

The Board of Trustees of the Incorporated Village of Westbury, after due deliberation at a public work session held on October 17, 2019, adopted Resolution No.: _____-2019:

RESOLUTION TO SET A PUBLIC HEARING FOR ACCEPTANCE OF THE PROPOSED AMENDMENTS TO CHAPTER 248 OF THE ZONING CODE AND MAP OF THE INCORPORATED VILLAGE OF WESTBURY, INCLUDING THE CREATION OF THE MAPLE UNION TOD DISTRICT

In so adopting, the Board of Trustees of the Incorporated Village of Westbury has called and is noticing a public hearing for the 5th day of December, 2019, at Village Hall, 235 Lincoln Place, Westbury, New York, at 7:30 p.m. to consider the proposed amendments to Chapter 248 of the Village Zoning Code and Zoning Map, including the creation of the Maple Union TOD District, as follows:

CREATION OF THE MAPLE UNION TOD DISTRICT

Article XXXIX Maple Union TOD District

[Added __-__-2019 by L.L. No. _____]

§ 248-347 Legislative intent, purpose and findings.

- A. The Master Plan of the Incorporated Village of Westbury (the “Village”) was adopted in 2003 (the “Village Master Plan”). The Village Master Plan recognized the importance of Westbury’s downtown business community, and the importance of continuing to analyze and augment zoning and development initiatives to meet the changing needs of the community. The Village Master Plan generally advocated for the strengthening of the business district in a number of ways, many of which have been implemented since the adoption of that plan. Since that time, there have been a number of well-documented regional and community changes that have caused the Village to consider additional changes to keep up-to-date with current needs of the community. In the meantime, additional opportunities have presented themselves to the Village to assist it in enhancing the business district and the community as a whole.
- B. Consistent with the Village Master Plan, the Village has, for more than fifteen years, implemented steps to spur revitalization of its downtown business district, particularly along its main business corridor, Post Avenue. The Village’s past efforts have included: traffic calming measures to make the streets pedestrian friendly; façade improvement to make the storefronts more consistent and attractive; approval of multi-family residential development to bring new residents into the community; approval of the development of a performing arts theater unique for central Nassau County; initiation of an arts council to promote and advance art and culture in the community; working with the Business Improvement District to promote the downtown; and other infrastructure, zoning and development improvements.
- C. In 2016, the Village was selected to participate in the State of New York’s Downtown

Revitalization Initiative (the “DRI”), and received a DRI grant to further advance its downtown redevelopment efforts. Governor Cuomo, in speaking about the DRI said, “A thriving downtown can provide a tremendous boost to the local economy. The [DRI] will transform selected downtown neighborhoods into vibrant places for people to live, work and raise a family, which will also attract new investments for years to come.”

- D. The Westbury DRI Local Planning Committee was established to provide a broad community perspective to guide the DRI planning process in developing a vision and Strategic Investment Plan (the “DRI Plan”), and identify projects that would advance the Village’s revitalization goals. The DRI Plan identified (and the State funded) a number of projects that will advance the Village’s downtown revitalization to the next level, including a rezoning project for the area within walking distance of Westbury’s Long Island Railroad train station (bounded by Post Avenue, Maple Avenue, School Street and Union Avenue, the “Maple Union Area”). The DRI Plan was the product of extensive analysis, of existing conditions, trends, development, zoning, etc. In this sense, the DRI Plan serves as an update and supplement to the Village’s Master Plan, and carries forward the master plan’s recognition of the importance of the business district to the community.
- E. The DRI Plan articulated the vision for Westbury’s downtown as follows: “*Westbury will be Long Island’s model transit-oriented, diverse, walkable, arts-centric downtown.*” The goal is to make Westbury’s downtown a vibrant, people-friendly place that feels safe and secure, where people can walk, shop, recreate, dine, interact, and spend time, with a strong sense of community.
- F. The vision also encompasses the notion that the Maple Union Area is today underutilized, and presents an opportunity to uplift and transform that area into a new and vibrant part of the community, through rezoning that employs transit oriented development (“TOD”) principles.
- G. The DRI Plan states, in relation to the proposed rezoning of the Maple Union Area, “*this [rezoning] is critical for the revitalization of Westbury... and will have several transformative effects. First, it will expand the boundaries of the downtown into the [Maple Union Area]. The project will allow the Village to grow rationally through medium-density, mixed-use development, while maintaining the single-family, low-density housing in the surrounding neighborhoods. Next, the rezoning will improve the connection between the LIRR Station and downtown by creating a vibrant, new neighborhood adjacent to the LIRR Station. Increased residential density will expand the consumer base for retailers along Post Avenue. The project will catalyze the development of new commercial spaces that will create jobs and open spaces that will meet community needs... The rezoning will allow the private market to address the demand for new multi-family housing that is evident in the real estate market analysis and public engagement findings... [t]he new development will generate significant positive fiscal impacts in the Village, region and State.*”
- H. In addition to the rezoning of the Maple Union Area, The DRI Plan also recognized that certain aspects of the Village’s existing zoning in its downtown core outside the Maple

Union Area, including on Post Avenue, can be enhanced and made consistent in certain respects with the new zoning envisioned for the Maple Union Area.

- I. As a result of the comprehensive analysis of the existing zoning and of various potential new zoning in the Maple Union Area and Post Avenue, and the impacts and effects of such changes, the Board of Trustees (i) herein finds that it is important for the future of the Village that the proposed rezoning take place, and (ii) hereby enacts, consistent with the Village Master Plan and the DRI Plan, a new article of the Village Code to create a new district to be known as the Maple Union TOD District (the “MU District”).
- J. The primary purpose of the MU District will be to facilitate in the Maple Union Area, the envisioned vibrant transit-oriented redevelopment incorporating a mix of new housing options, together with new retail, office, personal service, and/or other compatible uses that contribute to the enhancement and long-term sustainability of the community.
- K. The MU District regulations set forth in this Article are designed to (i) build upon the strengths of Westbury and its downtown area, including its location proximate to the Westbury LIRR train station; (ii) infuse new energy and activity to enhance Westbury’s downtown; (iii) make all of Westbury more sustainable for the future; and (iv) foster and improve the existing aesthetic appearance of the Maple Union Area.
- L. More specifically, the purposes of the new MU District are to (without limitation):
 - (1) Foster reasonable and prudent transit-oriented development that allows for increased density, mixed-use development in the Maple/Union area.
 - (2) Improve pedestrian and visual connections between the train station and downtown.
 - (3) Attract new residential and job-creating uses near the train station.
 - (4) Retain the existing diverse population and attract new residents.
 - (5) Encourage the development of diverse housing options.
 - (6) Establish a retail mix that supports and complements the existing business district and promotes the sustainability and diversity of the community.
 - (7) Ensure parking capacity meets the needs of residents, commuters and visitors.
 - (8) Facilitate improvements to key community assets.
 - (9) Increase pedestrian activity throughout the downtown.
 - (10) Enhance the pedestrian experience through streetscape improvements.
 - (11) Ensure the pedestrian environment is safe and easy to navigate.
 - (12) Attract new public benefits that encourage residents and visitors to come downtown.
 - (13) Enhance the cultural profile of the Village of Westbury.
 - (14) Support the sustainability and growth of existing cultural assets.
 - (15) Increase opportunities for the community to participate in culture.
- M. Corresponding changes to the existing zoning regulations for the Business Districts along Post Avenue will in certain respects complement the MU District and facilitate reasonable and prudent redevelopment therein and elsewhere in the Village.

N. This Article is enacted under the authority of § 7-703 of the Village Law of the State of New York and § 10 of the Municipal Home Rule Law of the State of New York.

§ 248-348 Terms and provisions of this Article control.

The provisions of this Article, with respect to the MU District, shall supplant, supersede, and to the extent these are inconsistent shall prevail over any other chapters, articles, and provisions of the Code of the Incorporated Village of Westbury (hereinafter the “Code”) as they relate to the MU District. Except as otherwise provided in this Article, any other chapters, articles, or provisions of the Code that are inconsistent with, or conflict with, this Article, and/or the standards and procedures set forth herein shall have no application, force, or effect within the Maple Union TOD District.

§ 248-349 Amended zoning map; Schedule of regulations.

This enactment shall include (i) the approval and filing of a new zoning map reflecting changes described herein (hereinafter the “updated Zoning Map” or “Zoning Map”); and (ii) the approval and adoption of the Schedule of Regulations.

§ 248-350 Designation of Maple Union TOD District.

The Maple Union TOD District shall be comprised of seven (7) subdistricts as herein defined: MU-R1, MU-R2, MU-R3, MU-R4, MU-R5, MU-R6 and MU-R7, as reflected on the updated Zoning Map.

§ 248-351 Permitted uses: MU-R1.

