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

Town of Brookhaven

Local Law No. 13 of the year 2024

A local Law amending Chapter 85 Entitled "Zoning," of the Town Code of the Town of Brookhaven

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

Local Law # 13 of 2024

Amend Chapter 85 entitled "Zoning" of the Town Code of the Town of Brookhaven

Section 1. Legislative Intent. It is the intent of these amendments to Chapter 85 entitled "Zoning" to amend the provisions of the Town Code that pertain to the Central Pine Barren District to conform with changes made by the Pine Barrens Commission to the Central Pine Barrens Comprehensive Use Plan.

Section 2. Text Amendment. Chapter 85 entitled "Zoning"; Section 85-720 entitled "Nondevelopment; development" is as follows:

§ 85-720 Nondevelopment; development.

A. Nondevelopment.

(1) For the purposes of §§ 85-718 through 85-726, any uses or activities which constitute nondevelopment are not subject to the provisions of §§ 85-718 through 85-726 or compliance with the standards and guidelines set forth herein. Without limitation, the following activities or uses constitute nondevelopment for the purposes of §§ 85-718 through 85-726:

- (a) Public improvements undertaken for the health, safety or welfare of the public. Such public improvements shall be consistent with the goals and objectives of the Long

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Island Pine Barrens Protection Act (ECL Article 57), and shall include, but not be limited to, maintenance of an existing road or railroad track;

- (b) Improvements and/or work by any utility not involving substantial engineering redesign for the purpose of inspection, maintenance or renewal on established utility rights-of-way or the like, and any work pertaining to water supply for the residents of the Town;
- (c) Without limitation, the maintenance, renewal, replacement, reconstruction, improvement, or alteration of any existing structure or additions to an existing residence or residential property owned by an association formed for the common interest in real property;
- (d) The use of any structure or land devoted to dwelling uses for any purposes customarily incidental and otherwise lawful;
- (e) The use of any land for agriculture or horticulture so long as such use does not effectuate any material alteration of native vegetation;
- (f) Improvements, maintenance or other work by a utility undertaken in the interest of public health, safety, or welfare so long as consistent with the goals and objectives of the Long Island Pine Barrens Protection Act (ECL Article 57);
- (g) Existing or expanded recreational use consistent with the purpose of §§ 85-718 through 85-726, including scouting activities, the maintenance or expansion of facilities associated with or necessary for such scouting activities, including, but not limited to, the addition, modification, expansion or replacement of structures necessary for such activities and such clearing as may be reasonably required for the maintenance or expansion of scouting activities;
- (h) A change in use of land or structure from a use within a class specified in §§ 85-718 through 85-726 to another use in the same class;
- (i) Residential development on any subdivision, residential cluster development, land division or site plan which has received preliminary or final approval on or before June 1, 1993, provided the lots to be built upon conform to the lot area requirements of the current zoning, are subject to the three-year exemption contained in § 265-a of Town Law, or are subject to an exemption from an upzoning adopted by the Town Board;
- (j) In the Compatible Growth Area, construction of single-family homes and customary accessory uses thereto on any lot held on June 1, 1993, in ownership singly and separately from adjacent lots;
- (k) In the Compatible Growth Area, continuation of existing nonconforming uses, and activities permitted by special permit or special exception, including renewals of said special permits or special exceptions;
- (l) In the Compatible Growth Area, land divisions or subdivisions in the Compatible Growth Area consisting of five or fewer residential lots which conform to the lot area requirements of the existing zoning for the subject parcel; or

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(m) In the Compatible Growth Area: renovations, reconstruction, additions or extensions to existing commercial or industrial uses, provided the addition or extension conforms to the uses permitted in the zoning district in which said parcel is located and which does not increase existing square footage by more than 25%.

(n) Pre-existing structures or uses that comply with existing laws, including legal non-conforming uses in accordance with their current approved use(s).

B. Development.

(1) For the purposes of §§ 85-718 through 85-726, "development" shall mean the performance of any building activity or mining operation, the making of any material change in the use or intensity of use of any structure or land and the creation or termination of rights of access or riparian rights; without limitation, the following activities or uses shall be construed as development:

(a) A change in type of use of a structure or land or, if the ordinance or rule divides uses into classes, a change from one class of use designated in an ordinance or rule to a use in another class so designated.

(b) A material increase in the intensity of use of land or environmental impacts as a result thereof.

(c) Commencement of mining, excavation or material alteration of grade or vegetation on a parcel of land, excluding environmental restoration activities.

(d) Material alteration of a shore, bank or floodplain of a river, stream, lake, pond, or artificial body of water.

(e) Re-establishment of a use which has been abandoned for one year.

(f) Departure from the normal use for which development permission has been granted, or material failure to comply with the conditions of an ordinance, rule or order granting the development permission under which the development was commenced or is continued.

(g) All other development customarily permitted under this chapter unless otherwise specified.

(2) In accordance with Article 57 of the Environmental Conservation Law and under the Plan, review of development proposals by the Joint Planning and Policy Commission is limited to:

(a) All development proposed within the Core Preservation Area.

(b) Development within the Compatible Growth Area which constitutes development of regional significance, as defined herein.

(c) A development project within the Compatible Growth Area by which an individual Commissioner may petition for review and a majority vote asserts review jurisdiction over such development.

