>

[1]: *Editor's Note: Former Subsection A(4), dealing with a parcel possessing a minimum street frontage of 70 feet, which subsection immediately followed this subsection, was repealed 11-29-1994 by L.L. No. 30-1994. This local law also provided for the renumbering of former Subsection A(5) through (9) as Subsection A(4) through (8), respectively.*
  - (4) The parcel remains of a size, shape and location as to reasonably accommodate the use thereof as a gasoline service station and any proposed secondary use;
  - (5) The use as a gasoline service station and any proposed secondary use will not prevent the orderly and reasonable use of adjacent properties or of properties in adjacent use districts;
  - (6) The use as a gasoline station and any proposed secondary use will not prevent the orderly and reasonable use of permitted or legally established uses in the district wherein the proposed use is to be located or of permitted or legally established uses in adjacent use districts;
  - (7) The safety, health, welfare, comfort, convenience or order of the Town will not be adversely affected by the proposed use as a gasoline station and any proposed secondary use and its location; and
  - (8) The use as a gasoline station and any proposed secondary use will be in harmony with and promote the general purposes and intent of this chapter.
- B. The Zoning Board of Appeals shall have the authority to impose such reasonable conditions and restrictions as are related to and incidental to the proposed use of the property as a gasoline service station and any proposed secondary use. 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 such relief may have on the neighborhood or community, and to protect, preserve and advance the intent of this chapter.

## § 213-431. Discontinuation of permitted gasoline service stations.

- A. Should the use of any parcel as a gasoline service station in a Gasoline Service Station Overlay District cease or be discontinued for six months or more or be abandoned for 30 days or more, the parcel's underlying zoning classification shall be deemed operative.
- B. Any building and/or structure related to the use as a gasoline service station, including but not limited to fueling dispensers, storage tanks, freestanding ground signs, canopies and kiosks, shall be removed within 30 days after such cessation or discontinuance. However, such shall not be deemed to require the removal of any building and/or structure which may be converted to a legal conforming use, provided that such conversion is significantly initiated within 30 days of cessation or discontinuance and is completed within six months. An extension of the time frames set forth in this subsection, not to exceed an additional one year, may be granted by the Zoning Board of Appeals for good cause shown.

## § 213-432. Discontinuation of nonconforming gasoline service stations.

- A. Should the nonconforming use of any parcel as a gasoline service station cease or be discontinued for six months or more or be abandoned for 30 days or more, such nonconforming use shall be deemed to have expired and may not be reinstated.
- B. Any building and/or structure relating to the use as a gasoline service station, including but not limited to fueling dispensers, canopies, storage tanks, freestanding ground signs and kiosks, shall be removed within 30 days as to such cessation or discontinuance. However, such shall not be deemed to require the removal of any building and/or structure which may be converted to a legal conforming use, provided that such conversion is significantly initiated within 30 days of cessation or discontinuance and completed within six months. An extension of the time frames set forth in this subsection, not to exceed one year, may be granted by the Zoning Board of Appeals for such causes shown.
- C. Any building or structure which has been damaged by fire or other cause to the extent of more than 50% of its value, exclusive of foundations, or 50% of its total building area shall be repaired or rebuilt only in conformity with the regulations of this chapter and the Building Code and all other applicable laws, rules and regulations.

## § 213-433. Severability; higher standards to prevail.

- A. The provisions of this article are severable. If any clause, sentence, paragraph, section, word or part of this article shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof but shall be confined in its operation to the clause, sentence, paragraph, section, word or part thereof directly involved in the controversy in which such judgment shall have been rendered. The invalidity of any word, clause, sentence, paragraph, section or part of this article shall not affect the validity of any other part of this article which can be given effect without such invalid part or parts.

- B. If any portion of this article is found to be in conflict with any other provision of any other local law or ordinance of the Code of the Town of Babylon, the provision which establishes the higher standard shall prevail.

## Article XXXVI. (Reserved)

[1]: *Editor's Note: Former Article XXXVI, Attendance at Board Meetings, adopted 8-16-1994 by L.L. No. 13-1994, as amended, was repealed 7-20-1999 by L.L. No. 5-1994. See now § 47-23.*

## § 213-434. (Reserved)

## Article XXXVII. Junkyards

[Added 8-19-1997 by L.L. No. 11-1997]

## § 213-435. Definitions.

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

### **JUNKYARD**

The premises from which a junk business or a motor vehicle junk business is conducted as such terms are defined in § ~~143-1~~ of this Code.

## § 213-436. Location of junkyards.

Notwithstanding anything contained in this Code to the contrary, junkyards shall only be permitted in H Heavy Industrial Districts or in any industrial district located within the area bounded by Patton Avenue, Edison Avenue, Alder Street and the westerly side of Nancy Street and only if a special exception permit is granted by the Zoning Board of Appeals to the operator of the junkyard pursuant to the standards set forth in this article.

## § 213-437. Standards for granting special exception permits for junkyards.

- A. The applicant shall provide proof to the Board that the landowner has consented to the operation of a junkyard.
- B. The applicant, prior to applying for a special exception permit under this article, will have applied for all required federal, state and county permits. The applicant shall have been issued all permits required by the federal, state and county governments for the operation of a junkyard at the site prior to the issuance of a permit pursuant to this article.