In the MU-R1 District, no lot or building shall be erected, altered or used other than as follows:

- A. Principal Uses.
 - (1) Attached housing and townhouses.
- B. Accessory Uses. Accessory uses shall be limited to those uses on the same lot with and customarily incidental to any of the above permitted uses.
- C. Special uses. The following uses shall be permitted only with a special permit issued pursuant to Article XXIX: Churches or similar places of worship, cellular towers and cellular antennas.
- D. For area requirements, see area zoning criteria set forth on *Schedule of Regulations*.

§ 248-352 **Permitted uses: MU-R2.**

In the MU-R2 District, no lot or building shall be erected, altered or used other than as follows:

A. Principal Uses.

- (1) Attached housing and townhouses;
- (2) Multiple dwelling residential use provided that buildings must contain finished ground floor area of at least 50% of the area of the second floor (the “Minimum Finished Ground Floor Area”). The Minimum Finished Ground Floor Area must front on a street.

B. The following principal uses shall be permitted on the ground level, except to the extent that such use would constitute an Adult Use as identified in Article XXVI of this Code:

- (1) Art or craft supply store, studio or gallery;
- (2) Antique shop;
- (3) Bakery, health food store, ice cream parlor, specialty food store, grocery store, supermarket, candy store, delicatessen or any retail store that prepares or sells food or drink other than alcoholic beverages or an eating or drinking establishment other than those serving alcoholic beverages, excluding fast food as defined by § 248-2, provided such use does not have a dining area of more than 300 square feet and no more than 12 seats, and provided that hours of operation of such use is between the hours of 7:00 a.m. and 10:00 p.m.;
- (4) Bank and credit union (excluding pawnbrokers and check cashing businesses);
- (5) Barber shop or beauty parlor;
- (6) Bicycle store;
- (7) Book store;
- (8) Clothing store;
- (9) Computer sales, supplies and repair store;
- (10) Collectible or memorabilia store;
- (11) Dry cleaner, provided no cleaning is performed on-premises;
- (12) Florist;
- (13) Gift shop;
- (14) Health club;
- (15) Jewelry store;
- (16) Martial arts, yoga and dance studio;
- (17) Mobile telephone, electric appliances and other electronics store;
- (18) Any municipal use, including municipal parking lot or structure;
- (19) Nail salon;
- (20) Optician and eyeglass store;
- (21) Other convenience retail establishment, such as a cosmetic store, drugstore, hardware store and music/video sale and/or rental store;
- (22) Pet store, pet grooming store or pet supply store, provided that they are no greater than 3,000 square feet in area and do not provide the boarding of animals;

- (23) Pharmacy;
 - (24) Not-for profit library, art gallery, museum;
 - (25) Real estate office;
 - (26) Shoe store or repair shop;
 - (27) Tailor;
 - (28) Travel agency;
 - (29) Vitamin store.
- C. Accessory Uses. Accessory uses shall be limited to those uses on the same lot with and customarily incidental to any of the above permitted uses.
- D. Special Uses. The following uses shall be permitted only with a Special Permit issued pursuant to Article XXIX:
- (1) An eating or drinking establishment that exceeds the thresholds described in § 248-352(B)(3) and/or one that serves alcoholic beverages;
 - (2) Cabaret;
 - (3) Cigar bar;
 - (4) Hotel;
 - (5) Churches or similar places of worship;
 - (6) Cellular towers and cellular antennas;
 - (7) A permitted use operating between the hours of 10:00 p.m. and 7:00 a.m. provided said use meets the standards enumerated in § 248-251.3;
 - (8) Assisted living housing which meet the definition for Specialized Senior Housing Facility or Facilities as defined by § 248-2; and
 - (9) Uses similar to permitted uses as determined by the Board of Trustees.
- E. Special ground floor use limitations. Except in the case of an attached housing or townhouse use, where ground floor commercial use is prohibited:
- (1) Buildings shall contain finished ground floor area of at least 50% of the area of the second floor (the “Minimum Finished Ground Floor Area”);
 - (2) 50% of the Minimum Finished Ground Floor Area must be commercial use and must front on a street.
- F. For area requirements, see area zoning criteria set forth on *Schedule of Regulations*.

§ 248-353 **Permitted uses: MU-R3.**

In the MU-R3 District, no lot or building shall be erected, altered or used other than as follows:

- A. Principal Uses.
- (1) Attached housing and townhouses;
 - (2) Multiple dwelling residential use provided that buildings must contain finished ground floor area of at least 50% of the area of the second floor (the “Minimum

Finished Ground Floor Area”). The Minimum Finished Ground Floor Area must front on a street.

- B. Accessory Uses. Accessory uses shall be limited to those uses on the same lot with and customarily incidental to any of the above permitted uses.
- C. Special Uses. The following uses shall be permitted only with a Special Permit issued pursuant to Article XXIX: Churches or similar places of worship, cellular towers and cellular antennas and Specialized Senior Housing Facility or Facilities, as defined by § 248-2.
- D. For area requirements, see area zoning criteria set forth on *Schedule of Regulations*.

§ 248-354 Permitted uses: MU-R4.

In the MU-R4 District, no lot or building shall be erected, altered or used other than as follows:

- A. Principal Uses.
 - (1) All uses permitted in the MU-R2 District;
 - (2) Adult Uses pursuant to Article XXVI.
- B. Accessory Uses. Accessory uses shall be limited to those uses on the same lot with and customarily incidental to any of the above permitted uses.
- C. Special Uses. The following uses shall be permitted only with a Special Permit issued pursuant to Article XXIX: Those permitted in the MU-R2 District.
- D. Special ground floor use limitations: Except in the case of an attached housing or townhouse use, where ground floor commercial use is prohibited:
 - (1) Buildings shall contain finished ground floor area of at least 50% of the area of the second floor (the “Minimum Finished Ground Floor Area”);
 - (2) Up to 50% of the Minimum Finished Ground Floor Area may be commercial use and must front on a street.
- E. For area requirements, see area zoning criteria set forth on *Schedule of Regulations*.

§ 248-355 Permitted uses: MU-R5.

In the MU-R5 District, no lot or building shall be erected, altered or used other than as follows:

- A. Principal Uses.

- (1) All uses permitted in the MU-R2 District.
- B. Accessory Uses. Accessory uses shall be limited to those uses on the same lot with and customarily incidental to any of the above permitted uses.
- C. Special uses. The following uses shall be permitted only with a Special Permit issued pursuant to Article XXIX: Those permitted in the MU-R2 District.
- D. Special ground floor use limitations: Except in the case of an attached housing or townhouse use, where ground floor commercial use is prohibited:
 - (1) Buildings shall contain finished ground floor area of at least 50% of the area of the second floor (the “Minimum Finished Ground Floor Area”);
 - (2) Up to 50% of the Minimum Finished Ground Floor Area may be commercial use and must front on a street.
- E. For area requirements, see area zoning criteria set forth on *Schedule of Regulations*.

§ 248-356 Permitted uses: MU-R6.

In the MU-R6 District, no lot or building shall be erected, altered or used other than as follows:

- A. Principal Uses.
 - (1) All uses permitted in the MU-R2 District.
- B. Accessory Uses. Accessory uses shall be limited to those uses on the same lot with and customarily incidental to any of the above permitted uses.
- C. Special uses. The following uses shall be permitted only with a Special Permit issued pursuant to Article XXIX: Those permitted in the MU-R2 District.
- D. Special ground floor use limitations: Except in the case of an attached housing or townhouse use, where ground floor commercial use is prohibited:
 - (1) Buildings shall contain finished ground floor area of at least 50% of the area of the second floor (the “Minimum Finished Ground Floor Area”).
 - (2) Up to 100% of the Minimum Finished Ground Floor Area may be commercial use and must front on a street.
- E. For area requirements, see area zoning criteria set forth on *Schedule of Regulations*.

§ 248-357 Permitted uses: MU-R7.

In the MU-R7 District, no lot or building shall be erected, altered or used other than as follows:

- A. Principal Uses.
 - (1) All uses permitted in the MU-R2 District.
- B. Accessory Uses. Accessory uses shall be limited to those uses on the same lot with and customarily incidental to any of the above permitted uses.
- C. Special uses. The following uses shall be permitted only with a Special Permit issued pursuant to Article XXIX: Those permitted in the MU-R2 District.
- D. Special ground floor use limitations: Except in the case of an attached housing or townhouse use, where ground floor commercial use is prohibited:
 - (1) Buildings shall contain finished ground floor area of at least 50% of the area of the second floor (the “Minimum Finished Ground Floor Area”);
 - (2) 50% of the Minimum Finished Ground Floor Area must be commercial use and must front on a street.
- E. For area requirements, see area zoning criteria set forth on *Schedule of Regulations*.

§ 248-358 Off-street parking requirements.

