

## **Chapter 151**

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[HISTORY: Adopted by the Board of Trustees of the Village of Kensington 2-9-1926 by Ord. No. 11; readopted as amended 12-14-1981 by L.L. No. 6-1981. Amendments noted where applicable.]

GENERAL REFERENCES

Agricultural Review Board — See Ch. 6.  
Storage of boats, trailers and vehicles — See Ch. 57.  
Building construction — See Ch. 64.  
Fences and walls — See Ch. 77.  
Flood damage prevention — See Ch. 80.  
Planning — See Ch. 114.  
Plumbing and sewers — See Ch. 117.  
Trees — See Ch. 141.

**ARTICLE I**  
**Reenactment and Title**

**§ 151-1. Reenactment.**

The Building Zone Ordinance of the Village of Kensington, being Ordinance No. 11 adopted February 9, 1926, as thereafter amended, is continued and readopted with sections renumbered so as to conform to this Code of Ordinances and is further amended so as to read as follows.

**§ 151-2. Title.**

This chapter shall be known and may be cited as the "Building Zone Ordinance of the Village of Kensington."

**ARTICLE II**  
**Definitions and Usage**

**§ 151-3. Word usage; definitions.**

- A. Word usage. Words used in the present tense include the future; the singular number includes the plural, and the plural number includes the singular.
- B. Definitions. As used in this chapter, the following terms shall have the meanings indicated:

**ACCESSORY BUILDING** — Includes every building, other than the principal building, devoted to an accessory use. It includes a swimming pool. It does not include any portion of the main or principal building which is devoted to an accessory use. If such a building or use is not located on the same lot as that of the building or use to which it is accessory, it is not an accessory building or use and must comply with the regulations applicable to a principal building or use.

**ACCESSORY USE** — Includes every use customarily incidental to the principal building or use and includes all

of the uses specified as accessory elsewhere in this chapter. If such a use is not located on the same lot as that of the building or use to which it is accessory, it is not an accessory use and must comply with the regulations applicable to a principal building or use.

**ALTERATION** — As applied to any building or structure, means any change or rearrangement in the structural parts or exterior wall or framework of existing facilities, or any change in any window, door, partition or room size, or any change in the plumbing facilities or the installation of a central air-conditioning system, the installation of a fence or the installation of siding or veneer on the exterior portion of a building. It includes any enlargement, whether by extending any side, front or rear building line or by increasing any height or by moving from one location or position to another. It also includes the enclosure of a space previously open, such as the enclosure of an open porch or patio or the construction of a roof over it.

**BASEMENT** — That portion of a building which is partly below grade with less than half of its floor-to-ceiling height below the average of the adjoining ground. **[Added 3-22-2001 by L.L. No. 1-2001]**

**BUILDING** — Any structure or combination of structures, above or below the surface of the ground, except a fence five feet or less in height. It includes a part of a building or an extension of or addition to a building.

**BUILDING AREA** — The proportion of the horizontal areas of the principal building on a lot to the total lot area measured from the exterior surface of the foundation wall on the ground level, including attached and detached private garages and covered porches. **[Amended 2-16-2011 by L.L. No. 2-2011]**

**CEILING HEIGHT** — The first floor ceiling height shall not exceed 12 feet measured from the top of the first floor deck to the underside of the second floor framing. This twelve-foot height limitation shall not apply to

front-entrance foyers, vestibules, and one-story additions. The second floor ceiling height shall not exceed 10 feet measured from the top of the second floor deck to the top of the second floor wall plate. **[Added 2-16-2011 by L.L. No. 2-2011]**

**CELLAR** — That portion of a building with half or more of its floor-to-ceiling height below the average level of the adjoining ground. A cellar shall not be used or occupied as living or sleeping quarters. **[Added 3-22-2001 by L.L. No. 1-2001]**

**CLUB** — A nonprofit organization or operation, or one owned and operated by a membership corporation or an unincorporated association for social, musical, dramatic, literary, artistic, gardening, yachting, boating, hunting, shooting, fishing, bathing, golf, tennis, squash, racquets or other lawful sporting purposes, excepting and not including an athletic organization, a political organization, a day camp, a youth home, a club for boys or girls, a nursing or convalescent home, an organization for the improvement of the social, mental, moral or physical condition of children or of young men and women or an organization the chief activity of which is a service customarily carried on as a business.

**CORNER LOT** — A lot at the junction of and fronting on two or more intersecting streets, having an interior angle of less than 135° at their intersection. A lot abutting upon a curved street shall also be considered a corner lot if the tangents to the curve at the points of intersection of the side lot lines intersect at an interior angle of less than 135°. **[Amended 5-17-1989 by L.L. No. 12-1989]**

**DWELLING** — A place of abode of one or more families.

**FAMILY** — A group of persons, including servants or employees, forming a single housekeeping unit. It does not include a boarder or lodger, each of whom shall be regarded as a separate family and who are permitted only in districts that allow more than one family. Where there

is more than one kitchen, there is presumptively more than one family.

**FIRST FLOOR ELEVATION LEVEL** — The distance from the mean ground level to the top of the first floor platform framing of a building. **[Added 2-16-2011 by L.L. No. 2-2011]**

**FLOOR AREA** — The sum of the gross areas of the several floors of the principal and all accessory buildings on a lot, measured from the exterior faces of exterior walls. **[Added 3-22-2001 by L.L. No. 1-2001; amended 10-21-2009 by L.L. No. 5-2009; 2-16-2011 by L.L. No. 2-2011]**

- (1) In particular, floor area shall include:
  - (a) Basement space, irrespective of its use.
  - (b) Floor space of each story above the basement and below the attic, irrespective of its use, and that portion of the area of any attic space, whether or not floor has been laid, with a minimum horizontal measurement of 6.5 feet that provides structural headroom of 6.5 feet or more.
  - (c) Floor space of interior balconies or lofts.
  - (d) Floor space of roofed terraces, exterior balconies or porches.
  - (e) Floor space (in the aggregate) of all uncovered balconies in excess of 150 square feet.
  - (f) Any portion of any floor area that exits to or is above grade. If an exit from a cellar is at grade level, then 50% of the floor space of that cellar shall be included.
  - (g) Private garages: **[Amended 12-18-2013 by L.L. No. 2-2013]**

- [1] Any area in excess of 400 square feet in an existing private garage;
- [2] Any area in excess of 200 square feet in a private garage where there is a structural alteration, reconstruction or enlargement of an existing dwelling in excess of 40% of the floor area of such dwelling, as determined by the Building Inspector, or where there is the construction of a new dwelling.

- (h) If the first floor ceiling height exceeds 10 feet, the floor area of that room shall be increased in direct proportion to the amount by which the ceiling height exceeds 10 feet. (Example: The square foot penalty for a base floor area of 2,500 square feet with a proposed eleven-foot ceiling on the first floor would be 250 square feet, calculated as follows: one foot/10 feet or 10% of 2,500 square feet for a total floor area of 2,750 square feet on the first floor.)
  - (i) Any area of a front-entrance foyer or vestibule which exceeds 12 feet in height shall be counted twice.
  - (j) If the second floor ceiling height exceeds nine feet, the floor area of that room shall be increased in direct proportion to the amount by which the ceiling area exceeds nine feet.
  - (k) If the ceiling height of a one-story addition exceeds 10 feet, the floor area of that room shall be increased in direct proportion to the amount by which the ceiling area exceeds 10 feet. (Example: The square foot penalty for a four-hundred-square-foot base floor area with a proposed fifteen-foot ceiling would be 200 square feet, calculated as follows: five feet/10 feet or 50% of 400 square feet for a total floor area of 600 square feet for that room.)
  - (l) Any space above the wall plate of a cathedral ceiling will be excluded from floor area calculations.
- (2) The floor area of a building shall not include any space occupied by open exterior wooden decks or on grade masonry terraces.

**FLOOR AREA RATIO IN A DWELLING** — The ratio of the gross floor area of a building or dwelling in square feet

to the lot area of the building site in square feet. **[Added 11-17-1993 by L.L. No. 5-1993]**

**FRONT BUILDING LINE** — A line across the full width of the lot running parallel to the street line as nearly as may be and the nearest line of the principal building at a point nearest the street. It is not necessarily the front of the building nor does it necessarily contain the main entrance to the building.

**FRONT YARD** — A yard on the same lot as the principal building or use, situated between the front line of the lot and the front building line.<sup>1</sup>

**HEIGHT OF A BUILDING** — The vertical distance from the mean ground level to the ridge of a roof structure. For multiple dwellings and commercial buildings, refer to height exceptions in § 151-18. **[Amended 2-16-2011 by L.L. No. 2-2011]**

**LOT** — A parcel of land, vacant or improved, which is occupied or designed to be occupied by one main building or use and the accessory buildings or uses customarily incident to it, including such open spaces as are arranged or designed to be used in connection with such building or use. It includes the word "plot." A lot may or may not be the land shown as a separate parcel on a duly filed map, Tax Map or developer's diagram. All adjoining parcels of property now or hereafter held in common ownership, regardless of the nature of the constituent parcels or the date, source or manner of acquisition or the use to which they may be devoted, shall be deemed merged into a single lot and shall be subject to the provisions of this chapter to the same effect as if they had constituted a single lot at the date this chapter was adopted.

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1. Editor's Note: The former definitions of "gross floor area," added 11-17-1993 by L.L. No. 5-1993, as amended 5-19-2004 by L.L. No. 4-2004, and "ground level," which immediately followed this definition were repealed 2-16-2011 by L.L. No. 2-2011.

**MEAN GROUND LEVEL** — The average elevation of natural grade level prior to any excavation or any fill being placed on the ground as determined by a licensed New York State land surveyor. The mean ground level shall be calculated based on an average of the elevations at each building corner; at each vertex where there is a change in plane; and at three equal intermediate points for building planes which are 20 feet or more. The mean ground level shall be measured along the entire foundation of a building. **[Added 2-16-2011 by L.L. No. 2-2011]**

**MEAN STREET CURB LEVEL** — The average elevation of the street pavement alongside the face of a curb as determined by a licensed New York State land surveyor. **[Added 2-16-2011 by L.L. No. 2-2011]**

**MULTIPLE DWELLING** — A dwelling which is occupied as the abode, residence or home of three or more families living independently of each other.

