

## NOTICE OF ADOPTION OF RESOLUTION

NOTICE IS HEREBY GIVEN that the Town Board of the Town of Babylon, County of Suffolk, State of New York, at a regular meeting thereof held on the 1<sup>st</sup> day of March 2023 duly adopted a resolution, an abstract of which is as follows:

**RESOLUTION NO. 188 MARCH 1, 2023**  
**ADOPTING LOCAL LAW NO. 7 OF 2023 AMENDING THE CODE OF THE TOWN OF BABYLON,**  
**CHAPTER 213 (ADMINISTRATION, SUBDIVISION OF LAND UNDER THIS ARTICLE,**  
**AMENDMENT OF THIS ARTICLE)**

WHEREAS, the Town Board of the Town of Babylon having duly called and held a Public Hearing at Babylon Town Hall, 200 East Sunrise Highway, Lindenhurst NY 11757 on the 15<sup>th</sup> day of February, 2023 upon the question of enactment of Local Law No. 7 of 2023 of the Town of Babylon, Suffolk County, New York, being a Local Law amending Chapter 213 of the Code of the Town of Babylon (Administration, Subdivision Of Land Under This Article, Amendment of This Article); and

WHEREAS, in accordance with Part 617.5(c.) (26), State Environmental Quality Review (SEQR), the adoption of this Local Law is classified a Type II Action and not subject to environmental review under SEQR.

NOW, THEREFORE, be it

RESOLVED AND ORDAINED, by the Town Board of the Town of Babylon, that Local Law No. 7 of 2023 of the Town of Babylon, Suffolk County, New York, is hereby enacted as follows and effective upon its filing with the New York State Department of State:

**LOCAL LAW NO. 7 of 2023**  
**AMENDING CHAPTER 213**  
**ARTICLE XLII**  
**§213-495, §213-496, & §213-497**  
**OF THE CODE OF THE TOWN OF BABYLON**

Section 1. Amend as follows:  
**§213-495 Administration**

**A. Department of Planning & Development**

- (1) Any application for development within the Wyandanch Straight Path Corridor Form Based Code (Wyandanch FBC) shall be processed and reviewed through the Department of Planning & Development. The Division of Downtown Revitalization (Downtown Revitalization), or such Planning Department staff designated to handle Downtown Revitalization matters, shall review and process these applications.
- (2) Purpose and Function of the Planning Department and the Office of Downtown Revitalization
  - a. The purpose of Planning Department staff and the Office of Downtown Revitalization in reviewing Wyandanch FBC applications is to foster walkable, transit-oriented development as per §213-492 and to ensure that all properties within the Wyandanch FBC Zoning District comply with the form based code in this Article XLII. Planning Staff shall also function as the main point of contact for applicants and shall ensure that all departments of the Town with jurisdiction over a project are consulted in a timely fashion to facilitate review of proposed developments.
  - b. Downtown Revitalization and Planning Staff shall advise and provide recommendations to the Commissioner of Planning & Development (Commissioner) and the Chief Building Inspector in administering provisions of the Article XLII, including the interpretation of words and terms herein, review of applications submitted under provisions of this article, and such other duties as may be delegated to Downtown Revitalization and Planning Staff by the Commissioner of Planning & Development.
  - c. Downtown Revitalization and Planning Staff shall review applications and proposals to ensure compliance with both the character and spirit of the Wyandanch FBC and the surrounding community and provide recommendations and guidance to the Commissioner regarding same.

- d. Downtown Revitalization and Planning Staff shall review all applications, in conjunction with other Town departments, and recommend approval, approval with conditions or modifications, or denial and shall notify the Commissioner of Planning & Development of its recommendations. Additional information may be requested if the application is deemed incomplete or inadequate for sufficient review.

