

Code of the Town of Babylon: Chapter 213, Article XLII

Downtown Wyandanch and Straight Path Corridor Form-Based Code

Adopted: August 2014

Town of Babylon Town Code

Chapter 213, Article XLII: Wyandanch and Straight Path Corridor Form-Based Code

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Part 1:
Authority, Purpose, and Administration

213-491 Authority

This article is adopted as a local law pursuant to, inter alia, the New York State Constitution, Article 9, §2(b)(3); Statute of Local Governments, §10, Subdivision 6; and Municipal Home Rule Law § 10, Subdivision 1(ii)a(11), §10, Subdivision 1(ii)a(12), and §10, Subdivision 1(ii)d(3). It shall amend and, to the extent necessary, supersede any provisions of New York Town Law §§261 through 281, as well as any other sections of the Town Law with which it may be inconsistent.

213-492 Intent and Purpose

- A. This article regulates the location, design, construction, alteration, occupancy, and use of structures and the use of land, including both private and publicly owned land, within the area known as the “Downtown Wyandanch and Straight Path Corridor Redevelopment Zone” (Wyandanch SPC Zone) within the Town of Babylon . This article has been enacted in order to institute a legally enforceable Form-Based Code within the Wyandanch SPC Zone based upon the Final Wyandanch Downtown Revitalization Plan adopted on May 22, 2009.
- B. The purpose of this article is to establish a detailed set of development rules and procedures that will result in a compact and walkable transit-oriented development in the vicinity of the Long Island Rail Road Station and along the Straight Path Corridor running north and south of the railroad station.
- C. This article is intended to supersede and replace all conflicting rules in the Babylon Town Code in order to create a more beautiful, harmonious, and pedestrian-oriented public realm.
- D. This article is further intended to implement a streamlined process of development application review and approval based upon compliance with the form-based code in order to expedite development that fulfills the purposes of this article.

213-493 Applicability

This Part applies to all land, buildings, streets, sidewalks, uses, activities, public and private improvements, and landscape alterations of any kind occurring within the Wyandanch SPC Zone as shown on the map entitled “Downtown Wyandanch and Straight Path Corridor Transect Diagram” (two sheets) which is incorporated by reference herein. Notwithstanding the provisions of Section 213-6, this article shall apply to property owned by the Town of Babylon, including but not limited to streets, sidewalks, public buildings, and other public places. The Town of Babylon urges and encourages entities that are not legally required to comply with this article to take this article into consideration in conducting their activities within the Wyandanch SPC Zone.

213-494 Relationship to Other Parts of the Town of Babylon Code

A. General Framework

This Part consists of a regulating plan, development standards, thoroughfare standards, architecture standards, and green building and site planning standards, organized by “transect zones” as described in Section 213-500. These plans, zones, and standards replace the zoning, subdivision, and other provisions in the Town Code regulating land use and development in the Wyandanch SPC Zone. The intent of this framework is to provide clear guidance to landowners, developers, municipal officials, and the community, while providing a streamlined and integrated framework for decision making. Where this article is silent about any matter relating to land use, building, or development, applicable provisions of the Town Code that do not conflict with this article shall apply.

B. Supersession Other Parts of the Town Code

The provisions of this article explicitly supersede in their entirety the following chapters of the Town Code within the Wyandanch SPC Zone:

- (1) Multiple Dwelling and Accessory Apartment regulations (Chapter 153)
- (2) Public Assembly Places (Chapter 173)
- (3) General Site Plan Review procedures and requirements (Chapter 186), except that the requirements in subsections 186-9B(8), (9), (11) and (12) shall be administered by the Building Inspector in consultation with the Form-Based Code Architect (see Section 213-495).