**PORCH** — A roofed open structure projecting from the outside wall of a building without a window sash, glazing panels, or any other form of enclosure. **[Added 2-16-2011 by L.L. No. 2-2011]**

**PRIVATE GARAGE** — A building used for the storage of one or more automobiles owned and used by the owner or tenant of the lot on which it is erected, for a purpose accessory to the use of the lot.

**REAR BUILDING LINE** — A line across the full width of a lot running parallel to the rear line of the lot as nearly as may be and the nearest line of the principal building at a point nearest the rear line of the lot. In the case of a lot which adjoins two or more streets which do not intersect, there is ordinarily no rear building line.

**REAR YARD** — A yard on the same lot as the principal building or use, situated between the rear line of the lot and the rear building line.

**REQUIRED YARD** — The portion of the yard lying within the minimum limits provided by this chapter for the district in which the lot is situated.

**SCHOOL** — An institution of learning chartered by the State Board of Regents or operated by a school district existing under the Education Law of the State of New York. It does not include a nursery school, a day camp, a summer camp or recreational or athletic institution, organization, conservatory group or center, whether operated or managed by one or more persons, of which the principal object or one of the principal objects is physical education, teaching of dancing, singing, dramatics, music, playing of musical instruments, calisthenics, typewriting, stenography, dressmaking, designing or millinery or the giving of instruction in beauty parlor operation, business courses or instruction of a similar nature.

**SIDE BUILDING LINE** — A line running from the front building line to the rear building line (or in case there is no rear building line, running from one front building line to the other front building line) on each side of the lot, passing along the nearest line of the principal building at a point nearest the side line of the lot.

**SIDE YARD** — A yard on the same lot as the principal building, situated between the side line of the lot and the side building line and bounded by the front and rear building lines.

**STORY** — The part of a building between the finished first floor elevation and the finished second floor elevation or between the finished second floor elevation and the top of the ceiling joist or spring line of a cathedral ceiling.

**[Amended 5-19-2004 by L.L. No. 4-2004; 2-16-2011 by L.L. No. 2-2011]**

**STREET** — Includes a public or private road, avenue, lane, alley or parking place and any private driveway used by or giving access to more than two lots.

**STREET LINE** — The dividing line between a lot and the side line of a street. Where the lot adjoins a public street, it is ordinarily the property line. It is not the curblineline unless the curb runs along the property line.

**TERRACE** — An open porch without a permanent roof.  
[Added 2-16-2011 by L.L. No. 2-2011]

**USE** — Includes both the purpose to which a building or lot is or may be devoted, whether or not actually so devoted, and the building or lot itself.

**WALL OF A BUILDING** — The exterior bearing wall or structure supporting any part of the building extending more than two feet above or more than three feet below the ground level. An exterior chimney is deemed part of a wall whether or not it supports any other part of the building or structure.

**WALL PLATE** — The horizontal framing member of wood frame wall construction. [Added 2-16-2011 by L.L. No. 2-2011]

**YARD** — An open, unoccupied space on the same lot as the principal building or use, which is and must be open and unobstructed from the ground to the sky, except for trees, shrubbery, telephone or electric light wires and poles, hedges, retaining walls and fences five feet or less in height.

### ARTICLE III Zoning Districts

#### § 151-4. Establishment of districts.

- A. For the purpose of this chapter, the Village of Kensington is hereby divided into five districts designated as follows:  
[Amended 4-17-1991 by L.L. No. 1-1991]

Residence A District  
Residence B District  
Residence C District  
Residence D District  
Special Office District

- B. These districts are shown on the Building Zone Map which accompanies this chapter and which is hereby declared to be a part hereof. The districts designated on said map are hereby established, and the district designations shown on said map are hereby declared to be a part hereof.<sup>2</sup>

**§ 151-5. Changes in districts.**

In case of any amendment of this chapter heretofore or hereafter made creating new districts or changing district boundaries or transferring property from one district to another, the Building Zone Map shall be deemed to have been amended accordingly. A new or amended Building Zone Map need not be prepared or adopted showing such new districts or such changes in district boundaries or such transfer of property from one district to another, but such new districts, changes and transfers of property may be identified by words of description with the same effect as if they had been shown upon a duly prepared and adopted Building Zone Map.

**§ 151-6. Statement of policy.**

The Board of Trustees hereby determines that since the territory of the Village of Kensington is small in area and since it is now and has always been devoted exclusively to one-family residences, with the exception of the newly created (adopted December 20, 1965) Residence D District, Subdistrict D-1, for purposes of a multiple dwelling, § 151-12 of this chapter, and

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2. Editor's Note: The Building Zone Map is on file in the office of the Village Clerk. A copy is also included in a pocket at the end of this volume.

since the village forms only a small part of a large comprehensive community and since ample facilities for business and trade exist nearby within easy reach where the residents of the village have always been accustomed to shop and transact their business, there is no necessity for providing within the village limits for all of the activities of communal life, and that the purposes provided by Article 7 of the Village Law may best be carried out by excluding from the village all industrial, commercial and business uses and by limiting the use of the property in the village to one-family dwellings and accessory uses for which the territory of the Village of

Kensington is peculiarly suited, with the exception of the portion of the village that adjoins Middle Neck Road where a multiple dwelling may be constructed subject to the conditions and restriction hereafter set forth in this chapter.

**§ 151-7. Violations prohibited.**

- A. No building or part of a building shall be erected or altered except in conformity with the regulations herein prescribed for the district in which such building is located.
- B. No building, lot or premises and no part thereof shall be used for any purpose other than a purpose permitted by the regulations relating to the district in which such building or premises is located.

**§ 151-8. Prohibited subdivision. [Amended 3-21-1990 by L.L. No. 3-1990]**

Unless the portion of a lot which fails to comply with the following requirements is added to and forms part of an adjoining lot under the same ownership in such a way that said portion and the lot to which it is added, taken together, comply with all of the regulations applicable to the district in which it is situated. No lot shall be sold, divided, set off, leased or conveyed in such a manner that either the portion sold divided, set off, leased or conveyed or the portion remaining:

- A. Shall be less than the minimum size or shall have less than the minimum street frontage required by the regulations relating to the district in which it is situated; or
- B. Shall fail to provide the yards or other open spaces required by the regulations relating to the district in which it is situated in respect to any building or use then existing; or

- C. Shall contain any building which exceeds the height permitted by the regulations relating to the district in which it is situated; or
- D. Shall contain any building or use not permitted by the provisions of this chapter in the case of buildings hereafter erected or altered; or
- E. Shall contain a building or use accessory to the building or use located on the portion of the lot so severed from it; or
- F. Shall directly or indirectly violate any terms or conditions imposed by this chapter relating to the use of such lot; or
- G. Shall directly or indirectly violate any terms or conditions imposed by the Planning Board in approving a subdivision plot or imposed by the Board of Appeals in granting a variance or special exception under the provisions of this chapter or under the provisions of the Village Law; or
- H. Shall create a plot that does not have the minimum frontage required by this chapter on one of the following: Arleigh Road, Beverly Road, Bridle Path, Greenacre Court, Kensington Court, Nassau Drive, North Drive, Stoner Avenue or Sutton Court. [Added 11-17-1993 by L.L. No. 4-1993]

#### § 151-9. Residence A District.

In the Residence A District, the following regulations shall apply:

- A. Uses. No building shall be erected, altered or used and no lot or premises shall be used except for one of the following purposes and uses accessory thereto:
  - (1) A dwelling for not more than one family.
  - (2) Schools, as defined in this chapter.
  - (3) Governmental and municipal purposes.

- (4) Churches and places of worship.
  - (5) Uses accessory to the principal use to which the premises or the building thereon is devoted. Such accessory uses are subject to the conditions and limitations set forth in Article IV of this chapter.
- B. Height. No building shall be erected, altered or used any part of which is higher than three stories exclusive of cellar or higher than 35 feet, whichever is less.
- C. Size of lot. No building shall be erected, altered or used on a lot having an area of less than 8,000 square feet.
- D. Street frontage; width of lot at street and at rear. No lot shall have a street frontage of less than 100 feet or a street frontage that measures less than 90% nor more than 110% of the rear lot line. **[Amended 11-20-1997 by L.L. No. 5-1997]**
- E. Front yard. Where two or more buildings exist on the same side of the street as a proposed building and are situated within 200 feet of such proposed building or any part thereof, no portion of such proposed building shall be erected nearer to the street line than a line joining the front lines of such existing buildings and running as nearly parallel to the street as may be provided that no portion of such proposed building shall be erected nearer than 30 feet to the street line of any street, and no portion of the front building wall need be erected more than 50 feet from such street line. In no case shall any portion of a building be erected nearer than 30 feet to the street line of any street.
- F. Rear yard. Except where expressly permitted otherwise, the minimum distance between the rear line of the lot and any building or structure at any point shall not be less than 15 feet. **[Amended 11-16-1988 by L.L. No. 7-1988]**
- G. Side yards. Except in the case of a corner lot, two side yards shall be provided. Except where expressly permitted otherwise, the minimum distance between a side line of a

lot and any building or structure at any point shall not be less than 10 feet. **[Amended 11-16-1988 by L.L. No. 7-1988]**

- H. Building area. No principal building or use, together with all accessory buildings or uses, shall occupy in the aggregate more than 35% of the area of the lot.
- I. Corner lots, in the case of a corner lot there shall be two front yards and two rear yards; the yards at the street frontages shall be the front yards, and the yards opposite them shall be the rear yards. Such yards shall comply with the requirements for front and rear yards, respectively. The yard at the wider street frontage shall have a minimum depth of 20 feet, but shall in other respects comply with the requirements for a front yard. **[Amended 5-19-2004 by L.L. No. 4-2004]**
- J. Floor area ratio (FAR). In no case shall a dwelling be constructed with an FAR in excess of 0.4. **[Added 11-17-1993 by L.L. No. 5-1993]**
- K. Floor area. The floor area in a building shall not exceed 8,000 square feet. **[Added 2-16-2011 by L.L. No. 2-2011]**
- L. Front yard lot coverage. The maximum permitted lot coverage of all paved areas in a front yard, including gravel and stone aggregate, shall not be greater than 30% of the front yard. This shall include driveways, parking areas, walkways, patios and permitted encroachments. **[Added 2-16-2011 by L.L. No. 2-2011]**
- M. Rear yard lot coverage. The maximum permitted lot coverage of all paved areas in a rear yard, including gravel and stone aggregate, shall not be greater than 25% of the rear yard. This shall include parking areas, walkways, patios, decks, pools and permitted encroachments. **[Added 2-16-2011 by L.L. No. 2-2011]**
- N. The height of an accessory structure shall not exceed 16 feet. **[Added 2-16-2011 by L.L. No. 2-2011]**