Within the Maple Union TOD District, all structures and land uses hereafter erected, enlarged or extended shall be provided with the amount of off-street automobile parking space and loading and unloading space required by the provisions of Article XXXI of the Code.

§ 248-359 Development bonus provisions.

- A. Intent. In accordance with § 7-703 of the Village Law of the State of New York, the Board of Trustees is empowered to provide for a system of zoning incentives, as it deems necessary and appropriate, consistent with the purposes and conditions set forth in this Article. This provision, allowing for the awarding of zoning incentives in the form of development bonuses to those applicants who provide certain specified public benefits, is designed to improve the working, shopping and living environment of the Maple Union TOD District by:
 - (1) Providing, encouraging the retention and development of attractive and useful open space;
 - (2) Improving pedestrian circulation;
 - (3) Encouraging a mix of land uses and housing types;
 - (4) Encouraging use of nearby mass transportation facilities;
 - (5) Improving traffic circulation and parking;

- (6) Arranging and designing buildings to provide light and air to streets and other properties and to enhancing aesthetic views;
- (7) Encouraging the development of attractive, pedestrian-oriented retail areas;
- (8) Encouraging the provision and use of both passive and active recreation areas;
- (9) Preserving and/or increasing the quantity and quality of landscaping;
- (10) Encouraging creative and superior architectural design; and
- (11) Improving the Village infrastructure.

B. Examples of public benefits, subject to the approval of the Board of Trustees, which could meet the above objectives within the Maple Union TOD District include but are not limited to:

- (1) Affordable housing units in excess of that required by §248-361 of the Village Code;
- (2) Inclusion of Micro-units of no less than 350 square feet of clear floor area;
- (3) Inclusion of Age-restricted units;
- (4) Inclusion of Veteran preferential units;
- (5) Off-site improvements to parks, open space, transit facilities, and streetscape within the Maple Union TOD District;
- (6) Provision for social or cultural public benefits;
- (7) Water and sewer system improvements;
- (8) Additional off-street parking made available for public use;
- (9) Public street crosswalks;
- (10) Additional open space, enhancement of existing open space, and ecological restoration;
- (11) Private or public recreational opportunities;
- (12) Pedestrian or vehicular connector;
- (13) Off-street passenger loading (for hotels, apartment, condominium, or housing cooperative buildings, etc.);
- (14) Sidewalk canopy;
- (15) Interior freight loading;
- (16) Leadership in Energy and Environmental Design (LEED) certifications or similar standards;
- (17) Subsurface, concourse or bridge connections to other buildings;
- (18) Additional setback at grade, allowing for sidewalk widening or plaza with landscaping and/or unique paving design;
- (19) Unique landscaping;
- (20) Shared transportation;
- (21) Cash contribution in lieu of the above; and
- (23) Transfer of land to the Village to achieve the above goals.

C. The Board of Trustees, in any approval granted under this Article, may provide a development bonus to an applicant in order to further the intent of this Section. The ***Schedule of Regulations*** describes the bonuses achievable by an applicant. An analysis of the long-term economic value of the proposed public benefits to the Village as compared with the long-term economic value of the proposed incentives to the applicant, shall be

provided as a part of the application. For purposes of this section, “long-term” shall be defined as a term of 10 years or more. Notwithstanding the above, the Board of Trustees expressly reserves to itself the right to grant bonuses exceeding those set forth in the *Schedule of Regulations*, if it deems such appropriate.

§ 248-360 Application procedures.

The procedure for any application for development under this Article, whether as of right or seeking developmental bonuses, shall involve the approval of a preliminary development concept or site plan by the Board of Trustees and the approval of a final detailed site plan, and a subdivision plat, if applicable, by the Board of Trustees. For the sake of clarity, all development proposals for land situated within the Maple Union TOD District must be brought under this Article in lieu of any other provisions of the Village Code.

- A. Application for development under this Article. Application for establishment, extension, or expansion of a development under this Article in the Maple Union TOD District shall be made by submitting 10 copies of the application to the Board of Trustees. The application shall include, at a minimum, the following:
- (1) The names and addresses of the property owner(s), the applicant(s), if other than the owner(s), and the planner, engineer, architect, surveyor, and/or other professional engaged to work on the project.
 - (2) Where the applicant(s) is/are not the owner(s) of the property, written authorization from the owner(s) for the submission of the application.
 - (3) A written narrative statement describing the nature of the proposed project, how it is designed to serve the purposes of this Article, the site's relationship to immediately adjoining properties and the surrounding neighborhood, the availability and adequacy of community facilities and utilities to serve the site, and the safety and capacity of the public roadways in the area of the site in relation to the anticipated traffic generation from the site.
 - (4) A written statement of the proposed method of ownership and maintenance of all common utilities, common facilities, and areas of open space within the proposed development.
 - (5) A written statement of the method that will be used to ensure compliance with any affordable, workforce, age-restricted, or veterans housing and eligibility requirements for same.
 - (6) A preliminary development concept or site plan for the proposed project, drawn to a convenient scale, and including the following:
 - (a) The area of the project site, in both acres and square feet;
 - (b) A site location sketch or radius map indicating the location of the project site with respect to neighboring streets and properties, the names of all owners of property within 200 feet of the site, the existing zoning of the site, and the location of all zoning district boundaries in the surrounding neighborhood;
 - (c) A preliminary site development plan, indicating the approximate location

and design of all buildings, the arrangement of parking areas and access drives, the general nature and location of other proposed site improvements, and the lot configuration if applicable; and

- (d) A preliminary rendering of the architectural treatments expected to be implemented on completion of the project.
- (7) An application fee, which shall be established from time to time by resolution of the Board of Trustees.
- (8) In order to evaluate compliance with the New York State Environmental Quality Review Act (“SEQRA”), along with an application for development, an applicant must submit an analysis prepared by a qualified environmental/planning professional evaluating consistency of the proposed action with the Conditions and Criteria set forth in the Findings Statement for the Proposed Zoning Amendments to the Village of Westbury Code, as adopted by the Village Board. Such analysis must evaluate the cumulative impacts of other project(s) for which (a) there is a valid application pending for development, or (b) a development has been approved but not yet constructed and occupied at the time of the extant application. Upon submission of a development application, the Village Board shall review the materials and may request additional information as needed to complete its evaluation of the consistency of the proposed action with said Conditions and Criteria. Upon receipt of all information deemed necessary for the review and upon completion of its review, the Village Board shall inform the applicant, in writing, as to the level of SEQRA review required, if any, pursuant to 6 NYCRR §617.10(d) Generic Environmental Impact Statements.
- (9) A conflict disclosure form as amended from time to time by the Board of Trustees.
- (10) A zoning analysis reflecting the proposal as an “as of right” build or indicating any proposed bonus zoning sought.
- (11) A list of public benefits offered to the Village and a written analysis as described in Section 248-359(C).
- (12) The written description of the plan for private sanitation, waste and rubbish disposal to be implemented, as required in § 248-362(A).
- (13) A deposit to be used by the Board of Trustees to engage professionals to review the application.
- (14) A written undertaking of applicant, in form acceptable to the Village, agreeing that applicant shall reimburse the Village for its actual out-of-pocket expenses of counsel and consultants (engineering, environmental, etc.) to be retained by the Village to assist the Village in considering the application, together with a deposit, in an amount to be determined by the Board of Trustees, as an advance against such reimbursement obligations. Applicant shall, if requested by the Village, make additional advances to the Village as necessary to restore such deposit as expenses are incurred and the advance depleted.
- (15) A written undertaking of applicant, in form acceptable to the Village, agreeing that applicant shall hold the Village harmless for any loss of Village real property tax revenues in the event that applicant obtains real property tax incentives abatements or exemptions, including any payment in lieu of taxes (PILOT).
- (16) Such other information as may be determined necessary by the Board of Trustees in order to properly enable them to review and decide upon the application.

B. Procedure for approval.

- (1) In its discretion, the Board of Trustees may determine, at any time, with or without a public hearing, and with or without review pursuant to SEQRA and its implementing regulations, that an application which requires bonuses or discretionary approval by the Board of Trustees will be denied or not entertained.
- (2) If the Board of Trustees determines to entertain a preliminary application for approval pursuant to this section, the applicant shall be required to submit to the Village a final detailed set of plans including a final site plan and subdivision plan (if applicable) and such additional materials and information as the Board of Trustees may require. Once all submissions have been made to the satisfaction of the Board of Trustees, the Board of Trustees shall promptly schedule and hold a public hearing on the application pursuant to the same notice and procedural requirements that are prescribed for Village local law adoption.
- (3) The requirements of SEQRA and its implementing regulations shall be complied with for any application pursuant to this section.