C. Applicability of Other Parts of the Town Code

- (1) In case of a conflict between this article and any other provision of the Town Code not listed in subsection B above this article shall control. Where no such conflict exists, all other chapters of the Town of Babylon Code including applicable portions of Chapter 213 shall have full force and effect within the Wyandanch SPC Zone.
- (2) All applications for building construction are required to conform to applicable building code and life safety ordinances and laws. Applicants shall be responsible for obtaining all necessary permits and approvals from local regulatory agencies with jurisdiction over a project including but not limited to fire, health, water, and sewer departments. In any case where building or life safety regulations are in conflict with this article, the Form-Based Code Architect (see Section 213-495) shall be notified at once and such ordinances shall control, except that the height limitations in Section 89-33 of the Town Code shall not supersede the provisions of this article. Building materials and assemblies shall consist of approved products that conform to the standards of applicable building codes, including the green building and Energy Star provisions of Chapter 89.
- (3) The stormwater management and drainage requirements in Chapter 189 of the Town Code shall have full force and effect in the Wyandanch SPC Zone.

213-495 Administration

A. Form-Based Code Architect

(1) Form-Based Code Architect (FBCA)

The Babylon Department of Planning and Development shall retain an employee or consultant as the Form-Based Code Architect (FBCA). The FBCA shall, at a minimum, be a licensed architect with at least five years experience in the design of new urbanist developments and the drafting and/or administration of form-based codes. The FBCA shall be appointed by the Town Supervisor in consultation with the Commissioner of Planning and Development.

In the event that the position of Form-Based Code Architect is vacant or that the FBCA is unavailable to perform the duties required by this Article, such duties shall be performed by the Design Director, Planning and Development, or such other staff member or consultant as may be designated by the Commissioner of Planning and Development.

(2) Purpose and Function of the Form-Based Code Architect

- a. The purpose of the FBCA is to foster architectural harmony and to ensure that all property owners in the Downtown Wyandanch and Straight Path Corridor Redevelopment Zone (Wyandanch SPC Zone) comply with the form-based code in this Article XLII. The FBCA shall also function as the main point of contact for applicants and shall ensure that all departments of the Town with jurisdiction over a project are consulted in a timely fashion to facilitate review of proposed developments.
- b. The FBCA shall advise and provide recommendations to the Commissioner of Planning and Development and the Building Inspector in administering the

provisions of this Article XLII, including the interpretations of words and terms herein, review of applications submitted under the provisions of this article, and such other duties as may be delegated to the FBCA by the provisions of this article, by any other chapter of the Town Code, or by any authorized town official involved in the review and approval of development applications in the Town of Babylon. The FBCA shall review all plans and shall be responsible for Design Review which must be completed prior to commencing any development in the Wyandanch SPC Zone. Applications for Design Review and construction shall be as set forth in the Design Review Procedure in Section 213-495 B(1)(b).

- c. The FBCA shall review all applications and recommend approval, approval with conditions or modifications, or denial and so notify Commissioner of Planning and Development and the Building Inspector immediately upon completing review of applications. The FBCA may request additional information at any point if the application is incomplete.
- d. The FBCA shall review all improvements, including alterations and modifications to structures for conformance with this chapter.
- e. The FBCA may recommend approval of encroachments expressly permitted by this article. Such encroachments shall not be permitted unless explicitly recommended in writing by the FBCA. All encroachments must be specifically requested in writing, separate from any plans or drawings, and specifically and individually approved in writing by the FBCA

upon a determination that such encroachment is consistent with the regulations and intent of this article. Approval of construction documents does not constitute approval of an encroachment if the encroachment has not been specifically requested and approved pursuant to this subsection (e).

- f. If specifically authorized by the provisions of this article, the FBCA may recommend that the Building Inspector waive one or more of the requirements of this article based on architectural merit, hardship, or other extenuating circumstances and the Building Inspector may approve the waiver. Approved waivers shall not be considered precedents for future waiver requests.
- g. No Building Permit shall be issued by the Building Inspector within the Wyandanch SPC Zone unless the FBCA has determined that the application is consistent with the regulations and intent of this article.
- h. The FBCA shall coordinate with the Building Inspector and all Town agencies with jurisdiction over a project as early as practical in the review process.