- O. For all new construction and substantial improvements that exceed 40% of the existing floor area, the additional regulations in § 151-13.2. shall apply. **[Added 2-16-2011 by L.L. No. 2-2011]**

**§ 151-10. Residence B District.**

In the Residence B District, the following regulations shall apply:

- A. Uses. No building shall be erected, altered or used and no lot or premises shall be used except for one of the purposes permitted in the Residence A District and uses accessory thereto.
- B. Height. No building shall be erected, altered or used any part of which is higher than permitted in the Residence A District.
- C. Size of lot. No building shall be erected, altered or used on a lot having an area of less than 7,500 square feet.
- D. Street frontage; width of lot at street and at rear. No lot shall have a street frontage of less than 100 feet or a street frontage that measures less than 90% nor more than 110% of the rear lot line. **[Amended 11-20-1997 by L.L. No. 5-1997]**
- E. Front yard. Where two or more buildings exist on the same side of the street as a proposed building and are situated within 200 feet of such proposed building or any part thereof, no portion of such proposed building shall be erected nearer to the street line than a line joining the front lines of such existing buildings and running as nearly parallel to the street as may be provided that no portion of such proposed building shall be erected nearer than 30 feet to the street line of any street and no portion of the front building wall need be erected more than 50 feet from such street line. In no case shall any portion of a building be

erected nearer than 30 feet to the street line of any street.  
[Amended 12-16-1987 by L.L. No. 9-1987]

- F. Rear yard. The minimum distance between the rear line of the lot and the rear wall of the principal building at any point shall not be less than 15 feet.
- G. Side yards. Except in the case of a corner lot, two side yards shall be provided, each of which shall have the minimum width required for the Residence A District.
- H. Building area. No principal building or use, together with all accessory buildings or uses, shall occupy in the aggregate more than 35% of the area of the lot.
- I. Corner lots. In the case of a corner lot there shall be two front yards and two rear yards; the yards at the street frontages shall be the front yards, and the yards opposite them shall be the rear yards. Such yards shall comply with the requirements for front and rear yards, respectively.  
[Amended 5-19-2004 by L.L. No. 4-2004]
- J. Floor area ratio (FAR). In no case shall a dwelling be constructed with an FAR in excess of 0.4. [Added 11-17-1998 by L.L. No. 5-1993]
- K. Floor area. The floor area in a building shall not exceed 8,000 square feet. [Added 2-16-2011 by L.L. No. 2-2011]
- L. Front yard lot coverage. The maximum permitted lot coverage of all paved areas in a front yard, including gravel and stone aggregate, shall not be greater than 30% of the front yard. This shall include driveways, parking areas, walkways, patios and permitted encroachments.  
[Added 2-16-2011 by L.L. No. 2-2011]
- M. Rear yard lot coverage. The maximum permitted lot coverage of all paved areas in a rear yard, including gravel and stone aggregate, shall not be greater than 25% of the rear yard. This shall include parking areas, walkways, patios, decks, pools and permitted encroachments.  
[Added 2-16-2011 by L.L. No. 2-2011]

- N. The height of an accessory structure shall not exceed 16 feet. **[Added 2-16-2011 by L.L. No. 2-2011]**
- O. For all new construction and substantial improvements that exceed 40% of the existing floor area, the additional regulations in § 151-13.2. shall apply. **[Added 2-16-2011 by L.L. No. 2-2011]**

**§ 151-11. Residence C District.**

In the Residence C District, the following regulations shall apply:

- A. Uses. No building shall be erected, altered or used and no lot or premises shall be used except for one of the purposes permitted in a Residence A District and uses accessory thereto.
- B. Height. No building shall be erected, altered or used any part of which is higher than permitted in the Residence A District.
- C. Size of lot. No building shall be erected, altered or used on a lot having an area of less than 8,000 square feet.
- D. Street frontage. No building shall be erected, altered or used on a lot having a street frontage of less than 65 feet.
- E. Front yard. The same requirements for a front yard in the Residence B District shall apply to front yards in the Residence C District.
- F. Rear yard. The minimum distance between the rear line of the lot and rear wall of the principal building at any point shall be not less than 25 feet.
- G. Side yards. The same requirements for side yards in the Residence A District shall apply to side yards in the Residence C district.

- H. Building area. No principal building or use, together with all accessory buildings or uses, shall occupy in the aggregate more than 35% of the area of the lot.
- I. Corner lots. In the case of a corner lot there shall be two front yards and two rear yards; the yards at the street frontages shall be the front yards, and the yards opposite them shall be the rear yards. Such yards shall comply with the requirements for front and rear yards, respectively. **[Amended 5-19-2004 by L.L. No. 4-2004]**
- J. Nonconforming uses. Any use existing in any building or premises at the time of the adoption of Ordinance No. 47 on November 16, 1954, and not conforming to the regulations provided in this § 151-17 may be continued, subject to the same conditions and limitations as set forth in § 151-22 of this chapter.
- K. Floor area ratio (FAR). In no case shall a dwelling be constructed with an FAR in excess of 0.4. **[Added 11-17-1993 by L.L. No. 5-1993]**
- L. Floor area. The floor area in a building shall not exceed 8,000 square feet. **[Added 2-16-2011 by L.L. No. 2-2011]**
- M. Front yard lot coverage. The maximum permitted lot coverage of all paved areas in a front yard, including gravel and stone aggregate, shall not be greater than 30% of the front yard. This shall include driveways, parking areas, walkways, patios and permitted encroachments. **[Added 2-16-2011 by L.L. No. 2-2011]**
- N. Rear yard lot coverage. The maximum permitted lot coverage of all paved areas in a rear yard, including gravel and stone aggregate, shall not be greater than 25% of the rear yard. This shall include parking areas, walkways, patios, decks, pools and permitted encroachments. **[Added 2-16-2011 by L.L. No. 2-2011]**
- O. The height of an accessory structure shall not exceed 16 feet. **[Added 2-16-2011 by L.L. No. 2-2011]**

- P. For all new construction and substantial improvements that exceed 40% of the existing floor area, the additional regulations in § 151-13.2. shall apply. [Added 2-16-2011 by L.L. No. 2-2011]

**§ 151-12. Residence D District.**

In the Residence D District, the following regulations shall apply:

- A. Establishment. The Residence D District shall consist of the following area: Bounded on the west side by Middle Neck Road, on the north and on the south by the Village line, on the east by the property of the Kensington School, Nassau Drive and Park Lane (extending northerly to the Village line), not including the parks or islands lying within Park Lane, constituting Lot Nos. 1 to 65, both inclusive, in Block No. 1, and Lot Nos. 1 to 38, both inclusive, in Block No. 3, all of Block 17 and Lot Nos. 9 to 13, both inclusive, in Block No. 8 and the boundary strips adjacent thereto, shown on a certain map entitled "Amended Map No. 1 of Kensington, Great Neck, Nassau County, L. I., property of Rickert-Finlay Realty Company, dated Dec., 1911, surveyed by George S. Hubbell, C.E., Flushing, Long Island," and filed in the office of the Clerk of the County of Nassau on December 16, 1911, as Map No. 30.
- B. Subdistricts. Of said Residence D District, the portion thereof situated within 100 feet of Middle Neck Road, as widened, is referred to as "Subdistrict D-1," and the portion thereof situated more than 100 feet from Middle Neck Road, as widened, is referred to as "Subdistrict D-2."
- C. Building Zone Map. The Building Zone Map is deemed amended accordingly.
- D. Uses in Subdistrict D-1. In Subdistrict D-1, no building shall be erected, altered or used and no lot or premises

shall be used except for one or more of the following purposes:

- (1) Uses permitted in the Residence A District.
  - (2) Multiple dwellings.
  - (3) The offices of a practitioner of medicine, osteopathy, physiotherapy, dentistry, podiatry or psychology, duly licensed under the Education Law of the State of New York.
- E. Uses in Subdistrict D-2. In Subdistrict D-2, no building shall be erected, altered or used and no lot or premises shall be used except for one or more of the following purposes:
- (1) Governmental and municipal purposes.
  - (2) Uses accessory to the uses which may exist in Subdistrict D-1, to the extent and subject to the conditions and limitations specified in Subsection E(3) hereof.
  - (3) The conditions and limitations referred to in Subsection E(2) hereof are as follows: Trees, shrubs, vegetable ground cover, ornamental planting, landscaping, walks, steps and walls are permitted in any part of the subdistrict.
- F. Height. No building shall be erected, altered or used which is higher than three stories plus basement or higher than 35 feet, whichever is less. Such height shall be measured from the elevation of the curb, or, if there is no curb, from the elevation of the pavement of the street, computed, in either case, from the curb or the pavement, as the case may be, of Park Lane nearest to the point of measurement.

For the purpose of this section, the terms "basement" and "story" shall have the definitions provided in the Multiple Residence Law.

- G. Building area. In Subdistrict D-1 no principal building or use, together with its accessory buildings, shall occupy in the aggregate more than 60% of the plot at curb level. However, the extension of the basement or cellar area of such building beneath the existing grade of the plot, to be used only for the parking of automobiles, as required by § 151-13 of this chapter, shall not be considered as occupancy of the area of the plot for the purposes of this section. Such basement or cellar area, however, shall not invade the front, rear and side yard restrictions above the existing grade of the plot, as hereinafter provided in this Article.
- H. Density. No building shall be erected, altered or used in Subdistrict D-1 on a plot having an area of less than 700 square feet for each family or dwelling unit for which the building is designed, used or intended to be used, and in no event on a plot having an area of less than 10,000 square feet. In calculating density, only area actually in Subdistrict D-1 shall be included. The area reserved and to be used for professional offices in the basement of any multiple dwelling erected in said Subdistrict D-1 is to be excluded in making the density computation.
- I. Front yard. No multiple dwelling shall be hereafter erected, altered or used which has a wall nearer than 50 feet to the street line of any street within the village, no front yard being required on Middle Neck Road. The term "street" shall include the entire area of the publicly owned property that lies between Middle Neck Road and Kensington Gate.
- J. Rear yard. Every building hereafter erected, altered or used shall have a rear yard of a minimum depth of 15 feet.
- K. Side yards. Two side yards shall be provided on every building plot, the aggregate width of which shall be at

least 35 feet. No side yard shall be less than 15 feet in width.