C. Decision by the Board of Trustees.

- (1) The Board of Trustees will render a final decision on an application after it closes the public hearing. The Board of Trustees may deny, approve or approve with modifications or conditions the application. This Article is intended to provide the Board of Trustees with the broadest level of discretion possible in evaluating proposed public benefits and resulting bonuses.
- (2) The Board of Trustees may require, incident to granting an approval, that the applicant(s) submit a declaration, to be recorded in the Office of the Nassau County Clerk, imposing such covenants and restrictions on the property included in such district as the Board of Trustees may deem necessary or desirable in order to protect the interests of the Village and assure that such property will be developed and maintained in accordance with, and will not be used in violation of, the purposes and provisions of this section. The Board of Trustees may also require, incident to any approval, a community benefit or similar agreement which documents certain aspects of the applicant's responsibilities with regard to the project.
- (3) Approval of the site plan, subdivision plan and/or approvals on a proposed development shall expire two years after the applicable approval; within such period the applicant shall have filed for, received and is constructing pursuant to a building permit for such development. The Board of Trustees, upon written request of the applicant, may extend the above time period for two additional periods of not more than six months each.
- (4) No building permit shall be issued and no commencement of use shall be permitted unless and until a site plan and all other permits and approvals shall have been issued by the Board of Trustees.
- (5) Where a proposed MU District development involves a subdivision or re-subdivision of land, no development may proceed unless and until the Board of Trustees has granted final subdivision plat approval, it being the intention of the

Board of Trustees to retain subdivision approval to themselves with regard to applications under this Article.

- (6) In its discretion, the Board of Trustees may require Bonding. The Board of Trustees are authorized to impose such requirements for bonding with respect to any project or approved development, construction, and improvements as they deem necessary and appropriate, and also to condition the release of such bond or portions thereof on the approval, acceptance, or dedication of all or any portion of the work that has been bonded.
 - (7) Referrals. The Board of Trustees may, by resolution of the Board of Trustees, in its discretion, refer any application, or any aspects thereof, to a Village board or commission whose input may be deemed appropriate by the Board of Trustees for recommendation and/or decision. If referred for approval, any such approval by such board shall be in lieu of, and have the force and effect of, the Board of Trustees determination under this Article.
- D. Waiver. The Board of Trustees may waive any submission it deems not necessary in order to evaluate an application. No failure on the part of the Village to exercise any right or power under this Article, or to insist upon strict compliance with the provisions of this Article, and no custom or practice of any party at variance with the terms and conditions of this Article, shall constitute a waiver of the Village's right to demand exact and strict compliance with the terms and conditions of this Article.
- E. Severability. Should any court of competent jurisdiction determine that any clause, sentence, paragraph, word, section or part of this section, or the application of same to any building, structure, land, or owner, is unconstitutional, illegal, or invalid, such determination shall not affect, impair, or invalidate the remainder of this section, which shall be separately and fully effective, or the applicability of this section to any other building, structure, land or owner.
- F. Separate Account for Public Benefit Funds. If the Board of Trustees determines that a suitable public benefit is not immediately feasible, or otherwise not practical, the Board of Trustees may require, in lieu thereof, a payment to the Village of a sum to be determined by the Board of Trustees. If cash is accepted in lieu of, or in addition to, other public benefits, such sum shall be deposited in a separate account maintained by the Village to be used for public benefits authorized from time to time by the Board of Trustees. Such public benefits need not be specifically related to the subject project but may be, in the Board of Trustee's discretion, generally beneficial to the Village.
- G. Statutory authority and supersession. This section, and any local law adopted pursuant to this Article, shall be deemed to have been adopted pursuant to the provisions of Municipal Home Rule Law § 10(1)(ii)(a)(14) and the Statute of Local Governments, §§ 10(6) and 10(7), and this section shall supersede any provision of Article 7 of the New York Village Law and, specifically, §§ 7-718 and 7-725-a thereof, that are inconsistent with the provisions of this section.

§ 248-361 **Development requirements for affordable housing.**

- A. For any residential or mixed-use development which incorporates five or more residential units, the applicant shall set aside at least 10% of all residential units for affordable workforce housing on site or shall otherwise comply with § 699-b of the New York State General Municipal Law. For purposes of this subsection, "affordable workforce housing" means housing for individuals and families at or below 80% of the median income for the Nassau-Suffolk primary metropolitan statistical area as defined by the federal Department of Housing and Urban Development. Affordable workforce housing units shall be of consistent design to those of the rest of the development. The applicant and its successors shall annually submit a certification to the Village that it is in compliance with § 699-b of the New York State General Municipal Law.

- B. The Village may promulgate requirements for for-sale housing pursuant to this section that complies to State law and regulations. In the alternative, the Board of Trustees may permit the developer to make provision of other land and the construction of the required affordable workforce housing units that are not part of the applicant's current subdivision plat or site plan but are to be provided on another site within the Village; or make the payment of a fee in accordance with § 699 of the General Municipal Law. Affordable housing units shall comply with all requirements set forth by the Village Board of Trustees at the time of site plan approval in relation to unit occupancy, location, design, and continued affordability over time. The developer and its successors shall annually submit a certification to the Village that it is in compliance with § 699-b of the New York State General Municipal Law.

- C. Covenants and Restrictions.
 - (1) To insure continued compliance with § 699-b(3) of the General Municipal Law requiring affordable housing to remain affordable in perpetuity, and to assure the compliance with and achievement of the Village's goals set forth in this Article, all affordable housing units shall be subject to covenants and restrictions that run with the land, and govern the sale, resale and rental of such units in accordance with the requirements of this Article. Any said covenants and restrictions shall be prepared by the applicant and submitted to the Village Attorney for approval as to form and content. Upon approval by the Village Attorney, such covenants and restrictions shall be recorded by applicant in the Office of the Nassau County Clerk, at his or her own expense and provide the Village Attorney and the Board of Trustees with a copy of the recorded instrument before an application for a building permit will be accepted for filing.
 - (2) As a condition of approval, the Board of Trustees:
 - (a) may require the applicant to enter into a contract with a local housing group to administer the affordability of the housing units, and to monitor the sale, resale and rental of all units for compliance with the Code and New York State laws. Prior to execution of any such contract, applicant shall submit same to the Village Attorney for approval as to form and content. Upon approval by the Village Attorney, applicant shall enter into such contract

- and shall deliver a fully executed copy thereof to the Village; before an application for a building permit will be accepted for filing; and
- (b) may require all deeds transferring title to affordable homeownership housing units to contain a reference to the Liber and Page of the recorded covenants and restrictions.
- (3) The Board of Trustees may establish such other restrictions, requirements, oversight and reporting obligations as it deems necessary from time to time, which shall be applicable to applicant or its successors or assigns upon notice thereof.

§ 248-362 Rubbish disposal.

- A. Notwithstanding anything to the contrary contained in the Village Code, properties approved for development under this Article shall thereafter be required to provide private sanitation, waste disposal, rubbish removal and recycling collection consistent with Chapter 211, and the Village shall thereafter have no responsibility to provide such services. Any site plan application, application for special use, building permit or other application under this Article shall be required to include a written description and plan for the private sanitation, waste disposal, rubbish removal and recycling collection to be utilized and implemented.
- B. Following any approval under this Section, the owners of any subject property shall provide the following:
 - (1) Provide written disclosure of the private sanitation, waste disposal, rubbish removal and recycling collection services in any lease, condominium plan, unit sale agreements, and other land use agreements with the end users of the units so developed, and in any contract of sale of the entire property, and all such agreements shall be subject to this requirement.
 - (2) Record a covenant, in such form approved by the Village, that reflects the perpetual private sanitation and recycling obligations related to the property, and such written disclosure requirements. Said covenants and restrictions shall be prepared by the applicant and submitted to the Village Attorney for approval as to form and content. Upon approval by the Village Attorney, the applicant shall record the covenants and restrictions in the Office of the Nassau County Clerk, at his or her own expense and provide the Village Attorney and the Board of Trustees with a copy of the recorded instrument before an application for a building permit will be accepted for filing.

AMENDMENTS TO CHAPTER 248 OF THE VILLAGE ZONING CODE

Article III Districts

§ 248-3 Districts designated.

[Amended 10-2-1961; 2-18-1965; 1-20-1966; 7-7-1966; 8-21-1967; 4-18-1968; 4-16-1981 by L.L. No. 4-1981; 7-30-1985 by L.L. No. 5-1985; 7-15-1999 by L.L. No. 2-1999; 5-4-2000 by L.L. No. 3-2000; __-__-2019 by L.L. No.____]

For the purposes of this chapter, the Village of Westbury is hereby divided into 24 districts, which are hereby designated as follows:

Residence A District

Residence AA District

Residence B District

Residence C District

Apartment A District

Apartment AA District

Apartment AAA District

Apartment AAAA District

Specialized Senior Housing Facility District

Business A District

Business B-1 District

Business B-2 District

Business B-3 District

Business B-4 District

Business B-5 District

Business B-6 District

Business AA District

Business Office District

Business BX District

Residence Parking District

Light Industrial District [Discontinued __-__-2019 by L.L. No.____]

Industrial District [Discontinued __-__-2019 by L.L. No.____]

Planned Industrial District

Maple Union TOD District

Article XII Business B-1 Districts

§ 248-124 Uses.