- C. The applicant shall have obtained site plan approval by the Planning Board.
- D. The requirements of Article **XIV, XV, XVI** or **XVII** of this chapter shall be complied with as applicable except as otherwise provided herein. Notwithstanding the foregoing, the Board shall have the authority to grant such area variances as it shall deem appropriate, pursuant to Town Law § 274-b, Subdivision 3.
- E. Such use is reasonable, necessary and will be in harmony with and promote the general interests and welfare of the surrounding community.
- F. The neighborhood character and surrounding property values are reasonably safeguarded.
- G. The proposed use will not prevent the orderly and reasonable use of adjacent property.
- H. The site is particularly suitable for the location of such use in the community.
- I. The access facilities are adequate for the estimated traffic from public streets so as to ensure the public safety and to avoid traffic congestion.
- J. There is room for creation of off-street parking and truck-loading spaces at least in the number required by the applicable provisions of this article, but in any case adequate for the actual anticipated number of occupants of the proposed use, whether employees, patrons or visitors and, further, that the layout of the spaces and related facilities can be made convenient and conducive to safe operation.
- K. The proposed use will not pose risks to the public health or safety.
- L. The characteristics of the proposed use are not such that its proposed location would be unsuitably near to a church, school, theater, senior citizens' residence, recreational area or other place of public assembly.
- M. Adequate buffer yards and screening can be provided to protect adjacent properties and land uses from possible detrimental impacts of the proposed use.
- N. Adequate provision can and will be made for the collection and disposal of stormwater runoff, sewage, refuse and other liquid, solid or gaseous waste which the proposed use will generate.
- O. Permitted collection and storage facilities for antifreeze, freon, gasoline, waste oil and any other petroleum liquid shall be provided and maintained. A copy of all such permits shall be submitted with the application.
- P. Provision for the storage and disposal of lead acid batteries in accordance with all federal, state and county laws.
- Q. The natural characteristics of the site are such that the proposed use may be introduced there without undue disturbance or destruction of important natural features, systems or processes and without significant negative impact to groundwater and surface water on and off the site.
- R. The lot area is sufficient, appropriate and adequate for the use, as well as reasonably anticipated operation expansion thereof.
- S. The proposed use can and will comply with all provisions of this chapter and of the Code which are applicable to it and can meet every other applicable federal, state, county and local law, ordinance, rule or regulation.
- T. The proposed use will not result in unacceptable levels of noise, vibration, smoke, dust, odor, fumes or noxious gases nor negatively impact upon air quality.
- U. The applicant must provide noise level specifications to the Department of Environmental Control for any

machinery to be utilized on the site. In the event that a substantial increase in existing noise levels may occur as a result of the proposal, a noise study may be requested by the Department of Environmental Control. The application will not be considered complete until such report is provided.

- V. A Town of Babylon Environmental Quality Review Act (TOBEQRA) full environmental assessment form will be provided with each application.
- W. The applicant shall provide a description of all material to be transferred, stored and processed on the site.

## § 213-438. Fencing of premises.

- A. Fence and gates required. The entire perimeter of premises operated as a junkyard shall be surrounded by a solid fence constructed of wood, aluminum, metal clad, chain link with slats or such other material as may be approved by the Commissioner, and the same shall be opaque, except that gates of not more than 24 feet in width, constructed of cyclone fencing, may be installed in the fence.
- B. Maintenance. The fence shall be kept in good order and repair and shall be painted or renovated at least once every three years in a solid color, either white, battleship gray, dark green or such other color as may be approved by the Commissioner.
- C. Setbacks. Said fence shall be set back from all street lines at least 15 feet, except that if a lot in question has a depth of less than 100 feet, then the setback from the street may be five feet.
- D. Height. On premises bordering a residential zone, the fence shall be 10 feet in height; otherwise the fence shall be six feet in height.

## § 213-439. Areas outside fences.

So much of the plot between the fence provided for in § 213-438 and the street line shall be suitably landscaped with underground sprinklers.

## § 213-440. Height of scrap and junk piles.

In no event shall scrap and junk be so piled as to exceed the height of 20 feet. Piles shall be maintained to the height of the fence required under § 213-438 within 20 feet from said fence.

## § 213-441. Maintenance of junkyard exteriors.

The exterior of premises operated as junkyards as provided herein shall be kept in a neat and orderly condition, free of debris, paper or any other solid waste or refuse material.

## § 213-442. Construction and maintenance of sidewalk and curb.



The owner of a junkyard, at his own cost and expense, shall erect, construct and maintain a sidewalk and curb along the entire property line of the premises as may abut upon a street.

## § 213-443. Deposits outside fenced area.

[Amended 7-20-1999 by L.L. No. 10-1999]

No junk vehicles, dismantled vehicles, parts of vehicles, junk material or ashes and debris shall be piled, stored or otherwise left by the owner or operator of the establishment outside the opaque fenced area as required herein, and any such junk or junk material that should be left by others outside the establishment shall be promptly removed by the owner and/or operator of the establishment.

## § 213-444. Storage areas for vehicles.

[Amended 7-20-1999 by L.L. No. 10-1999]

Vehicles may be stored only on concrete areas within the opaque fenced area of the junkyard. Storage of vehicles upon asphalt areas is prohibited.

## § 213-445. Public hearing.

A public hearing shall be held before the Zoning Board of Appeals pursuant to § **213-15** of this chapter prior to the granting of a special exception permit pursuant to this article.

## § 213-446. Parking requirements.

One parking stall shall be required for every 150 square feet of office area plus one parking stall for every employee plus three parking stalls for visitors.

