

Local Law Filing

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Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

STATE RECORDS

DEC 28 2020

Town of Brookhaven

Local Law No. 15 of the year 2020

DEPARTMENT OF STATE

A local Law amending Chapter 29 of the Code of the Town of Brookhaven entitled "Fees"; Chapter 85 entitled "Zoning" and Article XXVII "Redevelopment" of the Code of the Town of Brookhaven

Be enacted by the Town Board of the Town of Brookhaven as follows:

Section 1. Legislative Intent. To enact a new floating zone to create the type of planning and zoning flexibility, which is necessary to stimulate the revitalization of abandoned, vacant or underutilized Commercial Shopping Center, Bowling Alley and Health Club properties.

Section 2. Text Amendment. Chapter 29 of the Code of the Town of Brookhaven entitled "Fees" is hereby amended as follows:

Chapter 29. Fees

§ 29-2. **Waiver of fees.**

No Building Division, fire prevention or sign permit fee, as established by Town Board resolution, shall be charged for municipalities and government agencies, including but not limited to fire districts, lighting districts, water districts and any other special districts.

- A. No fee shall be charged for a certificate of assessment obtained for the installation of a solar photovoltaic collection system or solar hot water system on any single-family, two-family or single-family home with an accessory apartment.
- B. The New York State requirement that deer hunters in the Town of Brookhaven obtain a permit from the Town Clerk for a deer hunting permit to hunt deer during the Suffolk County special firearms hunting season is waived as authorized pursuant to New York State regulation 6 NYCRR 1.24(e).

Section 3. Text Amendment. Chapter 85 of the Code of the Town of Brookhaven entitled "Zoning", Article I. General Provisions §85-1. Definitions; word usage is hereby amended by deleting the words with a strikethrough as follows:

Chapter 85. Zoning

Article I. General Provisions

§ 85-1. **Definitions; word usage.**

(If additional space is needed, attach pages the same size as this sheet, and number each.)

(1)

Section 4. Text Amendment. Chapter 85 of the Code of the Town of Brookhaven entitled "Zoning" is hereby amended as follows:

Chapter 85. Zoning
Article XX. Business Districts
J Business 2 District (General Business).
§ 85-427. Planning Board special permits.

Chapter 85. Zoning
Article XX. Business Districts
J Business 2 District (General Business).
§ 85-433. Special permit criteria.

Chapter 85. Zoning
Article XX. Business Districts
J Business 4 District
§ 85-447. Planning Board special permits.
A. Lodge.

Chapter 85. Zoning
Article XX. Business Districts
J Business 4 District
§ 85-452. Special permit criteria.

Chapter 85. Zoning
Article XX. Business Districts
J Business 5 District
§ 85-461. Planning Board special permits.

Chapter 85. Zoning
Article XX. Business Districts
J Business 5 District

Chapter 85. Zoning
Article XX. Business Districts
J Business 8 District

Chapter 85. Zoning
Article XXII. Industrial Districts
L Industrial 1
§ 85-564. Planning Board special permits.

P. Fuel cell facility connected to the public electric grid in order to sell electricity to a public utility entity.

Chapter 85. Zoning
Article XXII. Industrial Districts
L Industrial 1
§ 85-569. Special permit criteria.

N. Fuel cell facility connected to the public electric grid in order to sell electricity to a public utility entity.
(1) The maximum permitted height for all structures and appurtenant equipment shall be 50 feet.
(2) A fuel cell facility shall provide a "proof of concept letter" from the local electric corporation acknowledging that the fuel cell facility will be interconnected to the utility grid to sell electricity to the electric corporation.

(If additional space is needed, attach pages the same size as this sheet, and number each.)

