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Bill 12K of 2013

Local Law ____ of the year 2014

(Insert Title)

A local law Amending the regulations with regard to the Business A District of the Village of Great Neck as to permitted uses and incentive zoning.

Be it enacted by the Board of Trustees of the
(Name of Legislative Body)

~~County~~

~~City~~

~~Town~~ of Great Neck

~~Village~~

Section 1. Legislative intent.

- A. This local law is intended, in part, to provide for a system of zoning incentives, or bonuses, as the Board of Trustees deems necessary and appropriate, consistent with the provisions of Village Law § 7-703, to advance the Village's specific physical, cultural, and social policies in accordance with the Village's comprehensive plan and in coordination with other community planning mechanisms and land use techniques.
- B. The Village has developed a proposed land use plan for the portions of Middle Neck Road that are zoned Business A in order to revitalize and energize the downtown core area. The Board of Trustees has determined that the system of incentive zoning provided herein will enhance and build upon the existing, successful entities in the Business A District, while encouraging the development of in-demand housing within a short walk to downtown amenities and without changing the primarily single-family residential character of the Village. The incentive zoning mechanism will grant additional

development density above the Business A District's baseline in exchange for the provision of community amenities. These incentives are intended to encourage appropriate housing for an increased residential population in the core area and facilitate improvements to the public realm, both of which would provide additional support for local businesses.

- C. It is the purpose of the Business A District to provide an active downtown containing a mix of housing types and retail, office, personal service, and/or other compatible uses. The vision for the Middle Neck Road corridor is that it will become a more active mixed-use corridor, lined with a diverse variety of local shops, restaurants, personal services, and groceries at the grade level, with expanded residential living opportunities above.
- D. Commerce within the Village is a necessary and desirable element of the Village's comprehensive zoning plan. While recognizing the public policy favoring houses of worship and schools and the acknowledged benefit of houses of worship and schools to a community, this Board finds that there is ample space within all of the other districts within the Village for houses of worship and schools to comply with that public policy and to provide that benefit. Moreover, because good planning practice recognizes the need for commercial areas to: (1) be composed of uses that attract shoppers, customers, and clients on an on-going basis during the course of the day and the week; (2) work together to create a scale of shopping and service activities sufficient to attract enough visitors to maintain economic viability; and (3) be designed so as to encourage pedestrian circulation among the uses, the Board further finds that houses of worship and schools will significantly detract from the synergy of the Board of Trustees' sought after active business corridor of retail, office, personal service, and/or other compatible uses. Therefore, in order to address the severe economic decline in the Business A District, which is the commercial center of the Village, houses of worship and schools should not be permitted within the Business A District.
- E. In order to effectuate the intent and purpose of this Article, it is necessary for the Board to have the authority to waive or alter the provisions of this Article, in a manner consistent with Article XXXI, Incentive Zoning.
- F. In accordance with the provisions of Village Law § 7-703, the Board of Trustees has evaluated the effects of any potential incentives that are possible by virtue of the provision of community amenities, including the potential development of affordable housing gained by the provision of any incentive or bonus afforded to an applicant or lost in the provision by an applicant of any community amenity to the village, and has found that:
 - (1) The Business A district contains adequate resources, environmental quality and public facilities, including adequate transportation, water supply, waste disposal, and fire protection, and that there will be no significant environmentally damaging consequences and that such incentives or bonuses are compatible with the development otherwise permitted.

- (2) The granting of incentives or bonuses, as provided in this local law, will not have significant effect on the environment.
- (3) There is approximate equivalence between potential affordable housing lost or gained.

Section 2. Article XIII, Business A Districts, of Chapter 575, Zoning, of the Code of the Village of Great Neck, is hereby amended, to read, as follows:

**“ARTICLE XIII
BUSINESS A DISTRICTS**

§ 575-128. Applicability.

The provisions of this article shall apply to the Business A District as hereinafter set forth.

§ 575-129. Use.

A. Permitted uses. A building may be erected, altered, or used and a lot or premises may be used for any of the purposes set forth in this section and for no other:

- (1) Principal uses.
 - (a) The following uses shall be permitted on the ground and upper levels:
 - [1] Retail stores.
 - [2] Personal service establishments, including barber shops, beauty parlors, shoe repair shops, nail salons, and dry cleaners and similar establishments.
 - [3] Financial institutions
 - [4] Museums and art galleries.
 - [5] Gymnasiums.
 - [6] Real estate offices and travel agencies.
 - (b) The following uses shall be permitted only on the upper levels:
 - [1] Multifamily dwelling units.
 - [2] Office, other than real estate offices and travel agencies.