(d) Development within the Compatible Growth Area that does not conform to the standards as set forth herein.

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(e) Development within the Compatible Growth Area which is also within a Critical Resource Area.

C. Development proposals of regional significance. Development proposals within the Compatible Growth Area which meet the threshold(s) of a development proposal of regional significance shall be subject to a full review by the Commission pursuant to Article 57 of the Environmental Conservation Law.

(1) Development applications which meet the following criteria are deemed development proposals of regional significance:

(a) A non-residential project that proposes development which exceeds 300,000 square feet of gross floor area, or an addition to an existing commercial, industrial, office, educational institution or health care facility development where the addition is 100,000 square feet or more and that addition causes the total square footage to exceed 300,000 square feet.

(b) A residential project that proposes the development of two hundred (200 residential development units or more or causes the total number of existing residential units on a project to exceed 200 units. A unit shall include any mixture of residential dwelling units such as attached single family units or homes, detached single family units or homes, apartments, condominiums, or cooperative units.

(c) A mixed use project that proposes a mixed use development of 400,000 square feet or greater of any type of use.

(d) A project that causes groundwater to be open to the atmosphere and be subject to surface runoff if proposed surface water area meets or exceeds the three acre threshold pursuant to the requirements of New York State Environmental Conservation Law Article 23, Title 27 and its implementing regulations 6 NYCRR Parts 420-425 pertaining to Mined Land Reclamation. Lined ponds that do not expose subsurface groundwater.

(2) Exceptions to development proposals of regional significance are development applications which:

(a) Are situated within a designated receiving district.

(b) Result from a transfer of development rights from a sending area (the Core Preservation Area).

(c) Contain a minimum of 15% of residential units or a minimum of 15% of commercial, industrial or office use square footage, as a direct result of the transfer of development rights.

Section 3. Text Amendment. Chapter 85 entitled "Zoning"; Section 85-723 entitled "Standards" is as follows:

§ 85-723 Standards.

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(4)

All proposed development located within the Compatible Growth Area of the Central Pine Barrens shall comply with the following standards (as also set forth in the Plan) unless a hardship exemption has been issued by the Commission. The Town of Brookhaven shall ensure compliance with these standards by requesting comments and/or analysis from the appropriate state, county and other agencies upon project application review pursuant to SEQRA. In the event that a proposed development project is inconsistent with the standards set forth in §§ 85-718 through 85-726, or is rendered inconsistent due to modification or amendment, the Town shall notify the Commission and afford the applicant opportunity to either revise the development proposal to render it conforming to the applicable standards or obtain a hardship exemption from the Commission. Where standards contained in §§ 85-718 through 85-726 differ from state, county, local law, or regulation, the stricter standards apply. The following standards are applicable to all proposed development in the Central Pine Barrens Area:

A. Sanitary waste, nitrate-nitrogen and other chemicals of concern

(1) Suffolk County Sanitary Code Article 6 compliance. All development proposals subject to Article 6 of the Suffolk County Sanitary Code ("Realty Subdivisions, Developments and Other Construction Projects") shall meet all applicable requirements of the Suffolk County Department of Health Services. Projects which require variances from the provisions of Article 6 shall meet all the requirements of the Suffolk County Department of Health Service's Board of Review in order to be deemed to have met the requirements of this standard.

(2) Sewage treatment plant discharge. Where deemed practical by the county or state, sewage treatment plant discharge shall be outside and downgradient of the Central Pine Barrens. Treatment systems that are approved by the New York State Department of Environmental Conservation or the Suffolk County Department of Health Services may be used in lieu of sewage treatment plants.

(3)

Suffolk County Sanitary Code Articles 7 and 12 compliance. All projects must comply with the provisions of Articles 7 and 12 of the Suffolk County Sanitary Code, including any provisions for variances or waivers if needed, and all applicable state laws and regulations in order to ensure that all necessary water resource and wastewater management infrastructure shall be in place prior to, or as part of, the commencement of construction.

(4) Commercial and industrial compliance with the Suffolk County Sanitary Code. All commercial and industrial development applications shall comply with the provisions of the Suffolk County Sanitary Code as applied by the Suffolk County Department of Health Services, and all other applicable federal, state or local laws. Development projects which require variances from the provisions of the Suffolk County Sanitary Code shall meet all requirements of the Department of Health Service's Board of Review in order to be deemed to have met the requirements of this standard.

B. Wellhead and groundwater protection. The New York State Department of Health requires minimum separation distances for public water supply wells from contaminant sources pursuant to Appendix 5D of 10 NYCRR Part 5, Subpart 5-1 Public Water Supply Systems in order to protect these public water supplies from contamination. Although this may have been considered adequate to prevent the rapid drawdown of bacterial contamination or its entry into groundwater through poorly constructed wells, it does not necessarily ensure an adequate level of protection against the suite of organic and inorganic pollutants that may threaten community water supplies.

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- (1) Significant discharges and public supply well locations. The location of public supply wells shall be considered in all applications involving significant discharges to groundwater, as required under the New York State Environmental Conservation Law Article 17.