- (3) All applications for a fuel cell facility shall be accompanied by a decommissioning plan to be implemented upon abandonment, or cessation of activity, or in conjunction with removal of the facility. Prior to issuance of a building permit, the owner or operator of the facility shall post a performance bond or other suitable guarantee in a face amount of not less than 150% of the estimated cost, as determined by the Town Engineer, to ensure removal of the facility. The form of the guarantee must be reviewed and approved by the Town Engineer and Town Attorney, and the guarantee must remain in effect until the system is removed. Review of the guarantee by the Town Engineer and Town Attorney shall be paid from an escrow established by the applicant. Prior to removal of a facility, a demolition permit for removal activities shall be obtained from the Town of Brookhaven.

Chapter 85. Zoning
Article XXVII.

Chapter 85. Zoning
Article XXVII. Commercial Redevelopment District (CRD)

§ 85-748 Legislative intent.

The purpose of the Commercial Redevelopment District legislation is to create the type of planning and zoning flexibility, which is necessary to stimulate the revitalization of abandoned, vacant or underutilized Commercial Shopping Center, Bowling Alley and Health Club properties. This type of sound planning is designed to achieve economically beneficial and socially desirable redevelopment which is more creative and imaginative in its land use and design than is possible under the more rigid, Euclidean and conventional regulations currently in place. The Commercial Redevelopment District is envisioned to guide redevelopment patterns that are civic-oriented, pedestrian-friendly, economically vibrant, environmentally sustainable, and that evoke a unique sense of place. The intent of the Town Board is to enact zoning which can be used as a positive redevelopment planning tool that will:

- A. Stimulate the revitalization of abandoned, vacant or underutilized, Commercial Shopping Center, Bowling Alley and Health Club properties.
- B. Encourage flexibility in site and architectural design.
- C. Maintain a consistently high level of design quality.
- D. Encourage redevelopment that blends a combination of residential, commercial, cultural, or institutional uses.
- E. Offer the opportunity for a balanced array of housing designed to meet the needs of the Town and the region.
- F. Encourage redevelopment that is characterized by compact, pedestrian-oriented developments that provide a variety of uses, diverse housing types, and are anchored by a central public space and civic activity.
- G. Encourage redevelopment that is walkable, affordable, accessible, distinctive, and in Brookhaven, true to the significant character and context of each community and/or hamlet.
- H. Recognize that public and private spaces have equal importance, creating a balanced community that serves a wide range of home and business owners.
- I. Encourage the inclusion of civic buildings and civic space -- in the form of plazas, greens, parks and squares -- enhances community identity and value.
- J. Encourage the efficient provision and delivery of governmental services, including educational, cultural, recreational and emergency services.

§ 85-749 Minimum qualifications and requirements. The Commercial Redevelopment District shall only apply to existing abandoned, vacant or underutilized:

- A. Commercial Shopping Center properties over 5 acres in size.
- B. Bowling Alley properties over 5 acres in size.
- C. Health Club properties over 5 acres in size.
- D. Commercial Shopping Center, bowling or health club properties over 5 acres in size, where the buildings have been demolished and removed.

(If additional space is needed, attach pages the same size as this sheet, and number each.)

§ 85-750 Permitted uses.

- A. In a Commercial Redevelopment District, all uses principally permitted, accessory permitted, and all uses authorized by special permit in Chapter 85 shall be permitted except as follows:
- 1) All uses exclusively permitted and or exclusively specially permitted in J5, L1, L2, K, MHC & PC shall be prohibited.
 - 2) Drive-through facility as an accessory use to a restaurant use shall be prohibited.

§ 85-751 Dimensional and design regulations.