In the Business B-1 District no building shall be erected, altered or used, and no lot or premises shall be used except in conformance with Article XVIII of this chapter.

§ 248-125 Front yards.

There shall be a front yard, the depth of which shall not be greater than 20 feet.

§ 248-126 Side and rear yards.

There shall be side and rear yards, the respective depths of which shall not be less than 10 feet, except where adjoining a residential zoning district, in which case the depth of such yard shall not be less than 20 feet.

§ 248-126-a Sidewalk widening and build-to zones.

[Added __-__-2019 by L.L. No.____]

Any new Building constructed shall set back from the property line sufficiently to allow for a sidewalk width of a minimum of twelve (12) feet and not greater than twenty (20) feet as measured from the face of the curb. The developer of the new Building shall be responsible for constructing the sidewalk to the specifications promulgated by the Department of Buildings.

§ 248-127 Building height.

No building shall exceed three stories, nor shall any building exceed 40 feet in height. The parapet of a building shall be included when measuring the building's height in feet.

§ 248-128 Building coverage.

Building coverage shall not exceed 35% of the lot.

§ 248-129 Floor area ratio.

The floor area ratio (FAR) of a lot shall not exceed 0.70.

§ 248-130 Site development plan or special use permit approval required.

[Amended 2-5-1987 by L.L. No. 1-1987]

Except as exempted by § 248-252 of this chapter, no building permit shall be issued and no building or use shall be established, except in conformity with a site development plan or special use permit, as appropriate, approved in accordance with Articles XXVIII and XXIX of this Chapter.

§ 248-131 Landscaping.

In addition to other landscaping requirements as contained in this chapter, the minimum front yard setback area shall be landscaped to the extent determined appropriate by the reviewing authority, except where needed for access purposes. The reviewing authority, as part of the process of site development plan or special use permit approval, as appropriate, may allow the redistribution of this landscaping requirement to other portions of the front part of the site, provided that it determines that a more attractive layout will result.

§ 248-132 Use registration.

All property located wholly or partially within this district shall be subject to Article XXX hereof.

§ 248-133 Floor area.

[Amended 5-16-1991 by L.L. No. 1-1991]

Each dwelling unit, if any, located in a building erected in this district shall provide a minimum clear floor area of the following square footage:

- A. Studio units: 500 square feet.
- B. One-bedroom units: 600 square feet.
- C. Two-bedroom units: 750 square feet.
- D. Each additional bedroom: 100 square feet.

Article XIII Business B-2 Districts

§ 248-134 Uses.

In the Business B-2 District, no building shall be erected, altered or used and no lot or premises shall be used except in conformance with Article XVIII of this chapter.

§ 248-135 **Side yards.**

Side yards shall not be required, except where adjoining a residential zoning district, in which case the depth of such yard shall not be less than 20 feet.

§ 248-136 **Rear yards.**

There shall be a rear yard, the depth of which shall not be less than 10 feet, except where adjoining a residential zoning district, in which case the depth of such yard shall not be less than 20 feet.

§ 248-136-a **Sidewalk widening and build-to zones.**

[Added __-__-2019 by L.L. No. _____]

Any new Building constructed shall set back from the property line sufficiently to allow for a sidewalk width of a minimum of twelve (12) feet and not greater than twenty (20) feet as measured from the face of the curb. The developer of the new Building shall be responsible for constructing the sidewalk to the specifications promulgated by the Department of Buildings.

§ 248-137 **Building height.**

No building shall exceed three stories, nor shall any building exceed 40 feet in height.

§ 248-138 **Site development plan or special use permit approval required.**

[Amended 2-5-1987 by L.L. No. 1-1987]

Except as exempted by § 248-252 of this chapter, no building permit shall be issued and no building or use shall be established, except in conformity with a site development plan or special use permit, as appropriate, approved in accordance with Articles XXVIII and XXIX of this chapter.

§ 248-139 **Use registration.**

All property located wholly or partially within this district shall be subject to Article XXX hereof.

§ 248-140 **Floor area.**

[Added 5-16-1991 by L.L. No. 1-1991]

Each dwelling unit, if any, located in a building erected in this district shall provide a minimum clear floor area of the following square footage:

- A. Studio units: 500 square feet.
- B. One-bedroom units: 600 square feet.
- C. Two-bedroom units: 750 square feet.
- D. Each additional bedroom: 100 square feet.

Article XV Business B-4 Districts

§ 248-150 Uses.

In the Business B-4 District, no building shall be erected, altered or used, and no lot or premises shall be used except in conformance with Article XVIII of this chapter.

§ 248-151 Front yards.

There shall be a front yard, the depth of which shall not be greater than 20 feet.

§ 248-152 Side and rear yards.

There shall be side and rear yards, the respective depths of which shall not be less than 10 feet, except where adjoining a residential zoning district, in which case the depth of such yard shall not be less than 20 feet.

§ 248-152-a Sidewalk widening and build-to zones.

[Added __-__-2019 by L.L. No._____]

Any new Building constructed shall set back from the property line sufficiently to allow for a sidewalk width of a minimum of twelve (12) feet and not greater than twenty (20) feet as measured from the face of the curb. The developer of the new Building shall be responsible for constructing the sidewalk to the specifications promulgated by the Department of Buildings.

§ 248-153 Building height.

No building shall exceed three stories, nor shall any building exceed 40 feet in height.

§ 248-154 Floor area ratio.

The floor area ratio of a lot shall not exceed 0.50.

§ 248-155 Site development plan or special use permit approval required.

[Amended 2-5-1987 by L.L. No. 1-1987]

Except as exempted by § 248-252 of this chapter, no building permit shall be issued and no building or use shall be established, except in conformity with a site development plan or special use permit, as appropriate, approved in accordance with Articles XXVIII and XXIX of this Chapter.

§ 248-156 Landscaping.

In addition to other landscaping requirements as contained in this chapter, the minimum front yard setback area shall be landscaped to the extent determined appropriate by the reviewing authority, except where needed for access purposes. The reviewing authority, as part of the process of site development plan or special use permit approval, as appropriate, may allow the redistribution of this landscaping requirement to other portions of the front part of the site, provided that it determines that a more attractive layout will result.

§ 248-157 Use registration.

All property located wholly or partially within this district shall be subject to Article XXX hereof.

Article XXIII Light Industrial Districts

[This zoning district was discontinued on __-__-2019 by L.L. No. _____ and only pertains to pre-existing legal non-conforming uses.]

§ 248-208 Uses prohibited.

In a Light Industrial District the following regulations shall apply:

- A. A building may be erected, altered or used and a lot or premises may be used for any business or industrial purpose except the uses prohibited in this section.
- B. In addition to uses prohibited in Industrial Districts, as set forth in Article XXIV, the uses as listed herein are also prohibited, as follows:
[Amended 1-19-1950; 5-16-1991 by L.L. No. 1-1991; 2-6-1997 by L.L. No. 1-1997]
 - (1) Adult uses as defined in Article II of this chapter.
[Added 3-20-1997 by L.L. No. 4-1997]

- (2) Bag-cleaning establishment.
- (3) Burlap manufacture.
- (4) Carpet-cleaning establishment.
- (5) Central station power plant.
- (6) Dismantling of motor vehicles and the storage and sale of used parts.
- (7) Dry cleaning at wholesale.
- (8) Iron, steel, brass or copper foundry.
- (9) Paper and pulp manufacture.
- (10) Perfume and extract manufacture.
- (11) Plating works.
- (12) Power forging, riveting, hammering, punching, chipping, drawing, rolling or tumbling of iron, steel, brass or copper, except as a necessary incident of manufacture of which these processes form a minor part and which are carried on without objectionable noise outside the plant.
- (13) Residential structures or uses.
- (14) Sausage manufacture.
- (15) Theater, open-air, drive-in and automobile.
- (16) Tourist camp.
- (17) Any other trade or use that is noxious or offensive by reason of emission of odor, dust, smoke, gas or noise.
- (18) Crushing machine.
[Added 12-2-1999 by L.L. No. 3-1999]

§ 248-209 Accessory uses.

Incidental or accessory uses or building in connection with permitted uses will be allowed.

§ 248-210 Height.

The height of any building or structure shall not exceed 35 feet and within such limits shall be that best suited to the architectural design and arrangements of all the buildings.

§ 248-211 Building area.

The total coverage for buildings or structures shall not exceed 65% of the plot area. The remaining 35% or more of the plot area shall be used for the accessory parking of vehicles, and means of ingress and egress thereto.

§ 248-212 Parking area.