C. Wetlands and surface waters.

(1) Nondisturbance buffers. Development proposals for sites containing or abutting freshwater or tidal wetlands or surface waters must be separated by a nondisturbance buffer area that is no less than the required by the New York State Tidal Wetlands or Freshwater Wetlands, and/or Wild, Scenic and Recreational Rivers Act and/or Chapter **81** of the Town of Brookhaven Code, Wetlands and Waterways. The Commission reserves the right to require a stricter and larger nondisturbance buffer for development projects not subject to Town review. Distances shall be measured horizontally from the wetland edge as mapped by the New York State Department of Environmental Conservation and the Town of Brookhaven. Projects which require variances or exceptions from these laws, and associated regulations, shall meet all requirements imposed in a permit by the New York State Department of Environmental Conservation and the Town of Brookhaven in order to be deemed to have met the requirements of the standard.

(2) Buffer delineations, covenants and conservation easements. Buffer areas shall be delineated on the site plan or subdivision map, and covenants and/or conservation easements, pursuant to the New York State Environmental Conservation Law and Chapter **81** of the Town of Brookhaven Code, Wetlands and Waterways, shall be imposed to protect these areas as deemed necessary.

(3) Wild, Scenic and Recreational Rivers Act compliance.¹¹ Development proposals shall conform to the provisions of the Wild, Scenic and Recreational Rivers Act, where applicable. Projects which require variances or exceptions under the New York State Wild, Scenic and Recreational Rivers Act shall meet all requirements imposed by the New York State Department of Environmental Conservation in order to be deemed to have met the requirements of this standard.

[1]

Editor's Note: See Environmental Conservation Law § 15-2701 et seq.

D. Stormwater runoff/stormwater recharge.

(1) Development projects must provide that all stormwater runoff originating from development on the property is recharged on site unless surplus capacity exists in an off-site drainage system.

(2) Natural recharge and basins. Natural recharge areas and/or drainage system designs that cause minimal disturbance of natural vegetation can be employed, where practical, in lieu of recharge basins or ponds that would require removal of significant areas of native vegetation.

(3) Ponds. Ponds should only be created if they are to accommodate stormwater runoff, not solely for aesthetic purposes.

(4) Natural topography in lieu of recharge basins. The use of natural swales and depressions can be permitted and encouraged instead of excavated recharge basins.

(5) Soil erosion and stormwater runoff control during construction. During construction, the standards and guidelines promulgated by the New York State Department of Environmental Conservation pursuant to state law, which are designed to prevent soil erosion and control stormwater runoff, may be adhered to.

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E. Coordinated design for open space, habitat and soil protection

(1) Open space is defined for purposes of this section as any undeveloped and unimproved, publicly or privately-owned open area, which can be comprised of either land or water, that remains in its natural state and may include agricultural areas that are permanently preserved and will not be developed. Open space is intended to be available, where applicable, for low-intensity recreational activities which have nominal environmental impact and have no effect on the environmental integrity of the open space, including hiking, hunting, nature study, bird watching and orienteering. In no case does open space mean active recreational facilities such as golf courses, amusement parks and ballfields. Proper management of these areas, including assignment of responsibility for such management, is essential in order to protect open spaces from illegal dumping, clearing, motor vehicle trespass and other abuses.

(2) Buffer areas are defined, for the purposes of this section, as areas incorporated into a development project site design for purposes including, but not limited to, conservation area compliance, habitat preservation, open space protection, separation between wetlands and development, visual consideration, or mitigation of environmental impacts. These buffer areas must be properly managed and protected to prevent damage and deterioration.

(3) Vegetation clearance limits. Clearing is defined, for the purposes of this standard, as the removal of any portion of the natural vegetation found on a development project site, exclusive of any vegetation associated with active agricultural or horticultural activity or formalized landscape and turf areas. Excessive clearing of natural vegetation can result in severe soil erosion, excessive stormwater runoff, and the destruction or reduction of Pine Barrens plant and wildlife habitat, and shall be minimized on development project sites through the provisions of this section. Revegetation of a development project site to meet open space requirements may be accomplished through the self-heal restoration process instead of planting horticulturally derived native plants from off-site sources depending on site conditions.

(a) The clearance of natural vegetation shall be strictly limited. Site plans, surveys and subdivision maps shall delineate the existing naturally vegetated areas and calculate those portions of the site that are already cleared due to previous activities.

(b) Areas of the site proposed to be cleared combined with previously cleared areas shall not exceed the percentages in Figure 5-1 herein.^[2] These percentages shall be taken over the total site, including, but not limited to, roads, building sites and drainage structures and landbanked parking. The clearance standard that would be applied to a project site if developed under the existing residential zoning category shall be applied if the proposal involves multifamily units, planned retirement units, attached housing, or clustering. Residential development within residentially zoned areas shall comply with the residential clearing limit categories contained in Figure 5-1. Commercial development in residentially zoned areas shall comply with the "Commercial, Industrial and Other or Mixed Use" clearing limit category. Site plans, surveys and subdivision maps shall delineate the clearing limit line and calculations for clearing to demonstrate compliance with this standard.

[2]

Editor's Note: Figure 5-1 is included as an attachment to this chapter.

(c)

To the extent that a portion of a development project site includes Core property, and for the purpose of calculating the clearance limits, the site shall be construed to be the combined

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Core and Compatible Growth Area portions. However, the Core portion may not be cleared except in accordance with Section 5.2 of the Plan.

(d) Development project sites which consist of non-contiguous parcels shall be treated as if the parcels were contiguous for purposes of determining conformance.