L. Parking spaces.

- (1) No multiple dwelling shall be constructed, altered or used and no application shall be made for a building permit for the construction of a multiple dwelling unless provision is made for garage space of sufficient size to accommodate automobiles equal in number to the number of families for which the multiple dwelling is designed, used or intended to be used.
- (2) Such garage space shall provide for each of such number of automobiles a readily accessible parking space not less than nine feet by 20 feet in size, free from columns or other obstructions that would interfere with parking, together with necessary access aisles or driveways.
- (3) Such garage space must be provided underneath the principal building or buildings in Subdistrict D-1, except as set forth in Subsection G hereof.
- (4) Such garage space must have adequate means of ingress and egress to Middle Neck Road or, if permitted, to Embassy Court. Such means of ingress and egress shall not be used for pedestrian travel, provision for which shall be made elsewhere. All access roads shall be paved in accordance with village specifications and shall be separated, by means of dividers or otherwise, from paths and sidewalks used by pedestrians.
- (5) No entrance to or exit from a garage shall be permitted on Park Lane, Beverly Road or Nassau Drive.

M. Multiple residences. In addition to the provisions of the Building Code,<sup>2</sup> the construction, alteration, repair and removal of every multiple dwelling or apartment house in the Village of Kensington shall comply with the provisions of the Building Code recommended by the National Board of Fire Underwriters of New York (sometimes known as the "National Code"), the Multiple Residence Law and the State Building Construction Code and Manual as the same now exist or may hereafter be amended, whichever is the more restrictive,<sup>3</sup> with the following additional requirements:

- (1) There shall be no means of access from one apartment to the balcony of another apartment.
- (2) No exterior clothesline or clothespole or other device for drying or airing clothes, laundry, bedding or draperies shall be permitted.
- (3) No water tank or shed or structure for the housing of elevators, air conditioners or other machinery shall be exposed.
- (4) No incinerators will be permitted.
- (5) No septic tanks or cesspools will be permitted for the disposal of sanitary and household waste.
- (6) Professional offices are permitted only on the first or ground story or basement as defined in the Multiple Residence Law.

N. Preliminary approvals. No multiple dwelling shall be constructed, altered or used and no application for a building permit for the construction or alteration of a multiple dwelling shall be issued unless the plans and specifications shall have been examined and approved as to type, design and exterior appearance, and unless the

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2. Editor's Note: See Ch. 64, Building Construction.

3. Editor's Note: Currently, see the New York State Uniform Fire Prevention and Building Code.

plans and provisions for the parking, storage or garaging of the occupants' automobiles shall have been examined and approved as to adequacy, safety and freedom from fire hazard and as to compliance with this chapter and all other applicable ordinances, and unless plans for stormwater and site drainage have been examined and approved as to adequacy by an architect or engineer appointed for the purpose by the Board of Trustees.

- O. Fees. In addition to the fees elsewhere required upon the filing of an application for a building permit and the issuance of a certificate of occupancy, the applicant for a multiple dwelling permit shall pay to the village a fee to be determined in each case by the Board of Trustees, to pay or reimburse the village for the reasonable charges of an architect or engineer who may be employed by the Board of Trustees to examine the application for the building permit and the plans and specifications submitted therewith and all amendments thereto and to inspect the work during and after the course of construction and ascertain compliance with the provisions of the building permit and the provisions of all applicable Village ordinances. **[Amended 3-21-1990 by L.L. No. 3-1990]**
- P. Floor area ratio (FAR). In no case shall a dwelling be constructed with an FAR in excess of 0.4. **[Added 11-17-1993 by L.L. No. 5-1993]**

**§ 151-13. Additional special restrictions. [Added 12-16-1987 by L.L. No. 8-1987]**

For the purposes of enacting restrictions which conform to certain deed restrictions on properties in the Village of Kensington, the following restrictions shall be applicable in addition to any other provisions of law, and where the following restrictions conflict with any other provision of law, the more restrictive provisions shall apply:

- A. In any district, no building of any character having what is known as a "flat roof" shall be erected except with a permit from the Board of Appeals.
- B. In a Residence A District:
- (1) No building shall be erected nearer than 20 feet to the front line of the building 1st, except upon lots fronting on South Drive (Stoner Avenue) and the lots in Block 2 and Lots 1 to 8, inclusive, in Block 8. Entrance steps or stairs are excepted from this restriction. All references in this section to blocks, lots or plots shall be references to those blocks and lots as shown on a map entitled "Property of Rickert-Finlay Realty Co., dated September 20, 1911," a copy of which is annexed to this law.<sup>4</sup> **[Amended 5-19-2004 by L.L. No. 4-2004]**
  - (2) No building shall be erected nearer than 10 feet to the front line of lots fronting on South Drive (Stoner Avenue) and Lots 1 to 8, inclusive, in Block 8. Entrance steps or stairs are excepted from this restriction. **[Amended 5-19-2004 by L.L. No. 4-2004]**
  - (3) No building shall be erected nearer than 20 feet to the side street line of the lot. Entrance steps or stairs are excepted from this restriction, and this restriction shall not apply to the lots in Block 2. **[Amended 5-19-2004 by L.L. No. 4-2004]**
  - (4) No house shall be erected or maintained within 10 feet of the side line dividing the plot on which it is erected from the plot of the adjoining owner.
  - (5) No house shall be erected to front on any street except that on which the lots front. This restriction shall not apply to the lots in Blocks 1, 2 and 3 and Lots 1 to 8, inclusive, in Block 8.

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4. Editor's Note: The map referred to is on file in the office of the Village Clerk.

- (6) No fence, except hedge or shrubbery, shall be maintained within 20 feet of the front line or side street line of any lot, except as provided in Kensington Code § 77-7. **[Amended 4-15-1993 by L.L. No. 2-1993]**
- (7) No house shall be erected or maintained on a plot having a frontage of less than 200 feet on Middle Neck Road north of Beverly Road or on the west side of Park Lane north of Beverly Road.
- (8) No house shall be erected or maintained on a plot having a frontage of less than 150 feet on Middle Neck Road south of Beverly Road or on the west side of Park Lane south of Beverly Road.
- (9) No house shall be erected or maintained on a plot having a combined frontage of less than 100 feet on the east side of Park Lane and the road or drive intersecting it.
- (10) No house shall be erected or maintained on a plot having a frontage of less than 100 feet on Beverly Road.
- (11) No house shall be erected or maintained on a corner plot having a frontage of less than 100 feet on North Drive, Arleigh Road, Nassau Drive (Nassau Road) or South Drive (Stoner Avenue).
- (12) No house shall be erected or maintained on an inside plot having a frontage of less than 100 feet on North Drive, Arleigh Road, Nassau Drive (Nassau Road) or South Drive (Stoner Avenue). **[Amended 11-20-1997 by L.L. No. 5-1997]**

C. In a Residence B District:

- (1) No building shall be erected on any of the following plots nearer to any part of the front line thereof than a distance equal to 1/4 of the greatest depth of said plot: Plot Nos. 4 to 24, inclusive, in Block No. 1; Plot

Nos. 2 to 8, inclusive, and 11 to 17, inclusive, in Block No. 3; Plot Nos. 2 to 13, inclusive, in Block No. 4; Plot Nos. 2 to 6, inclusive, and 9 to 13, inclusive, in Block No. 5; Plot Nos. 2 to 13, inclusive, in Block No. 6, and Plot Nos. 5 to 22, inclusive, in Block No. 7. For the purposes of this section, Plots 19 to 24 in Block No. 1 and Plot No. 7 in Block No. 4 shall be deemed to front on Arleigh Road; Plot No. 8 in Block No. 4 and Plot No. 7 in Block No. 6 shall be deemed to front on Beverly Road; and Plot 8 in Block No. 6 and Plot Nos. 6 and 22 in Block No. 7 shall be deemed to front on Nassau Road (Nassau Drive.).

- (2) No building shall be erected on any of the following plots nearer than 50 feet to the street lines thereof: Plot No. 1 in Block No. 1; Block No. 2; and Plot Nos. 1, 2, 3 and 4 in Block No. 7.
- (3) No building shall be erected on any of the following plots nearer than 40 feet to the street lines thereof: Plot Nos. 2 and 3 in Block No. 1; Plot Nos. 1, 9, 10 and 18 in Block No. 3; Plots 1 and 14 in Block No. 4; Plots 1, 7, 8 and 14 in Block No. 5; and Plots 1 and 14 in Block No. 6.
- (4) No building shall be erected on any of the following plots nearer than 40 feet to the line of Netherwood Road (Gilchrest Road): Plot No. 4 in Block No. 1; Plot Nos. 7 and 8 in Block No. 4; and Plot Nos. 7 and 8 in Block No. 6.
- (5) No building shall be erected on Plot No. 22 in Block No. 7 nearer than 25 feet to the line of Netherwood Road (Gilchrest Road).
- (6) The provisions of Subsection C(1) through (5) hereof shall not apply to porches, piazzas, porte cocheres and entrance steps or stairs.

- (7) No house shall be erected within 10 feet of the side line dividing the plot on which it is erected from the plot of the adjoining owner.
- (8) No house shall be erected on any of the following plots unless it fronts on Arleigh Road: Plot Nos. 2 to 24, inclusive, in Block No. 1; Plot Nos. 2 to 9, inclusive, in Block No. 3; and Plot Nos. 1 to 7, inclusive, in Block No. 4.
- (9) No house shall be erected on any of the following plots unless it fronts on Beverly Road: Plot Nos. 10 to 17, inclusive, in Block No. 3; Plot Nos. 8 to 14, inclusive, in Block No. 4; Plot Nos. 2 to 7, inclusive, in Block No. 5; and Plot Nos. 1 to 7, inclusive, in Block No. 6.
- (10) No house shall be erected on any of the following plots unless it fronts on Nassau Drive (Nassau Road): Plot Nos. 8 to 13, inclusive, in Block No. 5; Plot Nos. 8 to 14, inclusive, in Block No. 6; and Plots 4 to 22, inclusive, in Block No. 7.
- (11) Houses may be erected on any of the following plots to front on any street bordering said plots: Plot No. 1 in Block No. 1; Block No. 2; Plot Nos. 1 and 18 in Block No. 3; Plot Nos. 1 and 14 in Block No. 5; and Plot Nos. 1, 2 and 3 in Block No. 7.
- (12) No accessory structure shall be erected nearer than 75 feet to any street line of the following plots: all plots in Block Nos. 1, 2, 3 and 4, and Plots 1 to 21, inclusive, in Block No. 7.
- (13) No accessory building shall be erected nearer than 60 feet to any street line of the following plots: all plots in Block No. 5, all plots in Block No. 6 and Plot No. 22 in Block No. 7.
- (14) No fence, except hedge or shrubbery, shall be maintained on any plot nearer to the street line

thereof than the building line established by the restrictions covering the respective plots.