- (c) As used in this section, the words “upper level” shall mean one full story, not less than 8 feet, above the adjacent grade.
 - (d) None of the aforementioned uses shall be permitted with a drive-in window.
- (2) Accessory uses.
- (a) Off-street parking and loading, including parking structures.
 - (b) Open space or plaza areas available to the general public.
 - (c) Signs, subject to the provisions of Article XV of this chapter.
 - (d) Seating and/or counter facilities located wholly within a building or a fully enclosed portion thereof, to accommodate not more than eight persons at any one time, for on-premises consumption of food and beverage, using only disposable paper or plastic plates, containers, cups, dishes, and utensils, as an incidental and accessory use to a delicatessen, bakery, ice cream, or confectionery store.
- (3) Uses permitted subject to a special permit issued by the Village Board of Trustees.
- (a) Special Permit uses in the Business A District are as follows:
 - [1] Outdoor dining.
 - [2] Restaurants.
 - [3] Limited service restaurants.
 - [4] Open-front store and other open-front places of business.
 - [5] Outdoor display, sale, and storage of food or other merchandise.
 - (b) The Board of Trustees, in considering such applications, may issue permits for such uses for a limited period of time or otherwise, subject to such conditions and safeguards as shall be deemed appropriate, when, in its opinion, it shall find that such proposed use and improvement will conform to the general character of the neighborhood in which the property to be used is located; will not significantly burden congestion in the streets or sidewalks; will not interfere with the safety of pedestrians on the sidewalks; will not overcrowd the sidewalks; will not cause undue concentration of population; will not create littering or noise problems;

and will not otherwise adversely impact upon the public health, morals, safety, and general welfare of the Village.

- B. Other uses. All other uses, which, in the opinion of the Board of Trustees, are of the same general character as those specifically permitted.
- (1) The Board of Trustees, in considering such application, may, but shall not be required to, hold a public hearing.
 - (2) In granting any permits pursuant to this section, the Board of Trustees may issue permits for such uses for a limited period of time and/or subject to such conditions and safeguards as it shall deem appropriate, when, in its opinion, it shall find that such proposed use is of the same general character as those uses permitted in subdivision 1, of subsection A, of this section for the level for which it is proposed and will add to the synergize of the other retail, office, and personal services permitted in the Business A District.
 - (3) No modification, variance, or change in the general location, layout, and character of the project, which shall include the architectural designs and arrangements of all buildings as shown on the plan, as approved, will be permitted without the prior approval of the Board of Trustees.
 - (4) The provisions of Article XX, §§ 575-194 and 575-195 shall apply to all applications made and permits granted under this section.
- C. The Board of Trustees shall have the power to vary the parking requirements for the uses set forth in this section within this District.

§ 575-130. Maximum height.

No building or structure shall exceed two stories, with a maximum height of 25 feet, unless an additional story and/or height not exceeding 36 feet or a Roof Deck limited to the same restrictions as set forth in subsection E of § 575-288, has been authorized as an incentive or bonus in exchange for the provision of community amenities as specified in § 575-137, Development incentives, and § 575-280, Incentive zoning procedure. The following exceptions are permitted:

- A. Parapets, not exceeding three feet in vertical distance from base to the highest point or the minimum height required by the New York State Building Code for such parapets, whichever is greater.
- B. Stairwell or elevator bulkheads, water tanks, chimneys, heating and air-conditioning apparatus, or other mechanical equipment projections occupying less than 10% of the area of the roof and not exceeding 12 feet in vertical distance from base to the highest point.

- C. Safety railings or walls required by the New York State Building Code to enclose outdoor living space or decks, not exceeding the minimum height required by the New York State Building Code for such railings or walls.

§ 575-131. Floor area for multifamily dwellings.

No multifamily dwelling shall provide habitable floor area of less than 600 square feet per unit.

§ 575-132. Maximum building area.

The building area shall not exceed 80% of the lot area.

§ 575-133. Minimum front yards.

No front yard shall be required.

§ 575-134. Minimum side yards.

No side yard shall be required; but, if any is provided, then its least dimension shall be not less than four feet.

§ 575-135. Minimum rear yards.

There shall be a rear yard, the depth of which shall not be less than 10 feet.

§ 575-136. Design guidelines.

For all mixed-use development containing a residential component, the provisions of Article X, § 575-120, Design Guidelines, shall apply.

§ 575-137. Development incentives.