(e) Development project sites which consist of parcel(s) that are split among two or more zoning categories shall have a total clearing allowance for the entire site which is the sum of the individual clearances for each separately zoned portion of the site.

(f) Development project sites in Residential Overlay Districts that include the redemption of Pine Barrens Credits shall apply Figure 5-1 based on the resulting average lot size after the redemption of Credits, rather than the base zoning lot size. To determine the amount of clearing allowed, interpolate the maximum site clearance percentage using Figure 5-1, as long as the requirements of the Town Code and of Section 6.4 of the Plan are met.

(g) Land cleared for purposes of conducting environmental restoration pursuant to ECL 57-0107(13)(c), shall be considered "natural vegetation," and shall not be considered "cleared" or "previously cleared" land in determining conformance.

(h) Persons seeking relief from clearing requirements on development project sites must file a CGA hardship application.

(1) For a project site which is split between the Core Preservation Area and the Compatible Growth Area, and within which Pine Barrens Credits have been issued for the Core Preservation Area portion, only the Compatible Growth Area acreage shall be used to determine the amount of clearing allowed according to Figure 5-1.

(2) Open space standard requirement, unfragmented open space and habitat

(a) Development project sites must meet at a minimum the percentages of open space specified in Figure 5-1 regardless of existing physical site conditions. Applicants must prioritize first the use of existing cleared areas for development on a project site prior to clearing areas of natural vegetation. Site plans, surveys and subdivision maps must delineate the open space boundary lines and include the calculation of open space areas to demonstrate conformance with this standard. Applicants must identify the receiving entity to which dedicated open space will be transferred as required by subsection (5) of this Chapter.

(b) Conservation design promotes the creation of open space that permanently protects the significant natural and cultural resources and environmental features of a site by concentrating development into compact areas. This will be required for development projects and accomplished through the use of conservation design methods that include clustering, reduced density development design, or similar methods that achieve the requirements of this section.

(c) In determining which areas of a development project site to set aside as open space, the order of priority, from highest to lowest, shall be as follows:

- (i) Areas that include any species, habitats or significant attributes required to be protected under existing regulations. This includes, but is not limited to, wetlands; the habitats of endangered; threatened and special concern species; floodplains; archaeological sites and burial grounds and cemeteries.

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- (ii) Areas that contain woodlands followed by other natural areas.
- (iii) Areas that contain woodlands and other natural areas adjacent to existing open space, that will connect open space areas into large contiguous, unbroken blocks of habitat. This should include consideration of existing and planned future development of adjacent properties.

(d) Project sites that do not have sufficient existing natural areas to meet the open space requirement specified in Figure 5-1 due prior development or use, will be required to revegetate areas to satisfy this standard. This will include sites that do not meet the open space requirement due to pre-existing clearing or disturbance, formalized landscaped and turf areas and/or impervious surfaces.

(e) A range of one or more restoration methods may be required that include, but are not limited to, the "Self-Heal" approach, active restoration with nursery stock, and/or transplantation activities. The "Self-Heal" approach should be the first approach used for restoration of areas to be set aside as open space, unless otherwise prevented by site conditions. The "Self-Heal" approach is preferable because it allows existing live seed banks, rhizomes, roots, etc. to naturally recolonize a disturbed area rather than using active restoration with nursery stock grown offsite. The transplanting of natural vegetation from areas proposed to be developed should also be considered and implemented where feasible.

(f) The restoration of these areas will require the preparation of a restoration plan that will be subject to the review and approval of the approving agency. The plan will include at a minimum, a description of the restoration method, map of areas to be restored, site preparation work, schedule for implementation, monitoring and reporting requirements to guarantee a success rate of 85% after three to five years, and invasive species management, and reporting requirements. Since site conditions can vary, the approving agency may require other provisions in the restoration plan to ensure successful restoration of these areas to serve as open space. If the Self-Heal approach fails to successfully restore the areas, a restoration plan will need to be developed and approved by the reviewing agency that provides for active restoration with native species.

(g) The restoration area once it has been successfully restored with native species must be protected as the open space area in accordance with Subsection (5) of this chapter. Receiving entity and protection for open space areas.

(3) Fertilizer-dependent vegetation limits. No more than 15% of an entire development project site shall be established in fertilizer-dependent vegetation including formalized turf areas. Generally, nonnative species require fertilization therefore, planting of such nonnative species shall be limited to the maximum extent practicable. Development designs shall be in conformance with Standard 5.3.3.6.4 Native plantings.

(4) Native plantings. Development designs shall incorporate the species listed as "recommended" in Figure 5-2 "Planting Recommendations." Landscaping and restoration plans shall strive to use Long Island native genotypes, unless the plants are not available. A more extensive list of acceptable and unacceptable plants is available from the Commission office.

(5) Receiving entity and protection for open space areas

The use, maintenance and management of open space shall be considered when protecting open space areas. The project applicant must specify the entity to which the open space will be dedicated. The protection of the open space shall be guaranteed by dedicating the open space to a government entity, private not for profit, land conservation management organization, homeowner's association

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or similar entity through the transfer of title or a permanent conservation easement or covenant recorded with the Suffolk County Clerk, or similar mechanism to ensure open space protection.