B. Pre-Construction Approval Process and Permits for Buildings and Uses

- (1) Uses and Structures Allowed by Right, including Permitted Deviations and Encroachments: Prior to any submissions, a Pre-Application Conference is required. It is strongly recommended that this Pre-Application Conference take place prior to any design work by the applicant. All applications shall be submitted to the FBCA for a three-step preconstruction review. The

first step is Concept Review, the second step is Design Review, and the third step is Construction Documents Review. The Building Inspector, in consultation with the FBCA, shall determine, as part of Concept Review, whether a proposed use or structure is allowed by right, is prohibited, or may be allowable by a special exception use permit. If the application requires a special exception use permit, the FBCA shall conduct an initial concept review and refer the application to the Town Board pursuant to Article XXXII. In such a case, the FBCA shall request the applicant to provide design information in sufficient detail for the Town Board to make an informed decision. If the special exception use permit is approved by the Town Board, the application shall be resubmitted to the FBCA for full Design and Construction Documents Review.

All applicants shall place the Design Review Record (issued by the building inspector) in the bottom right corner of the first page of the application for each Concept Review, Design Review, and Construction Documents Review. Other submission requirements for approvals shall be determined by the FBCA and recommended to the Building Inspector, who shall issue forms and detailed instructions for submission of applications. Such requirements may include dual submission of material in electronic and hard copy.

- a. Concept Review establishes conceptual conformance with the requirements of this Part. More than one scheme may be submitted. The FBCA shall provide recommendations to the applicant on how to refine the concept in the concept review stage to ensure that it complies with this chapter.

- b. Design Review confirms compliance of the design details with this chapter and verifies that previous recommendations made by the FBCA have been incorporated. The FBCA may provide recommendations to the applicant on how to refine the concept in the design review stage to ensure that it complies with this article. An encroachment request letter or request for a dimensional deviation of 5% or less, if needed, shall be submitted at the design review stage. If determined by the FBCA to be consistent with this article, the building inspector shall approve a proposed dimensional deviation or requested encroachment.
 - c. Construction documents review confirms that the project as refined through design review will be constructed as approved. The FBCA shall provide recommendations to the applicant on how to refine the concept in the construction documents review stage to ensure that it complies with this article.
 - d. Applications for a building similar to or the same as one previously constructed in the Wyandanch SPC Zone: If essentially the same building has been previously built on another lot in the district, the reviews described in subsections (a), (b), and (c) reviews above shall occur simultaneously.
 - e. Building Permit: Following construction documents review, if the FBCA determines that the application is consistent with this article, the Building Inspector may issue a Building Permit in compliance with Section 213-495(c).
- (2) Special exception use permit: Those uses which are specifically authorized in this article to be granted by special exception use permit may be allowed by the Town Board pursuant to Article XXXII.
- (3) Variances: Variances from the provisions of this article may be granted by the Zoning Board of Appeals pursuant to the statutory requirements in Sections 267-a and 267-b of the Town Law of New York State. All variance applications shall be referred to the FBCA for an opinion on the effect of a proposed variance on the character of the neighborhood. The FBCA's response to the referral of a variance application shall specifically address whether or not the proposed variance will produce an undesirable change in the character of the neighborhood including the desired walkable and pedestrian-friendly neighborhood character to be created by this Article XLII.
 - (4) Review fees: The Town Board shall by resolution establish and from time to time update a schedule of fees for development applications under this article. Such fees shall be designed to cover the reasonable costs of review of applications under this article. Such fees shall distinguish between applications allowed by right and those allowed by special exception use permit and shall reflect the additional costs associated with review of special exception use permit applications.
 - (5) Compliance with the State Environmental Quality Review Act and Chapter 189 of the Town Code:
 - a. All applications submitted to the FBCA shall be referred to the Department of Environmental Control for review of environmental and stormwater impacts.
 - b. Applications for uses or activities allowed by right by this Part shall be deemed Type II actions under SEQRA and shall not require the submission of additional SEQRA

documentation if the Department of Environmental Control finds that such actions fall within the environmental parameters reviewed in the Generic Environmental Impact Statement (GEIS).