- A. Minimum non-residential yard setback: The minimum required yard setback to adjacent non-residential development shall be zero feet.
- B. Minimum residential side and rear yard setback and buffer: The minimum required side and rear yard setback and buffer to adjacent residential development shall be twenty-five (25) feet.
- C. Maximum permitted height: The maximum permitted height shall be fifty (50) feet. Mechanical/utility structures and enclosures are permitted above the allowed height but must be set back at least ten feet from the roof perimeter.
- D. Maximum permitted non-residential single tenant building size: The maximum permitted non-residential, single tenant building size shall be less than 40,000 gross floor area.
- J. Residential unit size regulations.
- 1) No more than thirty percent (30%) of the residential units shall exceed 1,200 square feet.
 - 2) Minimum thirty percent (30%) of the residential units shall be less than or equal to 800 square feet. However, no more than ten percent (10%) of the residential units shall be equal or less than 450 square feet.
 - 3) No residential unit shall be less than 400 square feet.
- K. Civic space and recreational requirements. Civic space and recreational areas, including squares, private plazas, greens, and public parks, shall be intermixed throughout the development for social activity, recreation, and visual enjoyment.
- 1) A minimum of two square feet civic space per residential unit shall be provided.
 - 2) Civic space may be provided both indoors and outdoors.
 - 3) At least one civic space location shall be devoted to creation of a focal point that is dedicated to the advancement of the arts or advances the historic or cultural significance of the community.
 - 4) Civic space requirements are in addition to the recreational requirements required herein. Outdoor recreation areas shall not count as civic space.
 - 5) Minimum outdoor recreational area shall be equal to the number of units multiplied by 200 square feet.
 - 6) Recreational requirements may be provided on-site, off-site or a payment made in lieu of. Payments made in lieu shall use the recreational fee as established by Town Board resolution. Any off-site recreational facilities provided must be located within the community in which the project is proposed is located and any payments made in lieu of providing on-site recreation must be used for the community in which the proposed project is located.
- L. Pedestrian and Bicycle Access:
- 1) Plans shall provide for continuity from sidewalks in public streets to main pedestrian entrances on the site.
 - 2) Provisions for secure interior bicycle storage space for the residential units shall be provided.
 - 3) Provisions for non-residential bicycle lockers for employees and bicycle racks for visitors shall be provided.
 - 4) Where appropriate, provide pedestrian and/or bicycle paths connecting the site with abutting areas to promote pedestrian and bicycle circulation and safety.
 - 5) Bike paths shall be provided along any main roadway that connects the development to a street or community or as may be directed by the Town Board or Planning Board.
- M. For buildings taller than one story, a horizontal expression line is required at the second-floor line and at any additional floor lines
- N. Land Development Standards:
- 1) All Article XXXIV Land Development Standards shall apply unless specifically superseded herein.

(If additional space is needed, attach pages the same size as this sheet, and number each.)

- 2) All loading, setback, landscaping, green landscaping design and buffer requirements of Article XXXIV Land Development Standards are superseded by the standards of the Commercial Redevelopment District.
- 3) Minimum Parking requirements:
 - i) Residential:
 - (a) 1 stall/residential unit less than or equal to 600 square feet.
 - (b) 1.5 stalls/residential unit greater than 600 square feet but less than or equal to 900 square feet.
 - (c) 2 stalls/residential unit greater than 900 square feet but less than or equal to 1,200 square feet
 - (d) 2.5 stalls/residential unit greater than 1,200 square feet.
 - (e) 0.5 stall/residential unit designated for persons with special needs.
 - ii) Non-residential:
 - (a) Grocery 4 stalls/1,000 square feet,
 - (b) General retail stores and shops, 3 stalls/1,000 square feet.
 - (c) Innovation center/incubator, 2.9 stalls/ 1,000 square feet.
 - (d) Restaurant and Major Restaurant, 1 stall/3 seats.
 - iii) All other uses shall utilize the Table of Parking requirements of Article XXXIV Land Development Standards unless specifically modified by the Town Board.
- O. Affordable and workforce housing. Shall be provided in accordance with Chapter 85, Article XIII, Affordable and Workforce Housing
- P. Signage: All signage shall be as approved by the Town Board or Planning Board.

§ 85-752 Permitted density and intensity.