## § 213-447. Conditions of permit.

- A. The permittee shall at all times be in compliance with all federal, state, county and Town laws, ordinances, rules and regulations, regarding the storage, processing and disposal of solid waste.
- B. The Board may limit the term of the permit as it shall determine in its sole discretion.
- C. The Board may limit hours of operation upon a finding that such a limit is necessary to the standards set forth in this article.
- D. The Board may require that the applicant post a bond with sufficient surety upon a finding that such a bond is necessary to protect the value of the property, character of the neighborhood and the public health and safety.
- E. The Board may impose such other reasonable conditions and restrictions as it shall deem appropriate.

## § 213-448. Applicable fees.

- A. The applicant shall pay the application fee which will be set by Town Board resolution from time to time.
- B. If the Commissioner of the Department of Environmental Control determines that a noise study is necessary as a condition of granting a special exception permit pursuant to this article, the applicant shall pay to the Commissioner of the Department of Environmental Control a noise study fee as shall be established by the Town Board from time to time.

## § 213-449. Nonconforming junkyard use.

[Amended 4-21-1998 by L.L. No. 5-1998]

- A. Any person currently engaging in or conducting a junk business or a motor vehicle junk business, as such terms are defined in § **143-1** of this Code, and possessing a license pursuant to Chapter **143** of this Code to operate a junkyard as of the effective date of this article shall be deemed to be operating a nonconforming junkyard and may continue to renew said junk dealer license as provided in Chapter **143** of this Code, provided that such premises is in compliance with the following:
  - (1) Fencing of premises.
    - (a) Fence and gates required. The entire perimeter of premises operated as a nonconforming junkyard shall be surrounded by a solid fence constructed of wood, aluminum, metal clad or such other material as may be approved by the Building Inspector, and the same shall be opaque around the storage areas, except that gates of not more than 24 feet in width, constructed of cyclone fencing, may be installed in the fence. Fencing around junkyards with front yard parking need not be opaque.  
[Amended 7-20-1999 by L.L. No. 10-1999]
    - (b) Maintenance. The fence shall be kept in good order and repair and shall be painted at least once every three years in a solid color of either white, battleship gray, dark green or such other color as may be approved by the Commissioner.
    - (c) Setbacks. Said fence shall be set back from all street lines at least 15 feet, except that if a lot in question has a depth of less than 100 feet, then the setback from the street may be five feet.
    - (d) Height. On premises bordering a residential zone, the fence shall be 10 feet in height; otherwise the fence shall be six feet in height.
  - (2) Areas outside fences. So much of the plot between the fence provided for in § **213-449A(1)** and the street line shall be surfaced with blacktop and/or concrete and so much of the plot between the fence and any adjoining residential property line shall be landscaped with grass.
  - (3) Height of scrap and junk piles. In no event shall scrap and junk be so piled as to exceed the height of 20 feet. Piles shall not exceed the height of the fence required under § **213-449A(1)** within 20 feet from said fence.
  - (4) Maintenance of nonconforming junkyard exteriors. The exterior of premises operated as nonconforming junkyards as provided herein shall be kept in a neat and orderly condition, free of debris, paper or any other solid waste or refuse material.

- (5) Construction and maintenance of sidewalk and curb. The owner of a nonconforming junkyard, at his own cost and expense, shall construct a driveway apron at all entrances where none exists, and shall maintain existing sidewalks and curbs and driveway aprons along so much of the premises as may abut upon a street.

[Amended 7-20-1999 by L.L. No. 10-1999]

- (6) Deposits outside fenced area. No junk cars, dismantled vehicles, parts of vehicles, junk material or ashes and debris shall be piled, stored or otherwise left by the owner or operator of the establishment outside the opaque fenced area as required herein, and any such junk or junk material that should be left by others outside the establishment shall be promptly removed by the owner and/or operator of the establishment.

[Amended 7-20-1999 by L.L. No. 10-1999]

- (7) (Reserved)<sup>[1]</sup>

[1]: *Editor's Note: Former Subsection A(7), regarding parking of vehicles containing junk, was repealed 7-20-1999 by L.L. No. 10-1999.*

- (8) Adequate provision has been made for the collection and disposal of stormwater runoff, sewage, refuse and other liquid, solid or gaseous waste which the use will generate.

- (9) If the owner and operator of a junkyard has been issued a dismantling permit by the state, they shall be required to obtain and maintain a permit from the Suffolk County Department of Health and/or New York State Department of Environmental Conservation as applicable for the storage and disposal of gasoline, diesel fuel, waste oil, freon and antifreeze.

[Amended 7-20-1999 by L.L. No. 10-1999]

- (10) Provision for the storage and disposal of lead acid batteries in accordance with all federal, state and county laws.

- B. Should the use of any parcel as a nonconforming junkyard cease or be discontinued for six months or more or be abandoned for 30 days or more, or should the licensee fail to renew his junk dealer's license within six months after the expiration date of the license, such use as a nonconforming junkyard shall be deemed to have expired and may not be reinstated. Nothing herein shall be deemed or construed to allow the operation of a nonconforming junkyard without a valid junk dealer's license or with an expired junk dealer's license.

## Article XXXVIII. Trailers and Trailer Parks

[Adopted 7-20-1999 by L.L. No. 11-1999]

### § 213-450. Definitions.

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

#### **CONTAINER**

An enclosed structure with no foundation used for storage.

#### **TRAILER**

A vehicle, not propelled by its own power, which is capable of being drawn on the public highways by a

motor vehicle, including but not limited to non-self-propelled vehicles used as living or sleeping quarters, as offices or for commercial storage or construction purposes, but excluding vehicles used to carry boats.