- (15) No house shall be erected or maintained on a plot fronting on either Arleigh Road or Beverly Road having a width at the front building line of less than 100 feet measured at right angles to the line dividing it from the adjoining plot, except as provided in Subsection C(17) hereof.
  - (16) No house shall be erected or maintained on a plot on Nassau Drive (Nassau Road) having a width at the front building line of less than 100 feet measured at right angles to the line dividing it from the adjoining plot. **[Amended 11-20-1997 by L.L. No. 5-1997]**
  - (17) Not more than three houses shall be erected on Plot No. 1 in Block No. 1. Not more than two houses shall be erected in Block No. 2. Not more than five houses shall be erected on Plot No. 1 in Block No. 7. Not more than four houses shall be erected on Plot No. 2 in Block No. 7. Not more than five houses shall be erected on Plot No. 3 in Block No. 7. In no event shall a house be erected on a lot with a street frontage of less than 100 feet. **[Amended 11-20-1997 by L.L. No. 5-1997]**
- D. In all residence districts. Notwithstanding anything contained herein to the contrary, no building, except an accessory building, shall be constructed on any plot that does not have the minimum frontage required by this chapter on one of the following: Arleigh Road, Beverly Road, Bridle Path, Greenacre Court, Nassau Drive, North Drive, Stoner Avenue or Sutton Court. **[Added 11-17-1993 by L.L. No. 4-1993]**

**ARTICLE IIIA**  
**Special Office District**  
**[Added 4-17-1991 by L.L. No. 1-1991]**

**§ 151-13.1. Regulations.**

In a Special Office District, the following regulations shall apply:

- A. Establishment. The Special Office District shall consist of four parcels of real property designated on the Nassau County Land and Tax Map as Section 2, Block 350, Lots 1 to 4, inclusive.
- B. Building Zone Map. The Building Zone Map is deemed amended accordingly.<sup>5</sup>
- C. Uses. A building or structure may be erected, altered or uses and a lot or premises may be used for any of the following purposes and for no other purpose:
  - (1) Office buildings.
  - (2) Medical or dental laboratories.
- D. Uses to be conducted indoors. Unless specifically provided to the contrary, all uses conducted in the Special Office District are to be conducted within fully enclosed buildings or structures.
- E. Performance standards. No land, building or structure may be used or occupied in any manner so as to create dangerous, injurious, noxious or otherwise objectionable fire, explosive, radioactive or other hazardous conditions; noise or vibrations; smoke, dust, odor or other form of air pollution; electrical or other disturbances; glare or heat; liquid or solid refuse or waste; conditions conducive to the breeding of rodents or insects; or other dangerous or

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5. Editor's Note: The Building Zone Map is on file in the office of the Village Clerk. A copy is also included in a pocket at the end of this volume.

objectionable elements in any amount or manner as to adversely affect the surrounding area.

F. Size of lot. No building or structure shall be constructed on a lot containing an area of less than 30,000 square feet.

G. Building area. In the case of any building erected, altered or used for business purposes, the total coverage for buildings and structures shall not exceed 50% of the lot area, except that the total coverage for a building that consists of one floor may not exceed 60% of the lot area.  
**[Amended 2-14-1996 by L.L. No. 1-1996]**

H. Front yard.

(1) There shall be a front yard, the depth which shall not be less than 25 feet.

(2) On a corner lot, the two yards fronting on streets shall be each considered front yards and shall not be less than 25 feet.

I. Side yards.

(1) On an interior lot, there shall be provided two side yards, each having a minimum of 10 feet in width.<sup>6</sup>

J. Rear yard.

(1) There shall be a rear yard, the depth of which shall not be less than 15 feet. **[Amended 2-14-1996 by L.L. No. 1-1996]**

(2) On a corner lot, the two yards opposite the two front yards shall each be considered rear yards, the depth of which shall not be less than 15 feet. **[Amended 5-19-2004 by L.L. No. 4-2004]**

K. Minimum landscaped area. There shall be a minimum landscape area provided measuring at least 10% of the

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6. Editor's Note: Former Subsection I(2), regarding corner lots, which immediately followed, was repealed 5-19-2004 by L.L. No. 4-2004.

total lot area. Such landscaped area shall include, at a minimum, a ten-foot planted buffer along any street frontage and any lot line abutting a residential district.

L. Off-street parking.

- (1) In the Special Office District, there shall be provided on each lot or premises on which an authorized use is instituted or maintained an accessory parking facility for motor vehicles meeting the minimum standards hereinafter set forth: **[Amended 2-14-1996 by L.L. No. 1-1996]**
  - (a) Medical/dental offices: one parking space for each 200 square feet of floor area.
  - (b) All other uses: one parking space for each 250 square feet of floor area.
  - (c) Floor area is the sum of the horizontal areas of the floors of a building measured from the interior walls of each such floor, excluding elevator shafts, stairwells and mechanical equipment rooms.
- (2) Parking spaces and access thereto. Each parking space required by this subsection shall have direct usable access to a street and shall be at least nine feet by 19 feet, except that 15% of the parking spaces may be eight feet by 18 feet. The aisle or driveway giving direct access thereto shall have a minimum width of 24 feet. **[Amended 2-14-1996 by L.L. No. 1-1996]**
- (3) All off-street parking spaces must be on ground level, but such parking spaces may be located on ground level beneath the building.

M. Off-street loading/unloading. Provisions for off-street loading and unloading shall be made on the premises used for a business purpose in a location that will not interfere with accessory parking and means of ingress thereto and

gress therefrom, and such areas shall be surfaced in the same manner as the parking areas. The area to be allocated for loading and unloading shall be at least 10 feet in width, 25 feet in length and 15 feet in clear height for each 10,000 square feet, or part thereof, of floor area, provided that not more than three such spaces shall be required.

- N. Height. No building shall exceed three stories, with a maximum height of 35 feet when measured from the center line of the adjacent road or 40 feet when measured from the average grade surrounding the building, whichever is less.
- O. Architectural review. As soon as practicable and, in any event, within 14 business days after an application for a permit involving the exterior appearance of a new or existing building or a group of such buildings or the appearance or physical shape of the land is made to the Building Inspector, the Building Inspector shall refer said application to the Village Clerk, who shall promptly transmit the same to the Chairman of the Architectural Review Board or, in the absence of the Chairman, the Secretary of the Board. The Chairman or the Secretary shall review the application and determine within a reasonable period of time whether further review by the Architectural Review Board is required or appropriate. Such determination and review shall be conducted pursuant to the provisions of Chapter 6 of this Code. **[Amended 5-19-2004 by L.L. No. 4-2004]**
- P. Nonconforming use.
- (1) The lawful use of a building or premises existing at the effective date of this chapter or authorized by a building or other permit issued prior thereto may be continued, although such use does not conform to the provisions of this chapter, and such use may be extended throughout the premises lawfully acquired previous to said date, provided that such extension of

use is in conformity with the provisions of this chapter.

- (2) Whenever a nonconforming use of a building or premises has been abandoned or changed to a higher classification or to a conforming use, such use shall not thereafter be changed to a use of a lower classification.
- (3) Discontinuance of any nonconforming use for a period of one year or more terminates such nonconforming use of a structure or premises, and, thereafter, said structure or premises shall not be used except in conformity with the provisions of this chapter.
- (4) A nonconforming building shall be extended, altered, enlarged, replaced or removed only if such extension, alteration, enlargement, replacement or removal does not increase the existing nonconformity.
- (5) The existence of a nonconforming use or building, or the application thereto of the limitations set forth in this Article, shall not be deemed to result in practical difficulties or unnecessary hardship warranting any variance in the application of any provision of this chapter to such nonconforming use or building or to the land on which it is located.
- (6) Nothing in this chapter shall be deemed to prevent keeping in good repair a nonconforming use or building in which a nonconforming use is conducted, but no such building that is declared by the Building Official to be unsafe or unlawful by reason of physical condition shall be restored, repaired or rebuilt except in conformity with the regulations prescribed by this chapter for the district in which such building is located.

- (7) Nothing in this Article shall be deemed to apply to any building or use or part thereof established in violation of law.

### ARTICLE IIIB

## Regulations for New Construction and Substantial Improvements

[Added 2-16-2011 by L.L. No. 2-2011]

### § 151-13.2. Additional regulations for new construction and substantial improvements.

The following additional regulations shall apply to new construction and substantial improvements constructed after March 1, 2011, in the Residence A, Residence B, and Residence C Districts. A substantial improvement shall be defined as improvements that exceed 40% of the existing floor area of the lot as determined by the Building Inspector.

#### A. First floor elevation.

- (1) The first floor elevation level of a building shall not exceed three feet on lots with a grade having less than a three-percent slope. If a lot has a grade with a slope greater than 3%, the first floor elevation is measured by calculating the average front yard along the foundation wall.
- (2) If the distance between the mean street curb level and the mean grade level is greater than three feet, the first floor elevation can not exceed 1.5 feet.

#### B. Side yards. Except in the case of a corner lot, two side yards shall be provided as follows:

- (1) For lots having a lot width greater than 140 feet:
  - (a) The first story of a building shall have a thirty-two-foot aggregate side yard setback and a fifteen-foot minimum side yard setback.

- (b) The second story of a building shall be set back a minimum of an additional six feet from the first story wall ("the required second story setback") unless:
- [1] The width of the improvement proposed within the required second story setback is no more than 75% of the building's first story width directly beneath it; and, either:
  - [2] The front and rear facade planes of the proposed improvement within the required second story setback do not share the same front or rear facade planes of the building and there is a break and change in plane by at least two feet; or the height of the roof eave of the proposed improvement within the required second story setback is less than 50% of the building's second story height.

(See Diagram 1. <sup>8</sup>)

- (c) The side yard setback for buildings that have two-story solid planes are as follows:
- [1] A building with a two-story solid plane on one side elevation shall have a thirty-seven-foot aggregate side yard setback and a twenty-two-foot minimum side yard setback for the side elevation with the solid two-story plane.
  - [2] A building with a two-story solid plane on each side elevation shall have a forty-four-foot aggregate side yard setback

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8. Editor's Note: Said diagram is included at the end of this chapter.

and a twenty-two-foot minimum side yard setback for each side.