## **B. Commissioner of Planning & Development**

- (1) Final authority and decision making for all applications within the Wyandanch FBC shall lie with the Commissioner of Planning & Development (Commissioner), except for any required Board approvals as outlined in this article.
- (2) The Commissioner shall review all improvements, including alterations and modifications to structures for conformance with this article.
- (3) No Building Permit shall be issued by the Chief Building Inspector within the Wyandanch FBC Zoning District unless the Commissioner has determined that the application is consistent with the regulations and intent of this article.
- (4) The Commissioner shall coordinate with Downtown Revitalization and Planning Staff to ensure that all Town Agencies with jurisdiction over a project are included in the project review as early as practical in the review process.
- (5) A memorandum from the Commissioner shall serve as the authorizing approval for Step II of the three step review process as outlined in subsection D. (1).
- (6) The Commissioner shall have the authority to approve any minor encroachments or dimensional deviation requests, as expressly permitted by this article under §213-495 D. (1). Such minor encroachments shall not be permitted unless explicitly recommended in writing by either Planning Staff or the Form Based Code Architect (FBCA). All minor encroachments or dimensional deviation request must be specifically requested by the applicant in writing and shall provide the planning justification for such request, separate from any plans or drawings. Such requests shall individually be approved by the Commissioner upon determination that such minor encroachment or dimensional deviation request is consistent with the regulations and intent of this article. Approval of construction documents does not constitute approval of a minor encroachment or deviation if the minor encroachment or deviation has not been specifically requested and approved pursuant to this subsection (6).
- (7) Any authority granted to the Commissioner may be designated to the Deputy Commissioner of Planning & Development, the Director of Downtown Revitalization, or any other member of the Planning Department, by the Commissioner.

## **C. Form Based Code Architect**

- (1) The Town of Babylon Department of Planning & Development shall retain an employee or consultant as the Form Based Code Architect (FBCA). The FBCA shall, at a minimum, be a licensed architect. The FBCA shall be appointed by the Town Supervisor in consultation with the Commissioner of Planning & Development.
- (2) In the event that the position of FBCA is vacant or that the FBCA is unavailable to perform the duties required by this article, such duties shall be performed by other staff members or consultants as designated by the Commissioner of Planning & Development.
- (3) Purpose and function of the FBCA
  - a. In addition to the various Town departments with jurisdiction over development applications within the Town of Babylon, the FBCA shall ensure that applications for development within the Wyandanch FBC Zoning District adhere to the Architecture Standards, as set forth in Part 6 of this article, and provide recommendations to the Commissioner regarding same. This includes review of overall building design, architectural style, ornamentation, color scheme, materials, and urban design context, among other elements as outlined within this article. Additionally the FBCA shall ensure that developments foster architectural harmony and comply with the intentions of the form based code as outlined in this article.
  - b. The FBCA shall be referred all applications for a proposed variance in order to provide an opinion and recommendation on a proposed variance's impact on the character of the neighborhood.

- c. The FBCA may also be requested by the Commissioner to provide specific recommendations in writing regarding encroachments or dimensional deviations from the Form Based Code, as outlined in this article.
- d. The FBCA shall provide all comments and feedback in writing to the Commissioner to help inform the decision making and review process.