F. Protection and conservation of species and communities.

(1) Special Species and ecological communities.. Where a significant impact is proposed upon a habitat essential to those species identified on the New York State maintained lists as rare, threatened, endangered or of special concern, or upon natural communities classified by the New York State Natural Heritage Program as G1, G2, G3 or S1, S2 or S3, or on any federally listed endangered or threatened species, the appropriate mitigation measures as determined by the appropriate state, county or Town agency shall be taken to protect these species.

(2) Bird conservation and protection. Development projects shall incorporate bird friendly structures, design and site planning elements to reduce bird strikes and mortality to the greatest extent feasible. Seek guidance provided in the American Bird Conservancy et al publication "Bird Friendly Building Design," available from their website.

G. Coordinated design for open space management. All applications must specify the entity/agency to which dedicated open space will be transferred.

Section 4. Text Amendment. Chapter 85 entitled "Zoning"; Section 85-724 entitled "Guidelines" is as follows:

Section 85-724. Guidelines

A. The guidelines established herein are advisory in nature and shall be applied to development proposals within the Compatible Growth Area at the discretion of the Town body or agency having approval jurisdiction over the application for proposed development unless:

(1) The proposed project is subject to the jurisdiction based on its location within a Critical Resource Area;

(2) The proposed project constitutes a development of regional significance; or

(3) The Commission otherwise assumes jurisdiction under the Act (see Volume I, Chapter 4, of the Plan).

B. Guidelines for development in the Compatible Growth Area. Where guidelines contained in §§ 85-718 through 85-726 differ from state, county, or local law, the Town may apply the stricter guideline. The following guidelines shall be applicable as deemed appropriate to development proposals in the Compatible Growth Area:

(1) Nitrate-nitrogen. A more protective goal of 2.5 ppm shall be achieved on new development projects through an average residential density of one unit per two acres (or its non-residential equivalent), through clustering, or through other mechanisms to protect surface water quality for projects in the vicinity of ponds and wetlands.

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(2) Wellhead and groundwater protection. The Suffolk County Department of Health Services' guidelines for private wells can be used for wellhead protection.

(3) Wetlands and surface waters/additional nondisturbance buffers. Stricter nondisturbance buffer areas may be established for wetlands as deemed appropriate.

Steep slopes.

(a) Clearing envelopes. Clearing envelopes can be placed upon lots within a subdivision so as to maximize the placement of those envelopes on slopes less than 10%.

(b) Stabilization and erosion control. Construction of structures on slopes greater than 10% may be approved if technical review shows that stabilization measures, erosion control practices and structures are implemented to mitigate negative environmental impacts and no alternative location exists on the project site.

(c) Slope analysis. Project review is facilitated if submissions contain a slope analysis showing slopes in the ranges 0-10%, 11-15% and 15% and greater. In areas with steep slopes, slope analysis maps should be required. This can be satisfied with cross hatching or shading on the site plan/subdivision map for the appropriate areas.

(d) Erosion and sediment control plans. Erosion and sediment control plans may be required in areas of 15% or greater slopes.

(e) Placement of roadways. Roads and driveways shall be designed to minimize the traversing of slopes greater than 10% and to minimize cuts and fills.

(f) Retaining walls and control structures. Details of retaining walls and erosion-control structures should be provided for roads and driveways which traverse slopes greater than 10%.

(6) Natural vegetation and plant habitat.

(a) Clustering. The maximization of the use of the clustering technique is encouraged where its usage would enhance adjacent open space or provide contiguous open space connections with adjacent open space parcels.

(b) Protection of dedicated open space. Proposed open space can be protected with covenants, conservation easements or dedications that specify proper restrictions on its use and contingencies for its future management.

(7) Agriculture or horticulture in the Compatible Growth Area is encouraged to comply with best management practices. Best management practices are, for purposes of this Plan, the same practices stated in the document entitled Agricultural Management Practices Catalogue for Nonpoint Source Pollution Prevention and Water Quality Protection in New York State, prepared by the New York State Nonpoint Source Management Practices Task Force, New York State Department of Environmental Conservation, 2007.

(8) Cultural resource consideration.

(a) Development proposals should account for, review, and provide protection measures for:

[1] Established recreational and educational trails and trail corridors, including but not limited to those trail corridors as inventoried in the Plan.

[2] Active recreation sites, including existing sites and those proposed as part of a development.

[3] Scenic corridors, roads, vistas and viewpoints located in Critical Resource Areas, and along the Long Island Expressway, Sunrise Highway, County Road 111 and William Floyd Parkway.

[4] Sites of historical or cultural significance, including historic districts, sites on the State or National Register of Historic Places, or recognized by local law or statute.

[5] Sensitive archaeological areas as identified by the New York State Historic Preservation Office or the New York State Museum.

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(b) Inclusion of cultural resources in applications. Development proposals should note established recreation and educational trails and trail corridors; active recreation sites; scenic corridors, roads, vistas and viewpoints as documented in Volume 2 of this Plan, and which are listed in Figure 5-3, which may be amended from time to time, in Volume I of this Plan and may be located in Critical Resource Areas, and along the Long Island Expressway, Sunrise Highway, County Road 111 and William Floyd Parkway; sites on the State or National Register of Historic Places, and historic structures and landmarks recognized by municipal law or statute, or listed on the State or National Register of Historic Places; and sensitive archaeological areas as identified by the New York State Historic Preservation Office or the New York State Museum within a five-hundred-foot radius of the outside perimeter of the project site, including any project parcels which are physically separate from the bulk of the proposed development areas. A development proposal may be disapproved or altered if the local municipality determines that the development proposal, in its current form, may have a significant negative impact on any of the above resources.