- (2) For lots having a minimum lot width of 100 feet up to a maximum of 140 feet:
- (a) The first story of a building shall have a twenty-eight-foot aggregate side yard setback and a twelve-foot minimum side yard.
  - (b) The second story of a building shall be set back a minimum of an additional six feet from the first story wall ("the required second story setback") unless:
    - [1] The width of the improvement proposed within the required second story setback is no more than 75% of the building's first story width directly beneath it; and, either:
    - [2] The front and rear facade planes of the proposed improvement within the required second story setback do not share the same front or rear facade planes of the building and there is a break and change in plane by at least two feet; or the height of the roof eave of the proposed improvement within the required second story setback is less than 50% of the building's second story height.

(See Diagram 1. <sup>9</sup>)

- (c) The side yard setback for buildings that have two-story solid planes are as follows:

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9. Editor's Note: Said diagram is included at the end of this chapter.

- [1] A building with a two-story solid plane on one side elevation shall have a thirty-foot aggregate side yard setback and a sixteen-foot minimum side yard setback for the side elevation with the solid two-story plane.
  - [2] A building with a two-story solid plane on each side elevation shall have a thirty-two-foot aggregate side yard setback and a sixteen-foot minimum side yard setback for each side.
- (3) For lots having a minimum lot width of 90 feet up to a maximum of 99 feet:
- (a) The first story of a building shall have a twenty-six-foot aggregate side yard setback and a twelve-foot minimum side yard.
  - (b) The second story of a building shall be set back a minimum of an additional six feet from the first story wall ("the required second story setback") unless:
    - [1] The width of the improvement proposed within the required second story setback is no more than 75% of the building's first story width directly beneath it; and, either:
    - [2] The front and rear facade planes of the proposed improvement within the required second story setback do not share the same front or rear facade planes of the building and there is a break and change in plane by at least two feet; or the height of the roof eave of the proposed improvement within the required second story setback is less than 50% of the building's second story height.

(See Diagram 1. <sup>10</sup>)

- (c) The side yard setbacks for buildings that have solid two-story planes are as follows:
- [1] A building with a two-story single plane on one or both side elevations shall have a twenty-eight-foot aggregate side yard setback and a fourteen-foot minimum side yard setback on each side.
- (4) For lots having a minimum lot width of 80 feet up to a maximum of 89 feet, a building shall have a twenty-two-foot aggregate side yard setback and a ten-foot minimum side yard setback on one side.
- (5) The width of an irregularly shaped lot shall be determined by calculating the average width of a lot's permissible building envelope. This average width shall be used to determine the applicable side yard setback requirements as set forth in this section.

(See Diagram 2. <sup>11</sup>)

C. Facades.

- (1) The horizontal plane of the building's front facade shall not extend more than 60 feet in width without a change or break in said plane of at least two feet.
- (2) The horizontal plane of the building's side facade shall not extend more than 35 feet without a change or break in said plane of at least two feet, and the primary facade cannot constitute more than 75% of the total area of that side wall.

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10. Editor's Note: Said diagram is included at the end of this chapter.

11. Editor's Note: Said diagram is included at the end of this chapter.

- (3) For both front and side facades, projecting chimneys or permitted encroachments shall not be considered a plane break or change.
- (4) Foundation walls shall not be exposed greater than one foot.

(See Diagram 3. <sup>12</sup> )

- D. Maximum encroachments permitted into required yards. No building or part of a building shall be erected in, upon or over a required yard except for the following permitted encroachments, and only when situated within a side yard that has a minimum width of 12 feet.
- (1) Cornices, eaves, gutters: 24 inches;
  - (2) Windowsills, belt courses or other ornamental features: four inches;
  - (3) Bay windows not more than 7.5 feet in width, no more than one story high: two feet;
  - (4) A one-story vestibule, no more than eight feet wide: 3.5 feet wide in the front yard;
  - (5) One-story open porches or terraces that are 60% of the overall front width of the building: 3.5 feet into the front or rear yard;
  - (6) Fireplace chimneys no greater than six feet in width: two feet deep;
  - (7) Stoops, entry steps and platforms with steps no greater than six feet in width and a roof that extends no more than one foot of the exit platform: three feet deep in a side yard and six feet deep in a front or rear yard; and

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12. Editor's Note: Said diagram is included at the end of this chapter.

- (8) Air-conditioning condenser area and equipment having a total width of seven feet or less: three feet deep.
- E. Driveways. Driveways are permitted encroachments within a required side yard but shall comply with the additional regulations set forth in this section.
- (1) For lots with a lot width greater than 99 feet, the following regulations shall apply:
    - (a) A driveway situated on a lot which is improved with a detached one- or two-car garage:
      - [1] A three-foot minimum side yard setback shall be required between the driveway and the side property line. Landscaping as approved by the Architectural Review Board shall be required within this setback.
      - [2] A two-foot minimum separation between the building and the driveway shall be required. Landscaping as approved by the Architectural Review Board shall be required within this setback.
      - [3] The maximum driveway width shall be 12 feet in the front and side yard.
    - (b) A driveway situated on a lot which is improved with a side-entrance garage:
      - [1] A three-foot minimum side yard setback shall be required between the driveway and the side property line. Landscaping as approved by the Architectural Review Board shall be required within this setback.
      - [2] The driveway shall have a twenty-six-foot clearance area to be used as a turning

lane. The location of the clearance area shall be approved by the Building Inspector.

- [3] The maximum driveway width shall be 12 feet in the front and side yard.
- (c) A circular driveway situated on a lot which is improved with a front-entry garage:
- [1] A five-foot minimum side yard setback on each side shall be required between the driveway and the side property line. Landscaping as approved by the Architectural Review Board shall be required within this setback.
  - [2] The building on a lot with a circular driveway shall have a forty-foot minimum front yard setback.
  - [3] Neither curb cut can be separated by less than 40 feet.
- (d) A driveway situated on a lot improved with an attached front-facing garage:
- [1] A three-foot minimum side yard setback shall be required between the driveway and the side property line. Landscaping as approved by the Architectural Review Board shall be required within this setback.
  - [2] The maximum driveway width shall be 22 feet for a double-car garage.
  - [3] The maximum driveway width shall be 12 feet for a single-car garage.
- (2) For lots with a lot width of 90 to 99 feet, the following regulations shall apply:

- (a) A driveway situated on a lot which is improved with a detached one-car or two-car garage shall comply with the following:
- [1] A two-foot minimum side yard setback shall be required between the driveway and the side property line. Landscaping as approved by the Architectural Review Board shall be required within this setback.
  - [2] A two-foot minimum separation between the building and the driveway shall be required. Landscaping as approved by the Architectural Review Board shall be required within this setback.
  - [3] The maximum driveway width shall be 10 feet in the front and side yard.
- (b) A driveway situated on a lot which is improved with a side-entrance garage:
- [1] A two-foot minimum side yard setback shall be required between the driveway and the side property line. Landscaping as approved by the Architectural Review Board shall be required within this setback.
  - [2] The driveway shall have a twenty-six-foot clearance area to be used as a turning lane. The location of the clearance area shall be approved by the building inspector.
  - [3] The maximum driveway width shall be 10 feet in the front and side yard.
- (c) A driveway situated on a lot which is improved with an attached front-facing garage:

- [1] A three-foot minimum side yard setback shall be required between the driveway and side property line. Landscaping as approved by the Architectural Review Board shall be required within this setback.
  - [2] The maximum driveway width shall be 22 feet for a double-car garage.
  - [3] The maximum driveway width shall be 12 feet for a single-car garage.
- (3) For lots with a lot width of 80 to 89 feet, the following regulations shall apply:
- (a) A driveway situated on a lot which is improved with a detached one-car or two-car garage shall comply with the following:
    - [1] A two-foot minimum side yard setback shall be required between the driveway and the side property line. Landscaping as approved by the Architectural Review Board shall be required within this setback.
    - [2] The maximum driveway width shall be 10 feet in the front and side yard.
  - (b) A driveway situated on a lot which is improved with a side-entrance garage:
    - [1] A two-foot minimum side yard setback shall be required between the driveway and the side property line. Landscaping as approved by the Architectural Review Board shall be required within this setback.
    - [2] The driveway shall have a twenty-six-foot clearance area to be used as a turning

lane. The location of the clearance area shall be approved by the Building Inspector.

- [3] The maximum driveway width shall be 10 feet in the front and side yard.
- (c) A driveway situated on a lot which is improved with an attached front-facing garage:
  - [1] A three-foot minimum side yard setback shall be required between the driveway and the side property line. Landscaping as approved by the Architectural Review Board shall be required within this setback.
  - [2] The maximum driveway width shall be 22 feet for a double-car garage.
  - [3] The maximum driveway width shall be 12 feet for a single-car garage.
- (4) The lot width of an irregularly shaped lot shall be the average width of the front lot line and front line of the building. This average width shall be used to determine the applicable driveway regulations as set forth in this section.

(See Diagram 4. <sup>13</sup>)

#### ARTICLE IV Supplementary and Interpretive Provisions

##### § 151-14. Accessory buildings and uses.

The following additional provisions shall apply to accessory buildings and uses:

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13. Editor's Note: Said diagram is included at the end of this chapter.

- A. The accessory building or use must be located on the same lot as the principal building or use to which it is accessory or on a lot immediately adjoining it. If it is located on a lot immediately adjoining the lot on which the principal building or use is located and the lots are severed, the accessory use shall cease.
- B. The accessory use shall not be carried on by any person other than the occupant of the principal building or, in the case of vacant property, the owner or lessee of the lot.
- C. The area occupied by accessory buildings shall be included in computing the maximum portion of the lot area which may be built upon in any given district. The area occupied by accessory buildings shall not exceed 8% of the area of the lot.
- D. Prior to the issuance of a building permit for the alteration or erection of an accessory building on property that abuts a Village reserve strip, the Great Neck Water Pollution Control District shall determine the actual location of the sewer line within the reserve strip. Notwithstanding anything contained in this Code to the contrary, in no event shall the accessory building be set back less than six feet from the actual location of the sewer line. **[Added 4-22-2004 by L.L. No. 5-2004]**

**§ 151-15. Professional offices and studios. [Amended 5-19-2004 by L.L. No. 4-2004; 9-19-2012 by L.L. No. 5-2012]**

- A. Professional offices and studios shall be permitted as an accessory use in legal single-family dwellings in the Village provided the owner obtains a special use permit from the Board of Trustees and complies with the following conditions:
  - (1) This accessory use is limited to one professional per dwelling, except that two professionals are permitted provided the person is the spouse, child or parent of the owner, and further provided that the

professionals reside in the dwelling in which such office or studio is located. This accessory use shall be incidental and subordinate to the use of such dwelling for residential purposes.