- A. In recognition of the opportunities to advance a specific physical, cultural, and/or social policy of the Village, in accordance with the Village's comprehensive plan, as set forth in this chapter, in coordination with such other community planning mechanisms and/or land use techniques as may be available and appropriate, if any, where an applicant proposes such an opportunity that the Board of Trustees may, from time to time, by resolution, find appropriate and that meets the criteria herein, the Board of Trustees may approve adjustments to any zoning restrictions set forth in this chapter, other than as to use, with such limitations as may be set forth more particularly with regard to the incentive sections for the zoning district within which the premises are located.
- B. In determining whether or not to grant the adjustment, the Board of Trustees shall consider the following:
 - (1) The extent and dollar value of the proposed amenity;

- (2) The public costs that would otherwise be required to effect the proposed amenity; and
- (3) The improvement to the immediate neighborhood and/or the Village as a whole from the proposed amenity.

C. Payment in lieu of community amenities.

- 1) At the request of the applicant or on its own determination that the identified amenities to the Village are not immediately feasible or otherwise not practical for the applicant to provide, the Board of Trustees may require, in lieu of the identified amenities, a payment to the Village of a sum determined by the Board of Trustees. Alternatively, the Board may choose to accept a partial amenity and partial payment in lieu of such proposed amenity. If cash is accepted in lieu of a community amenity, provision shall be made for such sum to be deposited in a trust fund to be used by the Board of Trustees exclusively for specific community amenities that could be applied throughout the Village as authorized by the Board of Trustees.
- (2) Any payment in lieu of community amenities must be received prior to the issuance of a building permit for the construction of the proposed development.

D. Incentive procedures.

Applications seeking modification of zoning restrictions as part of this District’s incentive zoning framework shall comply with the procedural requirements outlined in Article XXXI.”

Section 3. Said Chapter 575 is further amended by adding a new Article XXXI, Incentive Zoning, to read as follows:

**“Article XXXI
Incentive Zoning**

§ 575-280. Incentive zoning procedure.

- A. The Board of Trustees shall have powers set forth in Village Law § 7-703, as may be amended from time to time, with regard to incentive zoning. The Board of Trustees may, at its discretion, award incentives and bonuses to applicants who provide or make provision for specific physical, social, and/or cultural amenities, or cash in lieu thereof, of benefit to the residents of the Village, as from time to time determined by resolution of the Board of Trustees, provided such are in accordance with the comprehensive plan established by this chapter.
- B. To evaluate the adequacy of the proposed amenities to be accepted in exchange for the requested development incentives or bonuses, the applicant shall, as part of its initial submission to the Village, submit an application for development incentive bonuses to the Building Department together with the payment of any applicable fees that shall be

set, from time to time, by resolution of the Board of Trustees. The application for a development or incentive bonus shall include the following and such other documentation and information as may be requested by the Building Department or the Board of Trustees:

- (1) A description of the proposed amenities outlining the benefits that will accrue to the community;
- (2) The economic value of the proposed amenities to the Village as compared with the economic value of the proposed incentives to the applicant. The analysis shall include a comparison of the long-term economic impact of the proposed amenities to the Village compared to the long-term economic value of the incentives to the applicant. For purposes of this section 'long-term' shall be defined as a term of 10 years or more;
- (3) A preliminary demonstration that there are adequate parking, transportation, and fire-protection facilities serving or proximate to the proposed development to handle the additional demands the increased density or other incentive or bonus may place on such facilities or the Village beyond the demand that would otherwise occur with as-of-right development;
- (4) A description of the effect, if any on the potential development of affordable housing gained or lost by the provision of the incentive or bonus.
- (5) Demonstration that any additional height would not result in adverse visual impact on the nearby single-family residential areas, open space areas, streetscape, or, if applicable, the historic character, of the proposed building site or nearby properties; and
- (6) Where the applicant is requesting to provide payment in lieu of community amenities, the applicant shall provide a calculation and proposal of an appropriate payment. The Board of Trustees shall consider the proposal for payment by the applicant in determining whether the amenities may be achieved.

C. Authorization for development incentives and bonuses shall be subject to approval by the Board of Trustees. The Board of Trustees shall determine whether the proposed amenity provides sufficient public benefit to provide the requested incentive or bonus. In the event that the Board of Trustees grants the application, it may impose such terms and conditions as it deems reasonable or necessary. If the Board of Trustees determines that a suitable community amenity is not immediately feasible, or otherwise not practical, or not a sufficient amenity for the incentive or bonus requested, the Board of Trustees may require, in lieu thereof or in addition thereto, 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 a community amenity, provision shall be made for such sum to be deposited in a trust fund to be used by the Board of Trustees for specific community amenities authorized by the Board of Trustees.