- c. Applications for special exception use permits, appeals, and variances shall be subject to the SEQRA requirements for Type I or Unlisted Actions, as required by the SEQRA Regulations and shall be reviewed accordingly by the Department of Environmental Control.
 - d. All applications for permits for building or development shall comply with Chapter 189 requirements for stormwater management.
- (6) **Wastewater Management:** The applicant shall apply to the Suffolk County Sewer Agency and Suffolk County Department of Health Services for sanitary wastewater disposal to the Wyandanch Southwest Sewer District. On site wastewater disposal is not permitted. The Town shall be provided with the estimated wastewater flow from the development pursuant to Suffolk County requirements.
- (7) **Groundwater:** Because of the high groundwater Table in the area, soil borings, at least one per acre, as well as elevations and topography for all proposed developments, shall be submitted to the Department of Environmental Control as part of the Concept Review process.

C. Issuance of Building Permits and Certificates of Occupancy

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

D. Required Town Board Approval

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

E. Streets, Sidewalks, and Public Improvements

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

F. Non-Conforming Uses

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

- (1) The term “legal nonconforming use,” as used in this article, shall mean any nonconforming use which, at the time such use was commenced, was maintainable as a master of right under the statutes, ordinances and general rules of law then in effect in the Town of Babylon.
- (2) Any legal nonconforming use may be continued; provided, however, that a legal nonconforming use shall not be abandoned or changed unless changed to a conforming use. A legal nonconforming use, if changed to a conforming use, may not be thereafter changed to any nonconforming use.
- (3) A nonconforming use which shall be discontinued for more than six months shall thereafter be determined to be illegal and in violation of the ordinances. Upon the expiration of the aforesaid six-month period, the said use may not be reinstated, and any structure which shall be in violation of the then controlling ordinances by virtue of this section shall be razed at the expense of the owner.
- (4) No legal nonconforming use may be extended, except as provided in this section. In any building wherein the legal nonconforming use occupies more than 50% of the floor area, then the legal nonconforming use may be extended to the entire floor area.
- (5) A building arranged, designed or devoted to a nonconforming use at the time of the adoption of this section may not be reconstructed or structurally altered to an extent exceeding in aggregate 25% of the ground area of the building, unless the use of said building is changed to a conforming use, notwithstanding the provisions of F.(4) of this section. A nonconforming use of land may not be extended in the aggregate more than 25% of the area occupied at the time of the adoption of this section.

213-496 Subdivision of Land Under This Article

Land may be subdivided into lots and blocks only as permitted by the Regulating Plan or by a waiver granted by the Planning Board if determined by the FBCA to be consistent with the regulations and intent of this article. The Planning Board shall not require a preliminary plat for any subdivision application which complies with this article.

213-497 Amendment of This Article

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

213-498 through 213-499 [Reserved]

Part 2: The Transect



Figure 213-1. Downtown Wyandanch and Straight Path Corridor Transect Diagram

213-500 The Transect Diagram and Permitted Uses

A. General

- (1) This section establishes Transect Zones applied to property within Downtown Wyandanch and Straight Path Corridor Redevelopment Zone (Wyandanch SPC Zone).
- (2) The general intent is that the scale of urban form, and intensity of uses, shall be greatest closest to the Wyandanch Transit Stop and shall reduce in scale, and intensity, further away from the Wyandanch Transit Stop.
- (3) The Transect is a planning and zoning tool that organizes zones in a continuum from rural to urban, referred to as T1, T2, T3, T4, T5, and T6. One additional zone is the Special District, which covers land that does not fit into any of the previous categories. Each transect zone has a different set of characteristics. Because Wyandanch is set in a suburban location, not all of the transect zones listed above apply. The transect zones used in this Part are:

T3: Sub-Urban

T4(-): Neighborhood Residential

T4: Neighborhood

T5: Urban

SDC: Special District Civic

B. General Description of Transect Zones Used in Downtown Wyandanch and Straight Path Corridor

- (1) The Transect Zones used in the Wyandanch SPC Zone are generally described below:
 - a. T3: Sub-Urban – This zone consists of lower density residential areas primarily comprised of Single-Family Detached (SFD) and Duplexes homes.
 - b. T4(-): Neighborhood Residential – This zone has greater density than T3 and consists of residential uses located in a range of building types.
 - c. T4: Neighborhood – This zone has greater density than T3 and contains a mix of uses.
 - d. T5: Urban - This zone has the greatest density, intensity, and mix of uses.
 - e. SDC: Civic – This zone consists of Civic uses.

C. Permitted Uses

- (1) This section establishes Permitted Uses (P) and Uses Not Permitted (N) by transect zone, as listed in Table 213-1.
- (2) No buffer shall be required between uses.
- (3) Mixed-Use buildings shall be permitted in T4 and T5 zones.
- (4) Uses not listed in Table 213-1 that are similar in character, scale, and impact to Permitted Uses may be allowed if determined by the FBCA to be consistent with the regulations and intent of this Article XLII.
- (5) Uses not listed in Table 213-1 as either permitted or prohibited and not found by the FBCA to be similar to listed permitted uses may be allowed by Special Exception Use Permit granted by the Town Board in consultation with the FBCA, provided that such uses:
 - a. Are consistent with the intent and purpose of this article and the transect zone in which they are proposed to be located;
 - b. Will not adversely affect neighboring properties;
 - c. Will make a positive contribution to the economic viability and design quality of the Wyandanch SPC Zone;
 - d. Will enhance the pedestrian-oriented walkable character of the Wyandanch SPC Zone;
 - e. Will not exceed the environmental review parameters analyzed in the Final Wyandanch Downtown Revitalization Plan Final Generic Environmental Impact Statement (FGEIS).
- (6) Parking shall be permitted and shall adhere to the standards in Section 213-507.

TABLE 213-1.

	T3	T4 (-)	T4	T5	SDC
Civic	N	P	P	P	P
Commercial: Other	N	N	P	P	N*
Gas Station	N	N	N	N	N
Office	N	N	P	P	N*
Residential: Other	N	P	P	P	N
Residential: SFD and Duplex	P	P	P	N	N
Retail	N	N	P	P	N*
Industrial	N	N	N	N	N

*Uses permitted only when civic uses are included as the primary use.

D. Density

- (1) This section establishes permitted development density by Transect Zone as listed in Table 213-2.
- (2) Density shall be calculated by Floor Area Ratio (FAR). The Floor Area Ratio is determined by dividing the gross floor area of all buildings on a parcel by the area of that parcel. Structured Parking does not count toward the permitted FAR and is allowed in addition to the permitted FAR.
- (3) When multiple uses are located on a parcel, the permitted total density on a parcel is calculated by adding the use category FAR ratios. For example, a property in a T4 Zone that has both residential and commercial uses on it can have a total FAR of 2.3. The permitted density stated in Table 213-2 is a maximum and may not be attainable due to other regulations contained in this article. Achieving maximum permitted density shall not be a justification for waivers, deviations, or variances from the standards contained in this article.
- (4) For purposes of this article, permitted Floor Area in Table 213-2 does not include basements, cellars, penthouses enclosing only mechanical equipment, attic space, whether or not a floor has been laid, interior balconies, exterior balconies, non-enclosed porches, and enclosed or structural walkways designed and used exclusively for pedestrian access between buildings and/or parking structures which are permitted in addition to the FAR.
- (5) When multiple parcels are submitted for approval at the same time, the permitted density calculation shall be based on the total land area of all the parcels added together.

TABLE 213-2.

Use Category	T3	T4 (-)	T4	T5	SDC
Residential FAR	.6	1.5	1.5	2.2	N/A
Commercial FAR	N/A	N/A	.8	.8	N/A
Civic FAR	N/A	N/A	N/A	N/A	3.0

213-501 [Reserved]