## § 213-451. Storage or parking of trailers; exceptions.

- A. It shall be unlawful for any person owning any land within the Town or occupying the same as a tenant or otherwise to use or permit such land or any part thereof to be used for the storage, parking or maintenance thereon of any trailer or container without a permit granted by the Commissioner of the Department of Planning and Development.
- B. The presence of any such trailer or trailers or container or containers upon any land in the Town shall be presumptive evidence that such trailer or trailers or container or containers are maintained and parked thereon in violation of this section and with the express knowledge and consent of the owner of the land, the lessee of the land, if any, and the owner and/or custodian of the trailer or trailers or container or containers.
- C. The foregoing shall not apply to the storage of trailers or containers inside public or private garages; nor to a house trailer used by a family on a residential parcel during the 90 days following a fire or other casualty in the dwelling on said parcel if such dwelling has been rendered uninhabitable as a result of such fire or other casualty; nor to trailers duly registered with a State Department of Motor Vehicles or equivalent, designed and used to transport goods over the road to and from loading and unloading facilities in the industrial zone and which trailers must further be insured and have a valid Federal Highway Authority (FHWA) stamp appropriately affixed thereto, or to mobile dwellings when permitted by Article **XX** of this chapter.  
[Amended 9-7-1999 by L.L. No. 18-1999]
- D. No such duly registered transport trailer shall be stored, parked or maintained in any parking area of any lot if the result would be to reduce the available off-street parking on the lot below the minimum off-street parking required by this Code, nor shall any such duly registered transport trailer be stored, parked or maintained in the front yard or designated landscaped area of any lot.
- E. This section shall not prohibit the parking of any recreational vehicle or camper by the owner thereof upon the premises where such owner actually resides, provided that such vehicle or camper shall not be used for living or sleeping quarters on such premises and is registered with the New York State Department of Motor Vehicles.

## § 213-452. Permit required; application; investigation.

- A. Any person owning any land within the Town or occupying the same as tenant or otherwise who shall hereafter desire to use or permit such land or any part thereof to be used for the storage, parking or maintenance of a trailer or container not otherwise excluded in this article shall, before such use is made and annually thereafter, obtain a permit therefore in the following manner.
- B. Application in writing shall be made to the Commissioner of the Department of Planning and Development for the issuance to the applicant of a permit, which application shall state and illustrate in detail, by means of such documentation, plans and visual aids as are required by the Commissioner, the particulars of the applicant's request.

- C. The Commissioner shall grant such application if the health, safety and welfare of the residents of the surrounding area would not be adversely affected by such use and that the proposed use will be in harmony and accordance with the general purpose, intent, comprehensive plan and design set forth in the Code, will be in accordance with the character of the district and its peculiar suitability for the proposed use and will serve to conserve the value of buildings and land and encourage the most appropriate use of land throughout the Town.
- D. As a condition of the permit, the premises shall be free of rubbish and debris and suitably landscaped and maintained as shall be determined by the Commissioner.

### **§ 213-453. Permit fee; duration of permit; exception.**

- A. There shall be an application fee and a permit fee to be set from time to time by the Town Board.
- B. The permit granted under this article shall be valid for one year. Renewal applications shall be submitted to the Commissioner at least 30 days prior to expiration of the permit. Renewals of permits shall be effective for one-year terms above described.
- C. Commencing 90 days after the effective date of this article, where use is made of any land or any part thereof for storage, parking or maintenance of a trailer or container prior to obtaining a permit or with an expired permit from the Commissioner, the fee will be doubled.

### **§ 213-454. Effective date.**

- A. This article shall take effect September 1, 1999, and shall also apply to all trailers and containers currently stored, parked or maintained on any land within the Town, where such was not otherwise previously approved by the Town Board or the Board of Appeals, whereupon this article shall apply upon the expiration of any previous approval.
- B. No permit may be issued by the Commissioner where an application for the same or similar permission was previously denied by the Town Board, Board of Appeals or Planning Board.

## **Article XXXIX. Personal Wireless Service Facilities**

[Added 9-3-2002 by L.L. No. 24-2002; amended 7-17-2007 by L.L. No. 15-2007]

### **§ 213-455. Purpose and intent.**

- A. The purpose of this article is to establish predictable and balanced regulations for the placement, construction and modification of personal wireless service facilities in order to accommodate the growth of such facilities while protecting the public against any adverse impacts on aesthetic resources and the public safety and welfare. The Town of Babylon wants to accommodate the need for personal wireless service facilities while regulating their location and number, minimizing adverse visual impacts through proper design, siting and screening, avoiding potential physical damage to adjacent properties, and encouraging joint use of tower structures.

- B. The article also seeks to minimize the total number of telecommunications towers in the community by encouraging shared use of existing and future towers, and the use of existing tall buildings and other high structures, in order to further minimize adverse visual effects from telecommunications towers.
- C. This article is not intended to prohibit or have the effect of prohibiting the provision of personal wireless services, nor shall it be used to unreasonably discriminate among providers of functionally equivalent services consistent with current federal regulations.

## § 213-456. Definitions.

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

### **ACCESSORY USE**

An accessory use serves the principal use, is subordinate in area, extent or purpose to the principal use, and is located on the same lot as the principal use. Examples of such uses include transmission equipment and storage sheds.

### **ANCILLARY EQUIPMENT**

Equipment necessary to the secure and successful operation of a wireless facility, including but not limited to a support structure, antenna, transmitting, receiving, and combining equipment, equipment shelter, fencing, transmission cables and telephone lines, utility lines and backup power source.

### **ANTENNA and/or BEACON**

A system of electrical conductors that transmit or receive radio frequency waves.