- (2) No display of advertising and no exterior sign shall be permitted except the name of the professional and letters or abbreviations indicating the nature of the profession. The sign shall not exceed eight inches by 24 inches and shall not be illuminated except as set forth in § 151-19.
- (3) On-premises parking shall be provided for all employees and professionals. Not more than one assistant or associate licensed practitioner and not more than one nurse or assistant or associate worker may be employed in such office.
- (4) A special use permit granted by the Board of Trustees for such accessory use of a dwelling shall apply only to the use described in the permit and to the named permittee, and such permit may not be transferred and shall expire upon the termination or modification of the permitted use by the permitted user.
- (5) The professional office or studio shall not be rented to a third party.
- (6) "Professional office or studio," as used herein, shall not be construed to include or mean kindergarten, child's nursery, dance school, music school, art school, or other private school. For the purposes of this section, the instructing or teaching of more than three persons at any time shall constitute the maintenance of a kindergarten, nursery, or other school.
- (7) No such use shall commence without a permit. The owner seeking such permit shall file a special use permit application in addition to any documents as

reasonably may be requested by the Village and shall pay the required fee. Such use shall not deviate from the approved permit prior to an amended permit being submitted and approved by the Village.

- (8) The hours of operation for such professional office or studio shall be stated in the special use permit application and approved by the Board of Trustees.
- (9) There shall be no excessive shipping of materials to and from the premises.
- (10) There shall be no overnight accommodations provided or maintained on the premises related to the professional office or studio use.
- (11) The Board of Trustees may impose reasonable conditions on the use to promote the general standards set forth in § 151-15C below.

B. Termination of all legal nonconforming uses.

- (1) All professional office or studio uses which preexisted on the effective date of this section may be continued, without conforming to the provisions of this section, until September 30, 2014.
- (2) On October 1, 2014, no professional office or studio use shall be permitted, notwithstanding the fact that it may have existed prior to the effective date of this section, unless the Board of Trustees has granted a special use permit pursuant to the standards and procedures set forth in this section.

C. General standards. The Board of Trustees shall consider the following factors when reviewing a special use permit application:

- (1) The use does not create a condition which is offensive, annoying or harmful to public health, safety and general welfare including, but not limited

to, by reason of noise, glare, vibration, odor, dust, fumes or undue human or vehicular traffic.

- (2) The use will be in harmony with and promote the general purposes and intent of this chapter.
  - (3) The plot area is sufficient, appropriate and adequate for the use and the reasonably anticipated operation and expansion thereof.
  - (4) The proposed use will not prevent the orderly and reasonable use of adjacent properties, particularly where they are in a different district.
  - (5) The site is particularly suitable for the location of such use in the Village.
  - (6) The characteristics of the proposed use are not such that its proposed location would be unsuitably near to a house of worship, school, theater, recreational area or other place of public assembly.
  - (7) In addition to the on-premises parking required pursuant to § 151-15A(6), there are sufficient on-street parking spaces to accommodate the anticipated number of patrons or visitors.
  - (8) The layout of the on-premises parking spaces and driveway is convenient and conducive to safe operation.
  - (9) Adequate buffer yards and screening are provided where necessary to protect adjacent properties and land uses.
  - (10) Adequate provisions will be made for the collection and disposal of stormwater runoff from the site and of sanitary sewage, refuse or other waste, whether liquid, solid, gaseous or of other character.
- D. Exemption. This section shall not apply to an owner who works from home, but does not have any employees or

special equipment other than a home office computer and typical appurtenances such as printer or facsimile machine.

- E. All other commercial uses of a single-family dwelling are expressly prohibited.

**§ 151-16. Private garages.**

A private garage is permitted only as an accessory use and subject to the following conditions:

- A. No business, service or industry may be carried on directly or indirectly in such garage or in connection therewith.
- B. No commercial or business vehicle shall be stored or kept temporarily or permanently in such garage or elsewhere on the lot.
- C. When attached to or forming part of the principal building, no part of the garage is permitted in a required yard.
- D. No private garage shall be permitted within a side yard or within the front yard.
- E. In the Residence A District, Residence B District and Residence C District, a detached private garage may be constructed in a rear yard or side yard, provided that no part thereof is nearer than four feet to the nearest property line. In the Residence D District the requirements of § 151-12 shall control. **[Amended 9-21-1994 by L.L. No. 3-1994]**
- F. In the case of a corner lot, a garage may not be nearer to the street line of the street than the front building line established for that street.
- G. In the Residence D District, Subdistrict D-1, parking spaces which are not required for resident use may be used for the parking of automobiles of nonresidents, subject to

such regulations and charges as may be imposed by the owner of such property.

- H. In the event that there are two or more private garages on a lot, only one detached garage may be set back as provided in § 151-16E; all other garages, either attached or detached, shall comply with the setback requirements for the principal building. **[Added 9-21-1994 by L.L. No. 2-1994]**
- I. No portion of a front-entrance garage may be located in the cellar or basement of a residence. **[Added 2-16-2011 by L.L. No. 2-2011]**

**§ 151-17. Encroachment in required yards.**

No building or part of a building shall be erected in, upon or over or shall project into a required yard, with the following exceptions:

- A. Cornices, eaves, gutters not more than 12 inches; or windowsills, belt courses or other ornamental features projecting not more than four inches. **[Amended 7-21-1999 by L.L. No. 1-1999; 5-19-2004 by L.L. No. 4-2004]**

- B. (Reserved)<sup>14</sup>
- C. Subsurface structures may be constructed beneath the surface of the ground of a required rear yard or a required side yard, provided that no part of such subsurface structure shall project above the surface of the ground in any such yard, and further provided that in cases where the surface of the ground has been raised above its natural state by fill, grading, terracing or otherwise, no part of such subsurface structure shall be constructed or maintained more than three feet above the level of the ground in its natural state.

**§ 151-18. Height of multiple dwellings and commercial buildings. [Amended 5-19-2004 by L.L. No. 4-2004; 2-16-2011 by L.L. No. 2-2011]**

The provisions of this chapter relating to the height of multiple dwellings and commercial buildings are subject to the following exceptions:

- A. A parapet wall or cornice may extend above such height limit not more than five feet.
- B. Stair bulkheads and air-conditioning units may extend above such height limit not more than 10 feet; provided, however, that such installation is enclosed in the same type of brick as used for the building and is set back a minimum of 20 feet from any exterior wall of the building.
- C. Ventilating fans may extend above such height limit but in no event shall they extend above the parapet wall.

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14. Editor's Note: Former Subsection B, regarding one-story uncovered porches, was repealed 5-21-1997 by L.L. No. 3-1997.

- D. Elevators may extend above such height limit not more than 14 feet; provided, however, that such installation is enclosed in the same type of brick as used for the building and is set back a minimum of 28 feet from any exterior wall of the building.

**§ 151-19. Signs.**

A. Permitted signs.

- (1) No signs shall be erected or maintained except:
- (a) Signs stating the name of the premises or the name of the owner or occupant thereof and, in the case of a duly licensed professional person, the letters or symbol designating his profession.
  - (b) Signs stating the street and number of the building or premises where the sign is located.
  - (c) Directional or warning signs for the convenience of persons desiring to enter the premises, such as "Deliveries," "Entrance," "Private," "Children" and the like. **[Amended 5-19-2004 by L.L. No. 4-2004]**
  - (d) In a Special Office District, real estate signs advertising the real estate on which the sign is located for sale or for rent. **[Amended 5-15-1996 by L.L. No. 2-1996]**
  - (e) During the course of construction of a building, signs giving the names of the builder, architect or artisan engaged on the work.
- (2) All permitted signs may include as incidental thereto a fanciful design, background or decoration.

- B. The size of the signs permitted by Subsection A of this section shall be as follows:

- (1) Signs permitted under Subsection A(1)(a), (b) and (c) and (2) shall not exceed six inches in height and two feet in length.
  - (2) Signs permitted under Subsection A(1)(d) and (e) shall not exceed three feet in height and four feet in width.
- C. The signs permitted by Subsection A shall be located as follows:
- (1) Signs permitted under Subsection A(1)(a), (b) and (c) may be erected and maintained within the required front yard, required side yard or required rear yard, provided that the highest point of the sign is not more than five feet above the level of the ground where it is located and the highest point of the post or standard on which it is mounted or to which it is attached is not more than six feet above the level of the ground where it is located.
  - (2) Signs permitted under Subsection A(1)(d) and (e) are prohibited in a required side yard or required rear yard and in the first 20 feet of the required front yard.
- D. Signs permitted under Subsection A of this section, other than real estate signs, may be illuminated by artificial means, subject to the following conditions, which must be complied with:
- (1) Electric lights, lamps or illuminated tubes shall not be used for the letters, numerals or other symbols of the sign or for its design, background or decoration. Notwithstanding the foregoing, an internally lighted sign with opaque background and translucent letters is permissible.
  - (2) No flashing or intermittent lights or means of illumination are permitted.

**§ 151-20. Swimming pools.**

- A. For the purpose of computing the building area, the required yards and the distance from the lines of the lot, the pool apron or platform alongside the side or end of a swimming pool, the base for the springboard or diving platform and the foundation for the purifying apparatus, if any, shall be included.
- B. No swimming pool or part thereof shall be constructed in the front yard.
- C. All swimming pools shall be constructed in accordance with standard practice.
- D. Each pool shall be provided with permanently installed facilities for the complete draining thereof. Such facilities shall be entirely separate from the house drains and house sewer. In no case may the contents of the pool be permitted to discharge, directly or indirectly, into a street or public sewer or public drain or catch basin, or in, upon or under the land of another person, or in such a way as to adversely affect the functioning of the house drains or house sewer of another property. **[Amended 5-19-2004 by L.L. No. 4-2004]**
- E. All connections with the public water supply shall be made by a duly licensed plumber in conformity with the Plumbing Code<sup>8</sup> and the rules and regulations of the water supply company or water district. Such connections shall be made in such a way as to prevent any water from the swimming pool from entering the public water supply system. In times of drought or water shortages, the Board of Trustees may direct that the use of the swimming pool be discontinued and that all connections with the public water supply system be broken until further order.
- F. Every swimming pool shall be enclosed by a fence or wall approved by the Building Inspector, sufficient to prevent

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8. Editor's Note: See Ch. 117, Plumbing and Sewers.

the accidental entry or unauthorized use of the pool by a child or children. Such fence or wall shall be erected so as to completely enclose either the pool itself or the particular yard area in which the pool is situated or the entire property back of the building line.