- A. Base density:
 - 1) The maximum base density shall be 10 units per acre.
 - 2) The maximum base non-residential density shall be 1,000 sf/acre.
- B. Density increase criteria. Permitted base density may be increased by the following:
 - 1) If the project site is located within 2,000 feet of an MTA/Long Island Railroad active station, an additional 7 units per acre of residential development and an additional 1,500 sf /acre of non-residential development may be permitted.
 - 2) If the project site can utilize an existing public or private sewage treatment plant, an additional 4 units per acre of residential development and an additional 1,500 sf /acre of non-residential development may be permitted.
 - 3) If the property has been specifically targeted for redevelopment or elimination of blight in a community-based adopted hamlet plan or other planning/land use document, corridor plan, land use plan or blight plan adopted by the Town Board, an additional 2 units per acre of residential development and an additional 1,000 sf /acre of non-residential development may be permitted.
 - 4) If the project uses high-quality, fire-resistant structural materials, including but not limited to steel, concrete and masonry, an additional 1 unit per acre of residential development and an additional 250 sf /acre of non-residential development may be permitted.
 - 5) If the project uses substantial amounts of green energy technologies, an additional 1 unit per acre of residential development and an additional 250 sf /acre of non-residential development may be permitted.
 - 6) If the project stays within the existing development envelope and will not substantially remove existing natural vegetation or remove landmark trees, then an additional 1 unit per acre of residential development and an additional 500 sf /acre of non-residential development may be permitted.
 - 7) An additional 1 unit per acre of residential development may be permitted if a minimum of 20% of the total housing units will be designed and constructed for those who have special needs. Minimum special needs design requirements are:
 - i) Housing/units specifically designed to meet universal design guidelines or housing/units specifically designed for the visually, auditory, or other special need.
 - ii) The applicant/owner shall enter a partnership or contract with a special need advocacy housing group hearing to design and administer the housing units.

(If additional space is needed, attach pages the same size as this sheet, and number each.)

- C. Additional non-residential development may be substituted for residential development at a rate of the total number of proposed residential units/acre for every 10,000 square feet of additional non-residential development.
- D. Residential units that are equal or less than 450 square feet shall be calculated as ½ units for the purposes of complying with the base density and density increase criteria contained herein.
- E. Increases in density and intensity granted herein shall not require the redemption of Pine Barrens Credits

§ 85-753. Time Limitations

- A. All change of zone applications that are not effective within one year of the date of the change of zone grant and for every additional six months thereafter, shall forfeit 1 unit per acre of residential development and 500 sf/acre of non-residential development.
- B. The applicant/owner shall obtain site plan approval from the Planning Board within two years of the effective date of the change of zone.
 - 1) The applicant/owner shall forfeit 1 unit per acre of residential development and 500 sf/acre of non-residential development if conditional site plan approval from the Planning Board is not obtained within two years of the effective date of the change of zone.
 - 2) For every additional six months after two years of the effective date of the change of zone, if conditional site plan approval from the Planning Board has not been obtained, the applicant/owner shall forfeit an additional 1 unit per acre of residential development and 500 sf/acre of non-residential development.
- C. The applicant/owner shall obtain a building permit and start substantial construction within three years of the effective date of the change of zone.
 - 1) The applicant/owner shall forfeit 1 unit per acre of residential development and 500 sf/acre of non-residential development if a building permit and start substantial construction has not commenced within three years of the effective date of the change of zone.
 - 2) For every additional six months after three years of the effective date of the change of zone, if a building permit has not been obtained and start of substantial construction has not commenced, the applicant/owner shall forfeit an additional 1 unit per acre of residential development and 500 sf/acre of non-residential development.
- D. Town Board may grant a six-month extension of time for making the zoning effective, obtaining site plan approval or obtaining a building permit and starting substantial construction, upon written request from the applicant/owner subject to the following requirements:
 - 1) The written request must state the reasons for the extension and delay and must document that applicant is diligently trying to obtain all required governmental permits and approvals.
 - 2) The extension request shall be accompanied by a fee equal to one half of the change of zone, site plan or building permit application fee that is the subject of the extension request.
 - 3) The extension request is made thirty days prior to the expiration of the time limits herein and the maximum extension request is limited to six months. Failure to submit all required documentation and fees prior to expiration of the time limits shall result in automatic density forfeiture as regulated herein.
 - 4) The Town Board has the discretion to deny, approve, conditionally approve or limit the length of any extension requested by the applicant. Additional public amenities or recreation facilities/fees may be included in any conditional approval.