#### **D. Pre-Construction Approval Process and Permits for Buildings and Uses**

##### **(1) Approval Process**

- a. All applications for development within the Wyandanch FBC Zoning District, shall undergo a three-step review and approval process as outlined in this article. At the discretion of the Commissioner, following a Step I: Concept Review, a determination shall be made regarding whether or not an application shall warrant completion of the three-step review process or standard review through the Department of Planning & Development.
- b. Step I: Concept Review
  - i. Establishes conceptual conformance with the requirements of the code.
  - ii. Shall determine whether a proposed use or structure is allowed by right, is prohibited, or may be allowed by special exception use permit.
  - iii. Shall consist of a preliminary meeting with the Commissioner, Planning Staff, and the FBCA to review preliminary plans and provide general feedback. Upon the completion of Step I: Concept Review and a determination by the Commissioner that the proposed development is feasible and consistent with the FBC, a Step II: Design Review application checklist will be issued. Once a checklist is received, an applicant may proceed with a formal Step II submission to the Planning Department.
- c. Step II: Design Review
  - i. Confirms compliance of the design details with this chapter and confirms that previous recommendations made by the Commissioner, Planning Staff, and the FBCA have been incorporated.
  - ii. This step is akin to a site plan review. A fully engineered site plan must be submitted and reviewed to ensure compliance with this article, including Part 3: Regulating Plan, Part 4: Development Standards, Part 5: Thoroughfare Standards, as well as other Town of Babylon specifications for development.
  - iii. This step also includes review of architectural elevations and floor plans, building renderings, material schedules, and color palettes, among other details, by the FBCA, to ensure compliance with this article, including Part 6: Architecture Standards.
  - iv. If a special exception use permit is required, as determined during Step I: Concept Review, the Commissioner will refer the application to the Town Board pursuant to Article XXXII. If such is the case, the Commissioner and Planning Staff will ensure that sufficient design information and detail is provided, in order for the Town Board to make an informed decision. A special exception use permit must be approved by the Town Board, prior to the completion of Step II: Design Review.
  - v. Minor encroachment request letters, requests for a dimensional deviation of 15% or less, or other such minor deviations from the code must be submitted during Step II: Design Review. As per §213-495 B. (6) the Commissioner may approve such a request upon determination that such request is consistent with this article and receipt of a favorable written recommendation from either Planning Staff or the FBCA.
  - vi. Variances must be applied for during Step II: Design Review. Upon review of an application by a Building Inspector, if a variance is required a denial will be written. Once a denial is written, it will be referred to the FBCA or Planning Staff, to provide a written opinion or recommendation on the impact of the requested variance on the neighborhood. After issuance of a denial and written comments are issued, the Commissioner may determine that an applicant can proceed with a formal application to the Zoning Board of Appeals.
  - vii. A memorandum from the Commissioner shall serve as a formal approval for Step II: Design Review and acceptance of an approved site plan.
- d. Step III: Construction Document Review

- i. Confirms that the project will be constructed as approved in Step II: Design Review.
- ii. Includes the complete review by the Building Inspector and/or Plans Examiner of construction drawings and documents, mechanical plans, and other necessary documents for issuance of a Building Permit.
- iii. Requires conformance with all necessary conditions of Step II: Design Review approval, as well as any other outside agency approvals.
- iv. Following construction document review, if determined that the plans are consistent with the previously approved plans and this article, a building permit shall be issued, in compliance with §213-495 E.

(2) Special Exception Use Permit:

- a. Those uses which are specifically authorized in this article to be granted by special exception use permit may be allowed by the Town Board pursuant to Article XXXII. This will occur during Step II: Design Review, as outlined in §213-495 D. (1) (c) (iv).

(3) Variances:

- a. Variances from the provisions of this article may be granted by the Zoning Board of Appeals pursuant to the statutory requirements in Sections 267-a and 267-b of the Town Law of New York State. Variance applications may be referred to the FBCA for an opinion on the effect of a proposed variance on the character of the neighborhood. The FBCA's response to the referral of a variance application shall specifically address whether or not the proposed variance will produce an undesirable change in the character of the neighborhood, including the desired walkable and pedestrian-friendly neighborhood character to be created by this Article XLII. Variance applications shall be made during Step II: Design Review, as outlined in §213-495 D. (1) (c) (vi).

(4) Applications and Submission Items

- a. The required submission items, such as applications, forms, drawings, and documents, shall be determined by the Department of Planning & Development in order to ensure adequate and sufficient details are provided for a thorough and thoughtful review to be completed.

(5) Review Fees

- a. The Town Board shall by resolution establish and from time to time update a schedule of fees for development applications brought pursuant to this article. Such fees shall be designed to cover the reasonable costs of review of applications under this article.

(6) Compliance with the State Environmental Quality Review Act and Chapter 189 of the Town Code

- a. All Wyandanch FBC applications submitted to the Planning Department shall be referred to the Department of Environmental Control for review of environmental and stormwater impacts.
- b. Applications for uses or activities allowed by right by this Part shall be deemed Type II actions under SEQRA and shall not require the submission of additional SEQRA documentation, if the Department of Environmental Control finds that such action fits within the environmental parameters reviewed within the Generic Environmental Impact Statement (GEIS).
- c. Applications for special exception use permits, appeals, and variances shall be subject to the SEQRA requirements for Type I or Unlisted Actions, as required by the SEQRA Regulations and shall be reviewed accordingly by the Department of Environmental Control.
- d. All applications for building or development shall comply with Chapter 189 requirements for stormwater management.