(c) Protection of scenic and recreational resources. Protection measures for scenic and recreational resources should include, but not be limited to, retention of visually shielding natural buffers, replacement of degraded or removed natural visual buffers using native species, use of signs which are in keeping in both style and scale with the community character, and similar measures.

(d) Roadside design and management. Undisturbed portions of the roadside should be maintained in a manner that protects the scenic features of these areas. Clearing (including that for aisles, driveways, access, and parking) is not precluded within these roadside areas, provided that appropriate buffers are maintained, and that man-made structures meet standards consistent with the character of the area.

Section 5. Text Amendment. Chapter 85 entitled "Zoning"; Section 85-725 entitled "Pine Barrens Credit Program." is as follows:

Section 85-725. Pine Barrens Credit Program

A. Purposes and objectives. The purpose, goals and objectives of the Pine Barrens Credit Program created herein is the implementation of the Comprehensive Land Use Plan adopted pursuant to Article 57 of the Environmental Conservation Law by the Central Pine Barrens Joint Planning and Policy Commission: to maintain the value in lands designated in the Plan for preservation and protection through the use and allocation of Pine Barrens credits, and to promote environmentally sensitive development in an efficient and orderly fashion which shall protect the quality and quantity of surface waters, groundwater and the long- and short-term integrity of the Suffolk County Central Pine Barrens ecosystem(s).

B. Commissioner's report.

(1) At least biannually, the Commissioner of the Department of Planning, Environment and Land Management, or his/her designee, shall report to the Town Board on the status of the Pine Barrens Credit Program created herein. Said report shall provide specific information and statistics with respect to approved development projects for which Pine Barrens credits have been redeemed, or redeemed and retired; and the number of credits which have been retired for each school district within the Town.

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(2) Based on an analysis thereof, the Commissioner may recommend that use of Pine Barrens credits for single-family residential development be discontinued for any given school district within the Town; notwithstanding, the Commissioner may further recommend continued use of Pine Barrens development credits for nonresidential development within the Town.

(3) Based on the Commissioner's report and recommendations, if any, the Town Board may undertake such action as it deems necessary and appropriate in respect thereof.

C. General provisions.

(1) Pine Barrens credits shall be derived solely from lands located in the Core Preservation Area within the Town for applicability to development within the Town.

(2) Upon the Joint Planning and Policy Commission's determination that all Pine Barrens credits attributable to lands located within the Core Preservation Area within the Town of Brookhaven have been redeemed or retired, the provisions of this section shall expire within 30 days thereafter, and shall be of no further force and effect; all pending applications incorporating unredeemed development credits shall be deemed withdrawn.

(3) For the purpose of computing the allocation of Pine Barrens Credits, a parcel of land is defined as a separately assessed Suffolk County Real Property Tax Parcel which is within the Core Preservation Area and existed on the Central Pine Barrens Comprehensive Land Use Plan initial adoption date of June 28, 1995 or the date the parcel is added to the Core Preservation Area or sending area, if later.

D. Residential Overlay District.

(1) All parcels of land located outside the Core Preservation Area and within the A Residential 1 and A Residential 2 Zoning Districts are hereby deemed "receiving districts" subject to the eligibility criteria set forth herein. An increase in density shall be established by the Planning Board for any parcel (or assemblage of parcels) subject of an application therefor where such parcel is located within a receiving district so long as in conformance with the following criteria:

(a) The subject premises is four acres or more in size if located in the A Residential 1 Zoning District.

(b) The parcel is eight acres or larger if located in the A Residential 2 Zoning District.

(c) Preliminary approval has been granted by the Suffolk County Department of Health Services for any parcel or premises located within the A Residential 1 Zoning District and within Hydrogeologic Zone 6.

(2) Exceptions to eligibility as receiving districts. A parcel or premises shall be ineligible for treatment and/or classification as an ROD in the event that:

(a) The parcel is located within a designated Critical Resource Area as identified in the Comprehensive Land Use Plan;

(b) The area of the parcel to be developed is located within:

[1] Five hundred (500) feet of any stream, bluff, surface water, or wetlands regulated by the New York State Department of Environmental Conservation or the Town of Brookhaven;

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

[2] Hurricane inundation zones as defined by the Federal Emergency Management Agency and the New York State Emergency Management Office (including, but not limited to, Fire Island), and Special Flood Hazard Areas as determined by the National Flood Insurance Rate Maps; or

[3] The South Setauket Special Groundwater Protection Area (South Setauket SGPA); or

[4] The New York State wild, scenic and recreation river corridors as mapped by the New York State Department of Environmental Conservation; or

[5] Publicly or privately owned parcels held for, or dedicated to, conservation or agricultural preservation purposes, including, but not limited to, parklands, parcels with conservation or agricultural preservation easements and parcels whose development rights or development potential have been removed or restricted; or

[6] The Core Preservation Area.

(c) Forty percent or more of the parcel contains steep slopes of 15% or greater.