### **COLLOCATION**

The use of any communication, transmission and/or reception antenna and/or towers, radio, television and/or telecommunications beacons to carry two or more antennas by two or more service providers.

### **FAA**

Federal Aviation Administration of the United States.

### **FCC**

Federal Communications Commission of the United States.

### **PERSONAL WIRELESS SERVICE FACILITY**

Any unmanned facility used in connection with the provision of wireless services, including but not limited to antenna, ancillary telecommunication equipment, telecommunication towers and access. A wireless facility includes all equipment and structural components needed to construct a complete wireless facility.

### **PREEXISTING TOWERS AND ANTENNAS**

Includes any and all towers or antennas possessing a valid, current and proper building permit and/or special use permit issued prior to the effective date of this article.

### **TOWER**

Including any structure designed and constructed primarily for the purpose of supporting one or more antennas for telephone, television, radio and similar communication purposes, including self-supporting lattice towers, guyed towers or monopole towers, radio and television transmission and reception towers, microwave towers, common-carrier towers, cellular telephone towers, alternative tower structures and similar structures, inclusive of the structure and any support systems appurtenant thereto.

## § 213-457. Applicability.

Except as set forth in § **213-458** below:

- A. Personal wireless service facilities, towers and antennas shall be a prohibited use in and within 150 feet of Residential Districts, Multiple Residence Districts and Senior Citizen Multiple Residence Districts.
- B. Except as provided in § **213-457A**, personal wireless service facilities, towers and antennas shall be permitted in Commercial and Industrial Districts only upon approval by the Zoning Board of Appeals of a special use permit.

## § 213-458. Exceptions.

Article **XXXIX** shall apply to all personal wireless service facilities, towers and antennas except the following:

- A. Amateur radio station operators.
- B. Preexisting towers or antennas, except expansion of the originally approved fenced compound area, or any addition or expansion which would increase the height permitted in the affected district.
- C. Those on property owned by the Town.
- D. Antennas which are accessory to permitted residential uses and are mounted on the residential dwelling without a tower.

## § 213-459. Review authority.

The Zoning Board of Appeals is hereby authorized to review and approve, approve with modifications or disapprove special use permits for personal wireless service facilities pursuant to this article. The Zoning Board of Appeals shall have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed personal wireless service facility, including the use of camouflage or stealth-type installation of the tower structure and/or antenna to reduce visual impact.

- A. Except as provided below, no personal wireless service facility shall hereafter be erected, moved, reconstructed, changed or altered and no existing structure shall be modified to serve as a personal wireless service facility, except after obtaining a special use permit in conformity with this article.
- B. Collocated facilities; equipment located inside.
  - (1) Personal wireless service facilities collocating on existing active towers do not require a special use permit, unless the originally approved compound area is being expanded, or unless the personal wireless service facility will be modified in such a way as to increase its height in excess of the permitted height in the affected district.
  - (2) Personal wireless service facilities collocating on existing structures or buildings do not require a special use permit unless the originally approved compound area is being expanded, or the height in the affected district is being exceeded.

- (3) If equipment area is located inside an existing building or structure, the condition regarding expansion of compound area does not apply.
- C. The Zoning Board of Appeals may waive any or all of the requirements for approval for applicants proposing minor changes to existing facilities. However, the Board may not waive the requirement that a public hearing be held on the application.
- D. No building permit shall be issued until the applicant provides proof that space on the facility has been leased or will be operated by a provider licensed by the FCC to provide service in the area.

## § 213-460. General criteria.

No special use permit relating to a personal wireless service facility shall be authorized by the Zoning Board of Appeals unless it finds that such facility:

- A. Is necessary to provide adequate service to locations that the applicant is not able to serve with existing facilities;
- B. Conforms to all applicable regulations promulgated by the FCC, FAA and other federal agencies;
- C. Will be designed and constructed in a manner which minimizes visual impact to the extent practical; and
- D. Is the most appropriate site among those available within the technically feasible area for the location of a personal wireless service facility.

## § 213-461. Submission requirements.

- A. Applications shall include the following:
  - (1) The location, type and height of the facility, and whether it is to be located on an existing structure, collocated or on a tower.
  - (2) Adjacent roadways, rights-of-way, land uses and structures and zoning on land within 1/2 mile.
  - (3) Setbacks from the property line of the proposed site.
  - (4) Environmental assessment.
  - (5) Scaled drawing of the site, including elevation drawings of the structure, the distance between all structures and proposed means of access.
  - (6) Landscape plan.
  - (7) Radio frequency study.
  - (8) Evidence of good faith effort to collocate or locate on existing towers, structures or buildings and why it is not feasible.
  - (9) Location and separation distance between all other existing and proposed facilities within the Town and/or within one mile.



- (10) Evidence that no existing tower, structure or building can accommodate the applicant's proposed antennas and provide necessary coverage.
  - (11) Detailed cost of construction analysis supported by written documentation.
  - (12) Engineering certification of safety of the proposed tower.
  - (13) Aviation Security Advisory Committee (ASAC) report.
  - (14) Radio frequency propagation maps.
  - (15) Health and safety study.
  - (16) Copy of FCC and FAA application and approval.
  - (17) Photo-simulation or visual analysis report showing where, within one mile, the facility can be seen.
  - (18) National Environmental Policy Act (NEPA) Study.
- B. The Zoning Board of Appeals may retain its own structural and/or radio frequency engineer, real estate appraiser and traffic engineer at the applicant's expense if the Zoning Board of Appeals deems necessary.