The area for accessory parking of vehicles to which reference is made in § 248-211 shall be provided at the rear of the buildings and shall include adequate loading and unloading space at the rear entrance to buildings.

§ 248-213 Parking area restrictions.

Such parking area shall not be used for any purpose other than the accessory parking of automobiles or other vehicles. In no case shall the storage, servicing or dismantling of automobiles or other vehicles be permitted in such area.

§ 248-214 Sewage disposal.

All proposed buildings not provided with municipal sewage disposal facilities shall be equipped with an independent sewage disposal plant approved by the Nassau County Department of Health.

§ 248-215 Site development plan approval required.

[Added 7-30-1985 by L.L. No. 5-1985; amended 2-5-1987 by L.L. No. 1-1987]

Except as exempted by § 248-252 of this chapter, no building permit shall be issued and no building or use shall be established, except in conformity with a site development plan approved by the Planning Board, in accordance with Article XXVIII of this chapter.

Article XXIV Industrial Districts

[This zoning district was discontinued on __-__-2019 by L.L. No. _____ and only pertains to pre-existing legal non-conforming uses.]

§ 248-216 Uses prohibited.

A. In an Industrial District, the following regulations shall apply: A building may be erected, altered or used and a lot or premises may be used for any lawful purpose except the following:

- (1) Abattoir.
- (2) Acid manufacture.
- (3) Acetylene gas manufacture.
- (4) Ammonia, bleaching powder or chlorine manufacture.
- (5) Arsine.
- (6) Asphalt manufacture or refining.
- (7) Assaying other than gold and silver.
- (8) Aluminum powder manufacture or storage in quantities exceeding 20 pounds.
- (9) Blast furnace.
- (10) Brick, pottery, tile, concrete-block or terra-cotta manufacture.
[Added 2-6-1997 by L.L. No. 1-1997]
- (11) Church or other place of worship.
[Added 2-6-1997 by L.L. No. 3-1997]
- (12) Coke manufacture.
- (13) Collateral loan broker, pawn broker, check-cashing business.
[Added 9-10-1998 by L.L. No. 6-1998]
- (14) Concrete manufacture or concrete batching plant.

[Added 2-6-1997 by L.L. No. 1-1997]

- (15) Crematory, other than crematory in a cemetery.
- (16) Creosote treatment or manufacture.
- (17) Dextrine, glucose or starch manufacture.
- (18) Disinfectant, insecticide or poison manufacture.
- (19) Distillation of coal, petroleum, refuse grain, wood or bone, except in manufacture of gas.
- (20) Dry cleaning or dyeing at wholesale.
- (21) Dyestuffs manufacture.
- (22) Emery cloth and sandpaper manufacture.
- (23) Fat, grease, lard or tallow manufacture, rendering or refining.
- (24) Fertilizer manufacture.
- (25) Fireworks or explosives storage or manufacture.
- (26) Gas (fuel or illuminating) manufacture in excess of 1,000 cubic feet per day or storage in excess of 10,000 cubic feet.
- (27) Gelatin, glue or size manufacture which includes products from fish, animal refuse and offal.
- (28) Grain drying or food manufacture from refuse, mash or grain.
- (29) Incineration, reduction, storage or dumping of slaughterhouse refuse, rancid fats, garbage, dead animals or offal.
- (30) Junk, scrap, paper or rag storage or baling.
- (31) Linoleum or oil-cloth manufacture.
- (32) Lampblack manufacture, animal black or bone black.
- (33) Lime, cement or plaster of paris manufacture.
- (34) Live poultry market.
- (35) Petroleum or other flammable liquids, refining or storage thereof in excess of 1,000 gallons, except that the Village Board may, after a public hearing, at least 15 days' notice of which shall be published in a newspaper of general circulation in the Village and upon approval of the plans, grant permission for the storage of such amount as such Board shall deem proper.
- (36) Paint, oil, varnish, turpentine, shellac or enamel manufacture.
- (37) Printing ink manufacture.
- (38) Potash works.
- (39) Pyroxylin plastic manufacture or articles therefrom.
- (40) Rawhides or skins, storage, cleaning, curing or tanning.
- (41) Residential structures or uses.
[Added 5-16-1991 by L.L. No. 1-1991]
- (42) Rubber manufacture from the crude material.
- (43) Sauerkraut manufacture.
- (44) Shoe-blackening or stove-polish manufacture.
- (45) Slaughtering of animals.
- (46) Smelting.
- (47) Soap manufacture.
- (48) Stockyards.
- (49) Stone crushing.
- (50) Structural steel or pipe works.

- (51) Sugar refining.
- (52) Tar distillation or manufacture.
- (53) Tar-roofing or waterproofing manufacture.
- (54) Theater, open-air, drive-in and automobile.
[Added 1-19-1950]
- (55) Tobacco manufacture or treatment.
- (56) Vinegar manufacture.
- (57) Wool pulling or scouring.
- (58) Yeast plant.
- (59) Crushing machine.
[Added 12-2-1999 by L.L. No. 3-1999]
- (60) Tattoo studio.
[Added 6-4-2009 by L.L. No. 6-2009]
- (61) Body-piercing studio.
[Added 6-4-2009 by L.L. No. 6-2009]

§ 248-217 Provisions applicable from Article XXIII.

The provisions of Article XXIII, §§ 248-210, 248-211, 248-212 and 248-213, of this chapter shall apply in Industrial Districts.

§ 248-218 Site development plan approval required.

[Added 7-30-1985 by L.L. No. 5-1985; amended 2-5-1987 by L.L. No. 1-1987]

Except as exempted by § 248-252 of this chapter, no building permit shall be issued and no building or use shall be established, except in conformity with a site development plan approved by the Planning Board, in accordance with Article XXVIII of this chapter.

Article XXVI Adult Uses

§ 248-230 Adult uses prohibited in certain districts.

[Added __-__-2019 by L.L. No. _____]

Adult uses are prohibited in all zoning districts in the Village except in Subdistrict MU-R4 of the Maple Union TOD District, subject to the limitations and conditions set forth in § 248-231.

§ 248-231 Limitations on adult uses.

[Amended 3-3-2016 by L.L. No. 5-2016; __-__-2019 by L.L. No. _____]

Adult uses are permitted only by the Board of Trustees as a special use permit, in Subdistrict MU-R4 of the Maple Union TOD District subject to the following limitations and conditions:

A. No adult use shall be permitted in Subdistrict MU-R4 of the Maple Union TOD District:

- (1) North of the Long Island Rail Road right-of-way;

- (2) West of Post Avenue; and
- (3) Within 500 feet east of Post Avenue.

- B. Not more than one adult use shall be permitted on any lot.
- C. No adult use shall be located within 400 feet of another adult use.
- D. All building openings, including doorways and windows, shall be located, covered or screened in such a manner as to prevent a view into the adult use from outdoors.
- E. No person under the age of 18 years shall be permitted into or on the premises of such use.
- F. There shall be no outdoor display of advertising of any kind, other than signage complying with all of the requirements as set forth in Article XXVIII of this Chapter.
- G. Adult uses shall comply with all other requirements of this Chapter, as well as all applicable Village, county, state and federal laws and regulations.
- H. No adult use shall be located within 400 feet of a place of worship (which shall not include cemeteries) or public or private school.
[Added __-__-2019 by L.L. No._____]

§ 248-232 **Nonconforming uses.**

[Amended __-__-2019 by L.L. No._____]

~~Any nonconforming use legally existing at the effective date of this chapter may be continued and any legally existing building designed, arranged, intended or devoted to a nonconforming use may be reconstructed and structurally altered and the nonconforming use therein changed, subject to the following regulations:~~

- ~~**A.**—The cost of structural alterations made in such building shall in no case exceed 50% of its structural value nor shall the building be enlarged unless the use therein is changed to a conforming use.~~
- ~~**B.**—No nonconforming use shall be extended at the expense of a conforming use.~~
- ~~**C.**—In a residence, apartment or business district, no building or premises devoted to a use permitted in a district of lower classification shall be changed into a use not permitted in such district of lower classification, and no building or premises in any district devoted to a use not permitted in an industrial district shall have its use changed to another use which is also not permitted in an industrial district.~~
- ~~**D.**—No nonconforming use, if once changed to a use permitted in the district in which it is located, shall ever be changed back to a nonconforming use.~~
- ~~**E.**—No nonconforming use, which shall have been discontinued for a period exceeding 12 months, shall be resumed, nor shall it be replaced by any other nonconforming use.~~

~~F. Whenever a district shall hereafter be changed, any then legally existing nonconforming use therein may be continued or changed to a use of a similar or higher classification, provided that all other regulations governing the new use are complied with.~~