- D. If a generic environmental impact statement has been prepared by the Board of Trustees in relation to the establishment of a system of zoning incentives within particular zoning districts, the applicant shall pay a proportionate share of the cost of preparing such impact statement. Such proportionate share shall be determined based upon the total area of the applicant's property for which the incentive or bonus is sought and the total area within the district that was the subject of the impact statement. All other requirements of Article 8 of the Environmental Conservation Law of New York State shall be complied with by the applicant, including preparation of a site-specific environmental assessment form and a supplemental environmental impact statement, if deemed by the Board of Trustees to be necessary."

Section 4. The first paragraph of § 575-120, Design guidelines, of Article X, Mixed-Use MU Districts, of said Chapter 575, is hereby amended, to read as follows:

"It is the objective of these guidelines to establish a general design framework for creating and/or preserving the desired architectural character and scale of buildings in Mixed-Use and, when there is a residential component, Business A Districts; to help assure that such areas will be visually attractive and will blend landscaped open space and structures in a manner that relates harmoniously to the existing and/or planned character of the MU and Business A Districts and nearby portions of the Village; and to create visual interest and variety in the treatment of architectural surfaces."

Section 5. The definition "Restaurant" in § 575-212, Terms Defined, of Article XXIII, Definitions and Usage, of said Chapter 575, is hereby amended to read as follows:

"RESTAURANT - A business enterprise primarily engaged in preparing and serving food and beverages by patrons seated at a table, served by a waiter or waitress, and consumed on the premises. Restaurant does not include bars, taverns, nightclubs, or limited service restaurants."

Section 6. Said § 575-212, Terms Defined, is hereby further amended by adding the definitions of "Amenity", "Bar, Tavern, or Nightclub", "Gymnasium", and "Limited Service Restaurant", to read, respectively, as follows:

"AMENITY - When used with regard to incentive zoning shall be deemed to include the word benefit."

"BAR, TAVERN, OR NIGHTCLUB" – An establishment primarily engaged in the sale and service of alcoholic beverages for on-premises consumption, subject to the regulatory authority of the New York State Liquor Authority and consisting of one or more of the following characteristics: age restrictions or cover charges for admission; hours of operation which include the hours any of the hours between 11:00 p.m. and 6:00 a.m.; and music. The accessory or incidental sale of food or snacks shall not entitle such a use to be considered a restaurant or a bar or tavern under other provisions of this Code.

“GYMNASIUM – An establishment open to the general public for physical exercise and training, including, but not limited to any or a combination of the following: aerobics, dance, weight lifting, exercise machines, martial arts, and the playing of musical instruments, and where no alcoholic beverages are sold.”

“LIMITED SERVICE RESTAURANT - A business primarily engaged in the sale of pre-processed or quickly prepared food and beverages in disposable containers or wrappers, selected by patrons from a limited line of items, such as hamburgers, chicken, pizza, tacos, hot dogs, ice cream, or yogurt, for consumption either on or off the premises, in a facility in which a major portion of the sales to patrons is at a stand-up type counter, take-out, and/or delivery.”

Section 7. Article XVIII, Architectural Review, of said Chapter 575, is hereby amended by adding a new section, § 575-182, to read, as follows:

“§ 575-182. Board to be responsible for architectural review and approval.

- A. The provisions of § 575-177 notwithstanding, whenever land use or development requires a permit, an approval, or a variance from the Board of Trustees or the Board of Appeals, the responsibility of architectural review and approval under the provisions of this article may be assumed by such board, and the cost and deposit requirements of § 575-177 shall apply, but not the fee requirement. The foregoing shall not apply when the Committee of Architectural Review, or another board exercising the Committee’s function, has previously rendered a decision with regard to the project, whether or not the project has been revised since the rendering of said decision, and a material change has been made to the prior decision. When the Committee of Architectural Review, or another board exercising the Committee’s function, has previously rendered a decision with regard to the project, if, in the discretion of the Building Inspector, there is a material change to the prior decision, the matter shall be referred back to the Committee or such board. Nothing in this section shall affect the right of an aggrieved applicant to the appeal process set forth in §575-180 from any action by the Architectural Review Committee or the Board of Trustees, to the limited extent that the Board of Trustees may assume the responsibility of the Architectural Review Committee pursuant to this article.
- B. If the Board of Trustees or the Board of Appeals elects to perform all or a part of the review otherwise required by the Committee of Architectural Review pursuant to this article, it shall acknowledge such election and the extent of such election in its determination, and, to the extent of such election, it shall have all of the powers of the Committee of Architectural Review, and, by its election, no separate application need be made to the Committee of Architectural Review to the extent of such election.

Section 8. Effective Date. This local law shall take effect immediately.