## § 213-462. Collocation.

The shared use of existing personal wireless service facilities or other structures shall be preferred to the construction of new facilities. Any special use permit application, renewal or modification thereof shall include proof that reasonable efforts have been made to collocate within an existing personal wireless service facility or upon an existing structure within a reasonable distance, regardless of municipal boundaries, of the site. The applicant must demonstrate that the proposed personal wireless service facility cannot be accommodated on existing personal wireless service facilities due to one or more of the following reasons:

- A. The planned equipment would exceed the structural capacity of existing and approved personal wireless service facilities or other structures, considering existing and planned use for those facilities;
- B. The planned equipment would cause radio frequency interference with other existing or planned equipment which cannot be reasonably prevented;
- C. Existing or approved personal wireless service facilities or other structures do not have space on which proposed equipment can be placed so it can function effectively and reasonably;
- D. Other technical reasons make it impracticable to place the equipment proposed by the applicant on existing facilities or structures;
- E. The property owner or owner of the existing personal wireless service facility or other structure refuses to allow such collocation or requests an unreasonably high fee for such collocation compared to current industry rates; and
- F. Existing or approved personal wireless service facilities cannot provide necessary coverage for a designated geographic area.

## § 213-463. Setbacks.

- A. Towers must comply with front yard setbacks of the affected zoning district. Towers must comply with either the side yard and rear yard setback of the affected zone, or must be setback a minimum of five feet from the rear or side property line, whichever is greater.
- B. Setbacks for all other components of a personal wireless service facility must be a minimum of five feet from the side and rear property lines, and setback a minimum of 40 feet from the front property line.
- C. Setbacks shall not apply to rooftop installations of personal wireless service facilities on existing buildings which have a valid certificate of occupancy.

## § 213-464. Lighting.

Towers shall not be artificially lighted except to assure human safety, proper flag etiquette and compliance as required by the FAA.

## § 213-465. Visibility and aesthetics.

- A. The maximum height for towers permitted under this article, including any antennas or other devices extending above the tower, measured from the ground surface, shall be 80 feet.
- B. Towers shall be galvanized finish and painted gray, green, blue or similar colors designed to blend into the natural surroundings below the surrounding tree line unless other standards are required by the FAA. Accessory uses shall maximize use of building materials, colors and textures designed to blend with the natural surroundings.
- C. The project shall be designed to blend with the natural and/or man-made surrounding to the maximum extent practicable.
- D. Structures offering slender silhouettes (i.e., monopole, flagpole, light pole or stealth-style installation) shall be preferable to freestanding lattice structures. The Zoning Board of Appeals may require stealth-style installation such as light pole, flagpole or similar type structure.
- E. The applicant must examine the feasibility of designing a proposed tower to accommodate future demand for additional facilities.

## § 213-466. Vegetation and screening.

- A. Existing on-site vegetation shall be preserved to the maximum extent possible, and no cutting of trees exceeding three inches in diameter shall take place prior to approval of the special use permit. Clear cutting of all trees in a single contiguous area shall be minimized to the extent possible.
- B. The Zoning Board of Appeals may require appropriate vegetative buffering around the fences of the tower base area, accessory structures and the anchor points of guyed towers to buffer their view from neighboring residences, recreation areas, waterways, historic or scenic areas, or public roads.

## § 213-467. Access.

- A. A road will be provided to assure adequate emergency and service access. Maximum use of existing roads, public or private, shall be made. Road construction shall be consistent with standards for private roads and shall at all times minimize ground disturbance and vegetation cutting. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion potential.
- B. Equipment, other than that necessary for the operation of the personal wireless service facility, and/or vehicles shall not be stored on the facility site.

## § 213-468. Signage.

Except as required by the FAA, FCC or OSHA, signage is prohibited on personal wireless service facilities, towers and antennas. Required signs shall not exceed minimum requirements as set forth by the FCC, FAA and/or OSHA. The Zoning Board of Appeals may require the installation of signage with safety information.

## § 213-469. Security.

- A. Towers, anchor points around guyed towers, and accessory structures shall each be surrounded by fencing not less than six feet in height and not more than eight feet in height.
- B. There shall be no permanent climbing pegs within 15 feet of the ground.
- C. Motion-activated or staff-activated security lighting around the base of a tower or accessory structure entrance may be required. Such lighting shall not project off the facility site.
- D. A locked gate at the junction of the accessway and a public thoroughfare shall be required to obstruct entry by unauthorized vehicles and/or persons. Such gate must not protrude into the public thoroughfare.
- E. All new telecommunication facilities are required to have generators that are sufficient to maintain service during power interruptions and outages.

## § 213-470. Engineering standards.

- A. All personal wireless service facilities shall be built, operated and maintained to acceptable industry standards. Each application must contain a site plan for the proposed facility containing the signature of an engineer licensed by the State of New York.
- B. Every facility shall be inspected at least every year for structural integrity by a New York State licensed engineer. A copy of the inspection report shall be submitted to the Town of Babylon Planning Department every year.

## § 213-471. Abandonment and removal.

At the time of submission of the application for a personal wireless service facility, the applicant shall submit an agreement to remove all antennas, driveways, structures, buildings, equipment sheds, lighting, utilities, fencing, gates, accessory equipment or structures, as well as any tower used as a personal wireless service facility if such

facility becomes technologically obsolete or ceases to perform its originally intended function for more than six consecutive months. Upon removal, the land shall be restored to its previous condition, including but not limited to seeding of exposed soils.