- A. Nonconforming uses, buildings or structures. A lawful use, building or structure which is rendered nonconforming by the enactment of this code or by reason of any subsequent amendment to this code may continue to exist, subject to the other provisions of this article.
- B. Continuation; abandonment; restoration; unsafe structures.
 - (1) Restoration of nonconforming uses. A lawful use which is rendered nonconforming by the enactment of this code or by reason of any subsequent amendment to this code may be continued, provided that it is not abandoned or destroyed as to 50% or more of the building square footage for all buildings located on the site used for such nonconforming use. If a nonconforming use is abandoned or destroyed as to 50% or more of the building square footage for all buildings located on the site used for such nonconforming use, it may not be resumed. The increase or expansion of a nonconforming use is prohibited.
 - (2) Restoration of nonconforming structures. Any lawful building or structure or portion of such building or structure rendered nonconforming by the enactment of this code or by reason of any subsequent amendment to this code, which is damaged or destroyed as to less than 50% as reflected in the square footage of the nonconforming building prior to the damage or destruction, by fire, flood, high winds or other accident or natural causes, may be repaired or rebuilt on the same building footprint and to the same dimensions, including height, provided such repair or rebuilding is completed within 12 months of the date of damage or destruction. The total square footage of such rebuilt structure shall not exceed the total square footage of the building that was damaged or destroyed.
- C. Unsafe buildings or structures. Any lawful building or structure or portion of that building or structure rendered nonconforming by the enactment of this code or by reason of any subsequent amendment to this code, and which is declared unsafe by the Village, may be restored or otherwise made to be in a safe condition, provided:
 - (1) That it is otherwise lawful to put such building or structure into a safe condition and required permits are issued;
 - (2) The building or structure will not become any more nonconforming by expansion or change to another non-conforming use, as a result of the measures taken to make it safe; and
 - (3) The building or structure is made safe and suitable for occupancy as reflected by a municipal approval or inspection within 12 months of being declared unsafe.
- D. Expansion; enlargement. No building or structure, or any use thereof, rendered nonconforming by the enactment of this code or by reason of any subsequent amendment to this code may be expanded or enlarged.

- E. Structural alterations. Except as provided for in B and C above, a nonconforming building or structure which is used for or occupied by a nonconforming use shall not be structurally altered to an extent exceeding, in total, the replacement value of the building or structure, unless the use of the building is changed to a conforming use.
- F. Abandonment. From enactment of this section, an inactive nonconforming land use has 12 months to resume. After enactment of this code, any consecutive twelve-month period without reactivation will result in the nonconforming land use being permanently classified as nonpermissible.

§ 248-235 Exceptions.

[Amended __-__-2019 by L.L. No. _____]

Except for development within the Maple Union TOD District pursuant to Article XXXIX of this chapter, where the approval of the Board of Trustees is required, the following exceptions shall apply:

- A. In the case of a narrow corner lot or of any shallow, irregular or steeply sloping lot, existing as such at the effective date of this chapter, where conformity with the provisions of this article would in the judgment of the Board of Appeals make it difficult to erect a practicable building, the Board, as provided in Article XXXVI, § 248-326A and B, may allow such building or structure to project nearer to any street or lot line than is herein prescribed, provided that it can be done in a way to safeguard the neighborhood, and provided that compensating area shall be added to one or the other required open spaces, and provided that in no case, in a residence or apartment district, shall any part of any structure be within less than five feet of any street, lot or line.
- B. As part of the site development plan approval under Article XXVIII, or special use permit approval under Article XXIX of this chapter, where the reviewing authority determines that the provisions of one or more required yards would be prohibitive due to the size, shape or frontage characteristics of the subject lot, the reviewing authority may reduce the yard or yards required, but not exceeding 50% of the required yard dimensions, except with regard to yards adjoining residentially zoned properties.
[Added 7-30-1985 by L.L. No. 5-1985]

§ 248-239 Courts.

[Amended __-__-2019 by L.L. No. _____]

Except for development within the Maple Union TOD District pursuant to Article XXXIX of this chapter, where the approval of the Board of Trustees is required, courts shall be governed by the following restrictions:

- A. The width of an inner court shall not be less than eight feet, but in no event shall it be less than four inches for each foot of the building height. For an inner court not on the lot line, the least dimension shall not be less than 16 feet.
- B. The width of an outer court shall not be less than eight feet, but in no event shall it be less than four inches for each foot of building height. If the depth of an outer court shall exceed four times its width, the width shall be increased one foot for each four feet of depth.
- C. The same restrictions as in the foregoing subsections shall apply to courts in business and industrial districts only, to floors used for residential purposes.

§ 248-240 Setbacks.

[Amended __-__-2019 by L.L. No. _____]

Except as otherwise provided in §248-126-a, §248-136-a, §248-152-a and Article XXXIX of this chapter:

- A. No regulation or requirement hereof shall be deemed to require the setback of any building beyond the average setback line observed by the buildings existing at the effective date of this chapter on the same side of the street within the block, provided that there are two or more buildings on such block.
- B. The average setback line observed by buildings on the same side of the street within 200 feet on each side of the lot in question shall control in lieu of the average setback line within the block where the block affected has a length of more than 1,000 feet between its intersecting streets.^[1]

^[1] Editor's Note: Former § 50-178, Building extensions, as amended 2-25-1965, which immediately followed this section, was repealed 5-16-1991 by L.L. No. 2-1991.

§ 248-247 Garages.

[Amended __-__-2019 by L.L. No. _____]

Except for development within the Maple Union TOD District pursuant to Article XXXIX of this chapter, where the approval of the Board of Trustees is required, the following requirements shall apply:

- A. Storage places for motor vehicles will be permitted on the same lot with apartment houses at the rate of one car for each family, for families who are permanent residents in such buildings, subject to the provisions of Article VII, § 248-47C, but no facilities for other than minor repairs will be permitted therein.
- B. No public garage shall be located less than 40 feet from any residence district on either side thereof, and the vehicular entrance door thereto shall be set back a distance of at least 15 feet from the street line, and an open, unoccupied space shall be maintained between

said door and the street line. The height of such open, unoccupied space shall be not less than 12 feet and the other dimensions shall be such that the center of said vehicular entrance door is visible from any point on the street line within a distance of 12 feet each side of the center line of said door.

§ 248-248 Gasoline service stations.

[Added 12-28-1950]

- A. A gasoline service station shall not be permitted in the Incorporated Village of Westbury in Residence A, Residence B, Residence C, Apartment AA, Maple Union TOD District and Apartment A Zones.
[Amended 2-16-1967; amended __-__-2019 by L.L. No. _____]
- B. The Board of Trustees shall have the power to grant a petition for permission to use property located in a Business B for a gasoline service station, after the petitioner has filed duly acknowledged consents to such use, of 75% in number of the owners and mortgagees of all property within 200 feet of any portion of the petitioner's plot.
[Amended 2-17-1955; __-__-2019 by L.L. No. _____]
- C. The petitioner shall affix to his petition a map prepared by a licensed surveyor, showing all property owners within 200 feet of any portion of the petitioner's plot, together with a certified last owner's and mortgagee's search, of all property located within 200 feet of any portion of the plot.

§ 248-251.7 Conformity with site development plan or special use permit; conflict with other provisions.

[Amended __-__-2019 by L.L. No. _____]

- A. In addition to the approval requirements set forth in this article related to proposed nonresidential uses between the hours of 10:00 p.m. and 7:00 a.m. on the following day, no such use shall be established, except in conformity with a site development plan or special use permit, as appropriate, approved in accordance with Articles XXVIII, XXIX and XXXIX of this chapter.
- B. To the extent that any provision of this article is inconsistent with any requirement of Article XXIX of this chapter, the provisions of this article shall govern.
- C. To the extent that any provision of this article is inconsistent with any requirement of Article XXXIX of this chapter, the provisions of Article XXXIX shall govern.

§ 248-279 Schedule of off-street parking requirements.

[Amended 2-18-1965; 7-30-1985 by L.L. No. 5-1985; __-__-2019 by L.L. No. _____]

**Minimum Required Off-Street Parking
(spaces)**

Use

Single-family and 2-family dwellings
[Amended 11-17-1988 by L.L. No. 5-1988]

2 for each dwelling unit; and where a part of the dwelling is used as a professional office by a doctor or dentist, 2 additional; or where a part of the dwelling is used as a professional office by any other professional person, 1 additional

Multiple dwellings
[Added __-__-2019 by L.L. No. ____]

½ space per micro unit and studio unit; 1 space per one-bedroom unit; 1 space per bedroom per two-bedroom unit and 1 space per each additional bedroom thereafter; in no case shall any attached housing, townhouse or multiple dwelling residential unit have less than 1.1 spaces per unit across the entire building.