(7) Wastewater Management

- a. The applicant shall apply to the Suffolk County Sewer Agency and Suffolk County Department of Health Services for sanitary wastewater disposal to connect to the Wyandanch Southwest Sewer District. On site wastewater disposal is not permitted. The Town shall be provided with estimated wastewater flow from the development pursuant to Suffolk County requirements.

(8) Groundwater

- a. Because of the high groundwater table in the area, soil borings, at least one per acre, as well as elevations and topography for all proposed developments, shall be submitted with plans and reviewed by the Department of Environmental Control, as part of the Design Review process.

**E. Issuance of Building Permits and Certificates of Occupancy**

Building Permits and Certificates of Occupancy shall be issued as provided in Chapter 89 of the Town Code, provided that the applicant has fully complied with the provisions of this Article XLII and all other applicable regulations.

**F. Required Town Board Approval**

As required by the terms of the Generic Environmental Impact Statement, pursuant to Section 503(h) of the General Municipal Law, the Town of Babylon Department of Planning and Development (the Planning Department) shall notify the Town Board upon receipt of any application for a permit for building construction or alteration, or for a certificate of occupancy for a structure within the Wyandanch Urban Renewal Area for a period of three years from the approval of the Final Wyandanch Downtown Revitalization Plan by the Town Board on May 22, 2009 or of any amendments or modifications thereto. During this period, the Planning Department shall not issue a building construction or alteration permit, or a certificate of occupancy for a structure or use within the Urban Renewal Area, without having first obtained the consent of the Town Board, unless the construction, alteration, or use is necessary for the immediate protection of public health and safety. The Town Board shall consent to the issuance of certificates and permits upon the determination that the proposed construction, alteration, or use is not inconsistent with the Plan or any amendments or modifications thereto. The Town Board shall have the power to reject any proposals which are inconsistent with the Plan in order to preserve the integrity of the Plan.

**G. Streets, Sidewalks, and Public Improvements**

All construction, improvements, and alterations to streets, sidewalks, utilities, parks, and other public facilities shall be reviewed prior to construction by the Department of Public Works and the Commissioner to ensure compliance with this article.

**H. Non-Conforming Uses**

All regulations governing non-conforming uses contained in the Town of Babylon Code shall apply, including the following:

- (1) 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 matter of right under the statutes, ordinances, and general rules of law then in effect in the Town of Babylon.
- (2) 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.
- (3) A nonconforming use which shall be abandoned and/or discontinued for a period of more than six months shall thereafter be determined to be illegal and in violation of the provisions herein. Upon the expiration of the aforesaid six month period, the said use may not be reinstated.
- (4) 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 existing floor area, the legal nonconforming use may be extended to the entire floor area.
- (5) 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 total floor area of the building, unless the use of said building is changed to a conforming use, notwithstanding the provisions of H.(4) of this section.

- (6) A special exception use permit from the Town Board shall be required for the expansion of a nonconforming use not in conformance with the provisions of this article.

**§213-496 Subdivision of Land Under This Article**

- A. Land may be subdivided into lots and blocks only as permitted by the Regulating Plan or by subdivision approval by the Planning Board if determined by the Commissioner to be consistent with the regulations and intent of this article. The Planning Board shall not require a preliminary plat for any subdivision application which complies with this article.
- B. Town owned parcels may be exempt from Planning Board requirements and can be subdivided by map or deed, as may be required, and if determined to be consistent with the regulations and intent of this article.

**§213-497 Amendment of This Article**

- A. This article may be amended as provided in Chapter 215 of the Town Code. Prior to adopting an amendment, the Town Board shall refer such proposed amendment to the Commissioner for comment. If the Commissioner does not comment within 30 days of such referral, the Town Board may enact the amendment without receiving such comment.

Section 2. Severability

If any clause, sentence, paragraph, subdivision, section or other part of this local law 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 local law, and it shall be construed to have been the legislative intent to enact this local law without such unconstitutional or invalid parts therein.

Section 3. Effective Date

This local law shall take effect immediately upon filing in the Office of the Secretary of the State of New York.

Dated: March 1, 2023, Town of Babylon

BY ORDER OF THE TOWN BOARD, TOWN OF BABYLON  
GERALDINE COMPITELLO, TOWN CLERK