## § 213-472. When effective.

This article shall take effect immediately when it is filed in the office of the New York State Secretary of State in accordance with § 27 of the Municipal Home Rule Law.

### § 213-472.1. Fire suppression exemption.

Accessory structures (under 100 square feet) located on site are exempt from installing fire-suppression systems.

### § 213-472.2. Maintenance.

The applicant/owner of the site is responsible for general maintenance and upkeep of the telecommunications facility. General maintenance includes painting, landscaping, fencing and flag maintenance/etiquette.

## Article XL. Hot-Mix Asphalt Facilities

[Added 6-21-2005 by L.L. No. 16-2005]

### § 213-473. Legislative intent and purpose.

- A. The Town Board of the Town of Babylon, after a review of the impacts of hot-mix asphalt plants and their regulation elsewhere, finds that:
  - (1) Hot-mix asphalt plants constitute a small but thriving industry on Long Island, offering such community benefits as jobs in the manufacturing sector and a local source of materials for other industries that provide for area growth and for the development and maintenance of its infrastructure;
  - (2) Local sourcing of hot-mix asphalt is advantageous because the product can deteriorate during transport over long distances, and because distance hauling contributes to higher costs;
  - (3) Hot-mix asphalt facilities can entail adverse impacts on local air and water quality, traffic, and neighborhood character which may be mitigated by use-specific controls;
- B. It is therefore the purpose of this article to:
  - (1) Support a local hot-mix asphalt industry by permitting facility location where compatible in all of the Town of Babylon's industrial districts;
  - (2) Establish clear, adequate and consistently applied regulatory controls to limit the impact of any hot-

mix asphalt facility on surrounding uses and the general public welfare.

## § 213-474. Definitions and word usage.

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

### **AGGREGATE**

Any crushed rock, gravel, sand or other granular material suitable for the manufacture of hot-mix asphalt or concrete.

### **BITUMEN**

Any of a class of black or dark-colored solid, semi-solid or viscous flammable mixtures of hydrocarbons and other substances, occurring naturally or obtained by distillation from coal or petroleum, that are a component of asphalt and tar and are used for surfacing roads and for waterproofing.

### **HOT-MIX ASPHALT (HMA)**

A paving material comprised of a mixture of hot dry aggregate and bitumen.

### **HOT-MIX ASPHALT PLANT, HOT-MIX ASPHALT FACILITY**

All the component structures, buildings and material storage areas of a site used for the production of hot-mix asphalt by mixing hot dry aggregate with bitumen or similar asphalt petroleum products. Neither the manufacture of aggregate (i.e. stone crushing) nor bitumen is considered part of the hot-mix asphalt production process for the purposes of this Code.

## § 213-475. Applicability.

- A. Facilities for the production of hot-mix asphalt shall be permitted only as a special exception use in all of the Town of Babylon's Industrial Districts; the Zoning Board of Appeals shall have original jurisdiction to hear and decide all such applications.
- B. All subsequent restrictions and requirements set forth in this article shall apply to any hot-mix asphalt facility regardless of underlying zoning district.
- C. The Zoning Board of Appeals shall consider the factors set forth in Article **XXXII** of the Babylon Town Code as well as the requirements set forth below in §§ **213-476** through **213-485**.
- D. Special exception use permits for hot-mix asphalt facilities will be valid for a period of five years. They may be renewed by application to the Zoning Board of Appeals upon demonstration of continued compliance with the requirements set forth below and all additional requirements previously imposed by the Zoning Board.

## § 213-476. Location restrictions

- A. No site containing an asphalt manufacturing plant shall be located within:
  - (1) Two thousand feet from sensitive institutional, residential and/or public uses, including churches, schools, libraries, hospitals, assisted-living and long-term-care facilities, and park and recreation areas;

- (2) One thousand five hundred feet of residentially zoned property;
  - (3) Seven hundred fifty feet of residential uses in a nonresidential zone.
- B. The location restrictions in this subsection may be reduced by 100 feet for every 10 feet of vegetative buffer planted along the entire length of the site boundary from which the restrictive distance is measured. The buffer shall be planted with a dense mix of deciduous and coniferous trees and shrubs, with at least half the stock to be a minimum of five feet when planted.
- C. For the purpose of this subsection, cemeteries and Metropolitan Transportation Authority rights-of-way shall not be considered residentially zoned properties.

## § 213-477. Lot size.

The minimum lot size for any hot-mix asphalt facility shall be two acres, regardless of underlying district requirements.

## § 213-478. Height restrictions.

- A. The height of any office or other building present on the site of a hot-mix asphalt facility shall adhere to the maximum height restriction of 35 feet for the Town's Industrial districts, as established in §§ **213-167** and **213-214**.
- B. Notwithstanding the provisions of §§ **213-167** and **213-214** to the contrary, the machinery of a hot-mix asphalt plant, including batch tower and storage silo with drag elevator, may be permitted to reach a maximum height of 55 feet, which shall be measured from the ground level elevation at the base of the machinery.
- C. Notwithstanding the provisions of §§ **213-167** and **213-214** to the contrary, the emissions stack of a hot-mix asphalt facility must have a minimum height of 55 feet and may reach a maximum height equal to 2.5 times the height of the tallest building within a two-hundred-foot radius of the property line, measured from the ground level elevation at the base of the stack.

## § 213-479. Frontage and setbacks.

- A. For any hot-mix asphalt facility, the minimum requirements for road frontage, and front, side and rear yards set forth in §§ **213-215** through **213-219** shall apply, regardless of underlying district requirements.
- B. Setbacks shall apply to all components of the hot-mix asphalt facility, including buildings, structures, machinery, equipment and material storage.
- C. Any mobile or portable equipment shall be kept within the applicable setback distances and shall not encroach on the required yard areas.