§ 85-754. General severability; interpretation.

- A. Nothing herein shall be construed to require the Town Board to grant maximum or any increase in density
- B. If any clause, sentence, paragraph, section or item of this article shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not impair nor invalidate the remainder hereof, but such adjudication shall be confined in its operation to the clause, sentence, paragraph, section or item directly involved in the controversy in which such judgment shall have been rendered.
- C. This article shall not be construed to supersede any federal, or state, or county laws or regulations, nor shall this article be interpreted in a manner as to bring it into conflict with federal, or state, or county laws.
- D. Amendments to the Zoning Map to Commercial Redevelopment District shall not require a Land Use Intensification Mitigation Fee.

(If additional space is needed, attach pages the same size as this sheet, and number each.)

F. All development/redevelopment within this district shall be subject to the requirements, procedures and guidelines specified herein, in addition to those standards of this chapter. When there is a conflict, the standards of §§ 85-748 through 85-754 will apply.

§ 85-755. through § 85-763. (Reserved)

Section 5. Authority. The Town Board is vested with the authority to make these amendments pursuant to Town Law §265. The Town Board is vested with the authority to make these amendments by Local Law pursuant to Municipal Home Rule Law §10 and in conformance with Municipal Home Rule Law §20.

Section 6. This local law shall become effective immediately upon filing with the Secretary of State of the State of New York.

(If additional space is needed, attach pages the same size as this sheet, and number each.)

(7)

1. (Final adoption by local legislative body only.)

I hereby certify that the local law annexed hereto, designated as local law No. 15 of 2020 of the Town of Brookhaven was duly passed by the Town Board on December 17, 2020, in accordance with the applicable provisions of law.

~~2. (Passage by local legislative body with approval, no disapproval or repassage after disapproval by the Elective Chief Executive Officer.)~~

~~I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20 _____ of the Town of Brookhaven was duly passed by the Town Board on _____, 20 _____, and was (approved)(not approved)(repassed after disapproval) by the _____ and was deemed duly adopted on _____, 20 _____, in accordance with the applicable provisions of law.~~

~~3. (Final adoption by referendum.)~~

~~I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20 _____ of the Town of Brookhaven was duly passed by the Town Board on _____, 20 _____, was (approved)(not approved)(repassed after disapproval) by the _____ on _____, 20 _____. Such local law was submitted to the people by reason of a (mandatory)(permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general)(special)(annual) election held on _____, 20 _____, in accordance with the applicable provisions of law.~~

~~4. (Subject to permissive referendum and final adoption because no valid petition was filed requesting referendum.)~~

~~I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20 _____ of the Town of Brookhaven was duly passed by the Town Board on _____, 20 _____, and was (approved)(not approved)(repassed after disapproval) by the _____ on _____, 20 _____. Such local law was subject to permissive referendum with the applicable provisions of law.~~

(If additional space is needed, attach pages the same size as this sheet, and number each.)

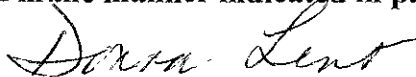
5. ~~(City local law concerning Charter revision proposed by petition)~~

~~I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20 _____ of the City of _____ having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the (special)(general) election held on _____, 20 _____.~~

6. ~~(County local law concerning adoption of Charter.)~~

~~I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20 _____ of the County of _____, State of New York, having been submitted to the electors at the General Election of November _____, 20 _____, pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and a majority of the qualified electors of the towns of said county considered as a unit voting at said general election, became operative.~~

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph 1 above.



Donna Lent, Town Clerk

Dated: December 21, 2020

STATE OF NEW YORK
COUNTY OF SUFFOLK

I, the undersigned, hereby certify that the foregoing local law contains the correct text and that all proper proceedings have been had or taken for the enactment of the local law annexed hereto.



Annette Eaderesto, Town Attorney
Town of Brookhaven

Dated: December 21, 2020

(If additional space is needed, attach pages the same size as this sheet, and number each.)