(d) The parcel does not conform to the requirements for such Districts contained within Section 85-450(D) of the Brookhaven Town Code.

E. Planning Board review and approval.

(1) The Planning Board is hereby authorized to review and approve, approve with modifications or disapprove applications for residential development utilizing the Residential Overlay District provisions created herein. All requirements set forth in this chapter applicable to development in the A Residence 1 District or the A Residence 2 District, as the case may be, shall be applicable to development proposals utilizing the Residential Overlay District created herein, except that:

(a) The Planning Board may vary, modify or waive strict compliance with the dimensional requirements applicable to an application herein as set forth in this chapter; and

(b) The applicant shall be entitled to an increase in density calculated in accordance with the provisions of §§ 85-718 through 85-726 as calculated and determined by the Planning Board.

(c) The Planning Board may allow attached or semidetached units in the utilization of a Residential Overlay District based on the following criteria:

(2) Additional requirements. An application for development for a Residential Overlay District shall include:

(a) A full long environmental assessment form (LEAF);

(b) A disclosure affidavit by the applicant or his attorney-in-fact.

(c) Calculation(s) demonstrating customary yield, Resident Overlay District (ROD) yield and the proposed number of Pine Barrens development credits available for the development proposal.

(3) An application for a development proposal for any land division incorporating treatment as a Residential Overlay District shall be subject to review and approval by the Planning Board notwithstanding any other provision in this chapter or the Subdivision Regulations.⁽¹⁾

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

[1]

Editor's Note: See Ch. SR, Subdivision Regulations.

(4) Upon the Planning Board's grant of final conditional approval of an application for residential development as a Residential Overlay District, the applicant shall obtain from the Pine Barrens Credit Bank and Clearinghouse, a Pine Barrens credit certificate confirming the number of Pine Barrens credits incorporated in the approved application.

F. Density increase in Residential Overlay District. Residential development pursuant to the within Residential Overlay District on an eligible parcel shall be entitled to an increase in density based on the addition of Pine Barrens credits to the customary unit yield (customary yield) as permitted by this chapter. The following formula(s) shall be employed in calculating the number of Pine Barrens credits which may be added to the customary yield for a single-family dwelling project application for an eligible parcel:

(1) Customary yield. The product of the total acreage multiplied by 43,560 square feet is divided by the dimensional area requirement, the result of which is multiplied by a factor of 0.8, the result of which equals the customary yield. All calculations shall be rounded to the nearest whole number, example $1.5 = 2$. Thus:

(a)

In the A Residential 1 District:

$$\frac{\text{Parcel area X } 43,560 \text{ sq. ft.}}{40,000 \text{ sq. ft.}} \quad \text{X} \quad 0.8 = \text{Customary Yield}$$

(b)

In the A Residential 2 District:

$$\frac{\text{Parcel area X } 43,560 \text{ sq. ft.}}{80,000 \text{ sq. ft.}} \quad \text{X} \quad 0.8 = \text{Customary Yield}$$

(2)

Residential Overlay District (ROD) yield. To determine the ROD yield, the product of the parcel area multiplied by 43,560 square feet, divided by the minimum dimensional area requirement, 40,000 square feet for an A Residence 1 zoned parcel and 80,000 square feet for an A Residence 2 zoned parcel, the result of which is multiplied by a factor of 1.2, shall constitute the ROD yield:

(a)

In the A Residence 1 District:

$$\frac{\text{Parcel area X } 43,560 \text{ sq. ft.}}{40,000 \text{ sq. ft.}} \quad \text{X} \quad 1.2 = \text{ROD Yield}$$

(b)

In the A Residence 2 District:

$$\frac{\text{Parcel area X } 43,560 \text{ sq. ft.}}{80,000 \text{ sq. ft.}} \quad \text{X} \quad 1.2 = \text{ROD Yield}$$

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

(3)

Pine Barrens credits. To determine the required number of Pine Barrens credits (PBC), subtract the customary yield from the ROD yield, the result of which equals the number of Pine Barrens credits (PBC) required for the proposed development application.

(less) - ROD Yield
Customary Yield
PBDC available

Section 6. Text Amendment. Chapter 85 entitled "Zoning" Attachment 6 is hereby amended as follows:

<u>Figure 5-1: Clearance and Open Space Standards</u> <u>This table shows total overall development project site clearance and requirement for open space including lots, roads, drainage and other improvements.</u>		
<u>Zoning lot size</u> <u>(see Notes at end of table)(*)</u>	<u>Maximum overall</u> <u>development project</u> <u>site clearance (**)</u>	<u>Minimum open</u> <u>space</u> <u>requirement (**)</u>
<u>10,000 square feet residential (1/4 acre)</u>	<u>90 %</u>	<u>10 %</u>
<u>15,000 square feet residential (1/3 acre)</u>	<u>70 %</u>	<u>30 %</u>
<u>20,000 square feet residential (1/2 acre)</u>	<u>60 %</u>	<u>40 %</u>
<u>30,000 square feet residential (2/3 acre)</u>	<u>58 %</u>	<u>42 %</u>
<u>40,000 square feet residential (1 acre)</u>	<u>53 %</u>	<u>47 %</u>
<u>60,000 square feet residential (1.5 acres)</u>	<u>46 %</u>	<u>54 %</u>
<u>80,000 square feet residential (2 acres)</u>	<u>35 %</u>	<u>65 %</u>
<u>120,000 square feet residential (3 acres)</u>	<u>30 %</u>	<u>70 %</u>
<u>160,000 through 200,000+ square feet residential</u> <u>(4 - 5+ acres)</u> <u>The total amount of disturbance of natural vegetation shall not exceed the clearance percentage, except on flagpole lots where the area of the pole shall be exempt from the total lot area and the total amount of clearing permitted.</u>	<u>25 %</u>	<u>75%</u>
<u>Other defined residential zoning lot size</u>	<u>Interpolate from entries above.</u>	<u>Interpolate from entries above.</u>
<u>All other zoning categories, including those categories without defined zoning lot sizes and parcels owned by the State or a public corporation</u>	<u>60 %</u>	<u>40 %</u>