## § 213-480. Building area.

The total building area shall not exceed 30% of the lot area, regardless of underlying district requirements.

## **§ 213-481. Number of buildings.**

Any hot-mix asphalt facility site may contain more than one building and/or structure.

## **§ 213-482. Outdoor material storage.**

- A. HMA facilities located in the Town's G Industrial Districts are required to store their aggregates in enclosed or semienclosed structures, either in silos or bunkers.
- B. Stockpiling of aggregates is permissible in the H District. However, such stockpiles must not exceed a height of 25 feet and must be covered to prevent materials from being dispersed by wind.

## **§ 213-483. Pollution controls.**

HMA facilities must have the following pollution controls:

- A. Emissions control equipment for both primary and secondary collection of particulate material in compliance with federal and state requirements. The applicant is also required to obtain an Article 19 State DEC permit prior to renewing the special exception permit;
- B. A system for controlling "fugitive dust," i.e., particulate matter, that, if not confined, would be emitted directly to the atmosphere from points other than a stack, vent, chimney or other functionally equivalent opening.
- C. A smoke recovery system to capture emissions generated by the truck loadout process.
- D. A storage tank containment area in compliance with the Suffolk County Sanitary Code.
- E. A system for managing stormwater runoff on site, with zero discharge at the property line.

## **§ 213-484. Traffic.**

As part of the special exception permitting process, hot-mix asphalt plants shall demonstrate truck routes from the site to major connector roads and/or highways that avoid residential streets.

## **§ 213-485. Parking.**

As part of the special exception permitting process, hot-mix asphalt plants shall demonstrate sufficient on-site parking for all trucks that may be required when the facility is operating at maximum capacity.

## § 213-486. Landscaping.

Hot-mix asphalt facilities shall be either enclosed with opaque perimeter fencing between six and eight feet high, or with a landscaped buffer occupying a minimum of 20% of the setback area.

## § 213-487. Site planning.

As part of the special exception permitting process, hot-mix asphalt plants shall demonstrate the use of site planning to mitigate plant impacts, with such features as:

- A. The use of berms to mitigate noise and dust, and maintain runoff on site;
- B. The siting of the facility's offices as a screen to machinery and equipment.

## Article XLI. Smoking

[Added 7-17-2007 by Ord. No. 14-2007; amended 7-17-2012 by L.L. No. 8-2012

## § 213-488. Legislative intent.

- A. This Legislature hereby finds and determines that human health is seriously threatened by exposure to environmental tobacco smoke (ETC) and that recent findings by the Federal Environmental Protections Agency (EPA) make clear that ETS, or secondhand smoke, is a human carcinogen responsible for 3,000 lung cancer deaths each year in nonsmoking adults.
- B. This Legislature also finds and determines that although smoking is prohibited in Town facilities and all hospitals located with the Town of Babylon, people seeking access to these facilities can still be exposed to secondhand smoke as they seek to enter such public buildings. The Town of Babylon declares and finds it to be in the public's interest to provide for regulation of certain conduct in public places by prohibiting smoking and tobacco use by persons at nondesignated areas. The odor from smoking tobacco products and litter caused by the improper disposal of cigarette butts in public areas can significantly reduce the enjoyment of a healthy and wholesome environment free of smoking related pollution. By prohibiting smoking at public areas, the Town desires to promote and enhance the healthy and wholesome environment and its safe enjoyment by all individuals, especially children.
- C. Smoking and tobacco use are not prohibited in areas specifically designated and suitably equipped for that purpose.

## § 213-489. Definitions.

As used in this chapter the following terms phrase, words, and their derivatives shall have the meanings given:

### **TOBACCO USE**



Includes smoking and the chewing of tobacco.

### **SMOKING**

To inhale or exhale the smoke of burning tobacco or tobacco substitute and also to carry burning tobacco or tobacco substitute in the form of a cigarette, cigar, or any other smoke-producing product or device, including pipes.

## **§ 213-490. Smoking and tobacco use prohibited.**

- A. It shall be a violation of this chapter for any person to smoke or carry lighted cigarettes or other smoking devices, including but not limited to cigars, cigarillos, pipes, and the like, in Town of Babylon parks, recreation areas, playgrounds, pools, and beaches. Such conduct is prohibited except where conspicuously designated "Smoking Permitted" or otherwise.
- B. Smoking is prohibited within a fifty-foot radius of all entrances to all Town buildings and facilities located within the Town of Babylon which are either owned or leased by the Town of Babylon and which are designated as accessible by the public.
- C. The Town further determines and declares that all Town-of-Babylon-owned parks, playgrounds, and recreation areas shall be designated as "Tobacco-Free Zones."
- D. Except as otherwise provided in this code, smoking and or tobacco use in areas designated as "Smoking Permitted" are not to be considered conduct in violation of this article.

## **§ 213-491. Penalties for offenses.**

A person who commits or permits any acts in violation of any provisions of this article shall be deemed to have committed an offense against this article and shall be liable for such violation and the penalty therefore, and shall upon conviction thereof, be subject to a fine or penalty of not less than \$50 and not more than \$250.

## **§ 213-492. Severability.**

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

## **Article XLII. Wyandanch and Straight Path Corridor**

[The current provisions regarding the Wyandanch and Straight Path Corridor are on file in the Town Clerk's office.]