Professional office or home occupation permitted in a residential zone as an accessory zone

2 in addition to spaces required for residential uses; medical or dental offices shall have 4 in addition to spaces required for residential uses

Retail or service business
[Amended __-__-2019 by L.L. No. ____]

1 for each 250 square feet of gross floor area

Living plant retail business

1 for each 150 square feet of gross floor area plus 1 for each 1,500 square feet of outdoor sales or display area

Business or professional office, financial institution

1 for each employee, but not less than 1 for each 250 square feet of gross floor area

Restaurant
[Amended 11-3-1994 by L.L. No. 5-1994; __-__-2019 by L.L. No. ____]

1 for each 100 square feet of gross floor area, or 1 for each 5 seats, whichever requirement is greater, and, in addition thereto, where counter service is provided, such additional parking as may be required by the reviewing authority

Cabaret or bar
[Amended 11-3-1994 by L.L. No. 5-1994]

1 for each 50 square feet of gross floor area, or 1 for each 3 seats, whichever requirement is greater and, in addition thereto, where counter service is provided, such additional parking as may be required by the reviewing authority

Fast-food restaurant

1 for each 25 square feet of gross floor area for the first 1,000 square feet plus 1 for each additional 35 square feet of gross floor area thereafter

Bowling center

5 per bowling lane

Theater, auditorium, stadium or other place of public assembly, including a place of worship
[Amended 11-3-1994 by L.L. No. 3-1997]

1 for each 3 fixed seats or 1 for each 50 square feet of gross floor area, whichever requirement is greater L.L. No. 5-1994; 2-6-1997

Use	Minimum Required Off-Street Parking (spaces)
Church or other place of worship [Added 2-6-1997 by L.L. No. 3-1997]	1 for each 3 fixed seats or 1 for each 50 square feet of floor area which is used for worship space or public assembly, including but not limited to sanctuaries, meeting halls, gymnasiums and classrooms, whichever requirement is greater
Funeral home	1 for each 50 square feet of area in assembly rooms
Small animal hospital	1 per employee plus 1 per 400 square feet of gross floor area
Motor vehicle service station	1 for each 1,000 square feet of site area; spaces within service areas of buildings and at pumps and access lanes thereto shall not be counted
Research and development laboratories	3 for each 4 persons employed on the maximum shift, or 1 for each 500 square feet of gross floor area, whichever requirement is greater
Light industry and manufacturing	1 for each person employed on the maximum shift, or 1 for each 300 square feet of gross floor area, whichever requirement is greater
Wholesale or other similar commercial use	1 for each person employed on the maximum shift, or 1 for each 800 square feet of gross floor area, whichever requirement is greater
Warehousing, storage or utility use	1 for each person employed on the maximum shift, or 1 for each 2,500 square feet of gross floor area, whichever requirement is greater
Library	1 for each 400 square feet of gross floor area
Taxicab terminal [Added 7-20-2006 by L.L. No. 3-2006]	1 per each nondriver employee and 1 per each authorized taxicab vehicle

Article XXVIII Site Development Plans

[Added 7-30-1985 by L.L. No. 5-1985; amended __-__-2019 by L.L. No. _____]

Except for development within the Maple Union TOD District, which is governed by Article XXXIX of this chapter, the following shall apply:

[Article follows]

Article XXXIV Signs

[Added 11-1-1984 by L.L. No. 2-1984; amended __-__-2019 by L.L. No. _____]

For development within the Maple Union TOD District, which is governed by Article XXXIX of this chapter, the following shall apply provided no provision of this article is inconsistent with any requirement of Article XXXIX of this chapter, in which event the provisions of Article XXXIX shall govern.

§ 248-303 Signs permitted.

[Amended 2-20-1992 by L.L. No. 3-1992; 6-13-1999 by L.L. No. 1-1999; 12-2-1999 by L.L. No. 3-1999; 5-3-2001 by L.L. No. 2-2001; __-__-2019 by L.L. No. ____]

- A. Generally. No sign shall be erected in any use district without a permit first having been applied for and issued, except as herein expressly exempted by Subsection B of this section. Signs of the types specified in this section shall be permitted in the Residence Parking (RP), Apartment A, AA, AAA and AAAA, Business A, B-1, B-2, B-3, B-4, B-5, B-6 and AA, Business Office, Business BX, Maple Union TOD and Planned Industrial Districts, only if and to the extent that they do not conflict with specific regulations of other articles of this chapter applicable to signs erected in such use districts. Where site plan approval is required by any other articles of this chapter for the erection of one or more signs in any use districts, any signs sought to be erected after the approval of such site plan and not shown thereon shall require the approval of the Planning Board of the Village of Westbury.

- B. [Subsection follows]

- C. Awning, canopy, facade, soffit or wall signs authorized only with a permit. In all Business and Planned Industrial Use Districts except Business B-1 and Business B-2 Districts, and the Maple Union TOD District, the following signs may be erected, provided that a permit therefor is first applied for and issued:
 - (1) Awning or canopy signs: one awning or canopy sign for each side of premises, provided that:
 - (a) One area containing lettering, numbers, symbols and/or caricature shall be permitted to be affixed to the front and each side of the awning or canopy so long as said area does not exceed two feet in height, except that awnings or canopies fronting on Old Country Road may contain one area not exceeding three feet in height.
 - (b) The awning or canopy does not project out from the storefront or facade more than three feet.
 - (c) The top of the awning or canopy does not project over the top of the parapet wall of the building to which it is affixed.
 - (d) The bottom of the awning or canopy is not less than eight feet nor more than nine feet above the adjacent ground level.
 - (e) Awnings or canopies shall be permitted on the front, side or rear of a premises, however, no such awning or canopy shall be permitted on the side or rear of a building if such awning or canopy faces residential premises.
 - (2) Facade, soffit or wall signs:
 - (a) One facade, soffit or wall sign, provided that:

- [1] It does not exceed two feet in height, except that such signs fronting on Old Country Road may not exceed three feet in height;
 - [2] It does not exceed in length 90% of the horizontal measurement of each tenant's or occupant's front wall spaces; and
 - [3] It does not project more than 12 inches beyond the exterior face of the building or structure, including any artificial lighting or reflectors connected thereto. This restriction shall not apply to soffit signs.
- (b) Such signs shall be permitted on front, side and rear of premises, however, no such sign shall be permitted on the side or rear of a building if said sign faces residential premises.

D. Awning, facade, soffit or wall signs authorized only with a permit. In all Business B-1 and Business B-2 Districts and the Maple Union TOD District, the following signs may be erected, provided that a permit therefor is first applied for and issued:

- (1) Awning signs: one awning sign for each side of premises, provided that:
 - (a) One area containing lettering, numbers, symbols and/or caricatures shall be permitted to be affixed to the front and each side of the awning or canopy so long as said area does not exceed 2 1/2 feet in height.
 - (b) The awning does not project out from the store front or facade more than to a point a distance of 18 inches from the innermost point of the adjacent curbline.
 - (c) The top of the awning does not project over the top of the parapet wall of the building to which it is affixed.
 - (d) The bottom of the awning is not less than seven feet nor more than eight feet above adjacent ground level.
 - (e) Awnings shall be permitted on the front, side or rear of a premises; however, no such awning shall be permitted on the side or rear of a building if such awning faces residential premises.
 - (f) All awnings must be retractable and must be retracted between the hours of 9:00 p.m. and 6:00 a.m. of the following day.
 - (g) In Business B-1 and B-2 Districts, canopy signs are specifically prohibited.
- (2) Facade, soffit or wall signs:
 - (a) One facade, soffit or wall sign for each side of the premises, provided that:
 - [1] It does not exceed 2 1/2 feet in height.
 - [2] It does not exceed in length 75% of the horizontal measurement of each tenant's or occupant's front wall space.
 - [3] It does not project more than 12 inches beyond the exterior face of the building or structure. Box lighting and neon lighting or the like are specifically prohibited.
 - [4] Exterior lighting shall be from above or behind the signage only; lamps shall not project more than 1 1/2 feet from the face of the sign and shall not extend above the top of the sign more than one foot; and such illumination shall not result in confusion with traffic signals, either because of color or proximity.

[Amended 4-2-2015 by L.L. No. 2-2015]

- (b) Such signs shall be permitted on the front, side and rear of a premises; however, no such sign shall be permitted on the side or rear of a building if said sign is less than 100 feet from any residential premises.
- (3) Any signs or awnings installed pursuant to this section shall be of a color scheme, in a color palate, approved by the Board of Trustees of the Village of Westbury. The Village Board shall at a regular meeting choose sample approved color palates, which shall thereafter be made available to the public by the Superintendent of Buildings.
- (4) All nonconforming signs in existence on the effective date of the local law whereby this § 248-303D was adopted, located in a Business B-1 and B-2 District, shall, at the expiration of three years from said effective date, become prohibited and unlawful. All nonconforming signs for which a period of continued permitted use is provided hereunder shall be removed by the owner or occupant of the premises on which they are located not later than the expiration date of such period.

D. [Subsection follows]

F. [Subsection follows]

G. [Subsection follows]