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

Notes:

(*) These entries are the minimum lot sizes required by zoning as of June 28, 1995 or the date the parcel is added to the Central Pine Barrens if later or the current zoning, whichever is more protective of the environment by minimizing clearing or maximizing open space, not the size of the subject parcels.

(**) In calculating the percentage of land cleared and the percentage of open space to be retained, the preserved areas in a development should preferably be existing native vegetation. These are maximum clearance and minimum open space standards, and more restrictive standards may be imposed during the review by the Commission, involved agency, or local municipality due to consideration of other standards, especially those addressing preservation of rare or endangered species, or unique flora or vegetation.

Section 7. Text Amendment.

Chapter 85 entitled "Zoning" Attachment 10 is hereby added as follows:

Figure 5-3: Scenic Roads and Areas in the Central Pine Barrens-

(Standards and guidelines shall apply only to the portion of these areas and roadways located in the Compatible Growth Area)

Scenic Roads in the Central Pine Barrens Area

- Sunrise Highway (NYS 27) from CR 51 intersection east to NYS 24 intersection.
- Riverhead -Moriches Road (CR 51) and Center Drive from CR 111 north to Riverhead County Center.
- Riverhead -Moriches Road (CR 63) from CR 51 north toward Riverhead
- Riverhead-Westhampton Road (CR 31) and Riverhead-Quogue Road (CR 104) from Suffolk Airport north to Riverhead
- Flanders Road (NYS 24) from approximately Cross River Drive (CR 105) east to Jackson Avenue
- Yaphank hamlet and Yaphank-Middle Island Road (CR 21) from Lower Lake north to Cathedral and Prosser Pines
- William Floyd Parkway from northerly edge of Brookhaven Laboratory to Route 25A
- Rocky Point Road (CR 21) from approximately Whiskey Road north to northern edge of state preserve
- North Street and Mill Road through Manorville hamlet
- Schultz Road and Wading River-Manorville Road

Scenic Areas in the Central Pine Barrens

- NYS Rocky Point Natural Resource Management Area
- Prosser Pines County Nature Preserve

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

- **Southaven County Park and Carmans River**
- **Brookhaven State Park**
- **Peconic River and associated Coastal Plain Ponds** from Middle Country Road (NYS 24) south to Schultz Road and east towards Connecticut Avenue
- **Swan Pond County Parkland**
- **Manorville-Riverhead Hills** from roughly the Long Island Expressway extending along an arc running southeast and east to CR 51
- **Riverhead Hills**, an extension of the above "arc", running from CR 51 east past Suffolk Community College, Speonk-Riverhead Road to CR 104
- **Cranberry Bog County Nature Preserve** located south of Riverhead County Center
- **Sears Bellows/Maple Swamp/ Flanders Hills County parkland** from Flanders Road (NYS 24) south to Sunrise Highway; from Pleasure Drive east to Bellows Pond Road
- **South Flanders and Henry's Hollow region**
- **Dwarf Pine Barrens**
- **Flanders and Hubbard County Parks, Southampton Town Red Creek Parkland**
- **Quogue Wildlife Refuge**
- **Peconic River** from Connecticut Avenue east to Riverhead hamlet and Flanders Bay
- **Paumanok Path** (Pine Barrens Trail portion) from Rocky Point south, southeast, and east to Sears Bellows County Park, the Red Creek region, and outside the Central Pine Barrens towards Montauk Point
- **Wildwood Lake** south of Riverhead hamlet
- **Artist Lake** immediately south of Middle Country Road in Middle Island
- **Lake Panamoka** approximately one mile north of Middle Country Road, between Ridge and Calverton

*A more complete description of each of the scenic resources listed is provided in the Central Pine Barrens Comprehensive Land Use Plan, Volume 2: Existing Conditions, Chapter 8: Scenic Resources, 6/28/1995, reprinted 8/96.

Section 8. Exemption. Land Use application having been approved prior to the effective date of these amendments shall comply with the Code(s) in effect at the time of said approval.

Section 9. Authority. The Town Board is vested with the authority to make these amendments pursuant to Town Law Sections 130 and Article 57 of the New York State Environmental Conservation Law and in conformance with Municipal Home Rule Law Sections 10 and 20.

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

Section 10. **Effective date.** This local law shall become effective immediately upon filing with the Secretary of State of the State of New York.

Dated: June 27, 2024
Farmingville, New York



Kevin J. LaValle, Town Clerk
Town of Brookhaven

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