- G. Such fence or wall shall be not less than four feet and not more than five feet in height above ground level and shall have not more than two openings for ingress or egress. Each of said openings shall have a self-closing gate or door with an automatic latch and a lock of such a character that it can be opened from the outside of the pool enclosure only by means of a key or a combination. Each gate, door, latch and lock shall at all times be maintained in good working order, and each gate or door shall be kept closed and locked at all times when the pool is not in use by adults, whether it contains water or is empty; provided, however, that the Building Inspector may approve alternative methods for closing or guarding the openings in said fence which provide equal or greater protection.

#### **§ 151-21. Miscellaneous prohibited uses.**

The outdoor storage of motor vehicles, boats, boat trailers and similar articles of property is prohibited throughout the village.

### ARTICLE V

#### **Nonconforming Buildings and Uses**

#### **§ 151-22. General.**

- A. A nonconforming building or use is:

- (1) A building or use which existed when the Building Zone Ordinance of the Village of Kensington was adopted on February 9, 1926, and which complied with all of the requirements of the ordinances of the village immediately prior to the adoption of such

ordinance, but which failed to conform to the requirements of the ordinance so adopted; or,

- (2) A building or use which existed when an amendment of such Building Zone Ordinance was adopted and which complied with all of the requirements of the Building Zone Ordinance immediately prior to the adoption of such amendment, but which failed to comply with the requirements of the Building Zone Ordinance as so amended; or,
  - (3) A building or use which may hereafter exist when an amendment of such Building Zone Ordinance is adopted and which complies with the requirements of the Building Zone Ordinance immediately prior to the adoption of such amendment, but which fails to comply with the requirements of the Building Zone Ordinance as so amended.
- B. Except as provided in Subsection C, any nonconforming use may be continued and any building designed, arranged or intended for or devoted to a nonconforming use may be reconstructed or structurally altered and the nonconforming use therein changed, subject to the following regulations:
- (1) The structural alterations made in such building shall in no case exceed its assessed value, nor shall the building be enlarged, unless the use therein is changed to a conforming use.
  - (2) No building or premises devoted to a use permitted in the district in which it is situated shall be changed to a use excluded from or not permitted in such district.
  - (3) A nonconforming lot having a street frontage, area, or width at the front building line less than the minimum provided for the district in which it is situated whose ownership at the time such nonconformity arose and at all times hereafter

differed from the ownership of all adjoining property may be improved and a building may be constructed, altered or enlarged thereon, provided that such building and lot comply with all of the requirements of the district in which such lot is situated other than the regulations as to minimum street frontage, area, or width at the front building line. **[Amended 11-20-1997 by L.L. No. 5-1997; 6-17-2009 by L.L. No. 3-2009]**

- (4) On a nonconforming lot improved with a building which has either or both side yards less in width than the minimum provided for the district in which it is situated, the building may be altered, extended or enlarged, provided that no side yard is reduced in width, and further provided that any extension or enlargement of the building shall conform to the minimum yard requirements herein provided for such district.
  - (5) The additional regulations in § 151-13.2 shall not apply to the structural alteration, reconstruction, or enlargement of a nonconforming building unless said improvements exceed 40% of the floor area as determined by the Building Inspector. **[Added 2-16-2011 by L.L. No. 2-2011]**
- C. Signs existing on the date of adoption of this chapter which do not conform to the requirements of this chapter may be continued no later than December 31, 1969, after which time such signs shall be removed. If any such existing sign is removed, relocated, repaired, replaced, altered, enlarged or changed in any way prior to December 31, 1969, the permission under this subsection shall not apply and such sign shall then and thereafter be made to conform to the requirements of this chapter.
- D. The restoration of a nonconforming building in the event of a catastrophe or natural disaster is permitted as follows: **[Amended 2-16-2011 by L.L. No. 2-2011]**

- (1) Nothing in this chapter shall prevent the restoration of a building destroyed by fire, explosion, act of God or act of a public enemy, to the extent of not more than 50% of its floor area, or prevent the continuance of the use of such building or part thereof as such use existed at the time of such destruction of such building or part thereof, or prevent a change of such existing use under the limitations provided by Subsection B. Any building destroyed in the manner aforesaid to an extent exceeding 50% of its floor area at the time of such destruction may be reconstructed and thereafter used only in such a manner as to conform to all the provisions of this chapter unless reconstruction is permitted pursuant to Subsection D(2) below.
  - (2) In the event a building is destroyed by fire, explosion, act of God or act of a public enemy to an extent exceeding 50% of its floor area, it may be reconstructed only if the Building Inspector has issued a certificate of occupancy or a certificate of existing use for the building that was destroyed, and approved plans are on file in the Village Building Department at the time of the destruction, which plans provide sufficient detail for the reconstruction of the same building that was destroyed. The owner shall file new plans with the Building Department and obtain new permits prior to any construction at the premises. The Building Inspector and Architectural Review Board shall confirm that the original plans on file with the Building Department have sufficient detail to reconstruct the same building at the premises and that the new plans are identical to the original plans.
  - (3) Nothing in this chapter shall prevent the restoration of a wall or other part of a building declared unsafe.
- E. Where any real property is acquired by the Village of Kensington for a public use, whether by dedication,

purchase, condemnation or otherwise, and as a result of such acquisition other real property not so acquired fails to conform to the regulations of this chapter or Building Code<sup>16</sup> in force at the time of such acquisition, the Board of Trustees may, by general resolution authorizing the improvement or by special resolution authorizing the acquisition of a specific parcel of real property, adopt other regulations applying to such real property which fails to conform as aforesaid, which shall take the place of the regulations with which it fails to conform; provided, however, that such resolution or regulation shall be adopted in the same manner as an ordinance amending this chapter or Building Code<sup>17</sup> generally.

## ARTICLE VI Administrative Provisions

### § 151-23. Interpretations; purpose.

In their interpretation and application, the provisions of this chapter shall be held to be minimum requirements and as not interfering with, abrogating or annulling any easements, covenants or other agreements between parties; provided, however, that where this chapter imposes a greater restriction or limitation upon the use of buildings, premises or lots or upon the height and size of buildings or requires larger yards or other open spaces than are imposed or required by existing provisions of law or ordinances or by easements, covenants or agreements, the provisions of this chapter shall control.

### § 151-24. Application for building permit.

- A. Before the construction or alteration of any building or any part of a building is commenced, the person causing such construction or alteration to be done, or his agent, or the architect or builder employed in connection with the

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16. Editor's Note: See Ch. 64. Building Construction.

17. Editor's Note: See, also, § 151-47.

proposed construction or alteration, shall file in the office of the Village Clerk, addressed to the Board of Trustees of the village, an application for a permit to construct or alter. Such application shall contain a statement of the full name and residence of each of the persons having an interest as owner, tenant or otherwise and of the use to which the building is to be put and such other information as the Board of Trustees may require. Said application shall be in duplicate and shall be sworn to before a notary public or commissioner of deeds and shall be accompanied by such plans and drawings and such a diagram of the lot, showing the exact location of the existing and proposed buildings, as will enable the Building Inspector to determine whether the proposed construction or alteration and use conform to the provisions of this chapter.

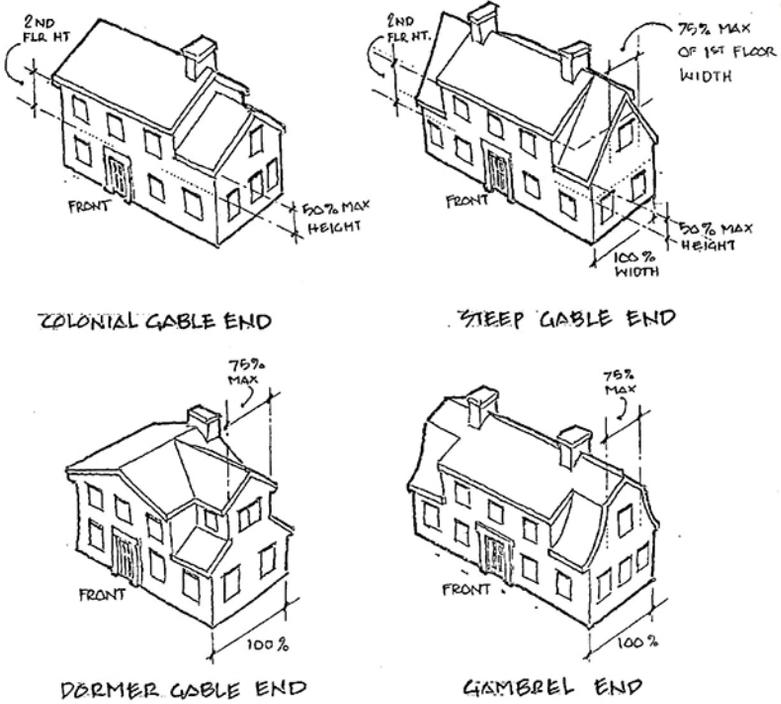
- B. Any property owner may file preliminary plans of a proposed building or structure prior to the filing of detailed plans there for, and such plans may be tentatively approved subject to the submission and filing of the complete plans, drawings, diagram and other data herein provided for. **[Amended 5-19-2004 by L.L. No. 4-2004]**
- C. All applications, statements, plans and detailed drawings required by this chapter shall be presented to and kept on file in the office of the Village Clerk. Nothing in this chapter shall prohibit the filing of amendments to any application at any time before the completion of the work for which the permit was sought, and such amendments, after approval by the Building Inspector, shall be made part of the application and filed as such. Such amendments shall be made in the same form and manner as the original application and shall be accompanied by similar plans and drawings relative to the changes proposed. **[Amended 5-19-2004 by L.L. No. 4-2004]**

ZONING

151 Attachment 1

Village of Kensington

Diagram 1  
Exceptions to Required Second Story Setback

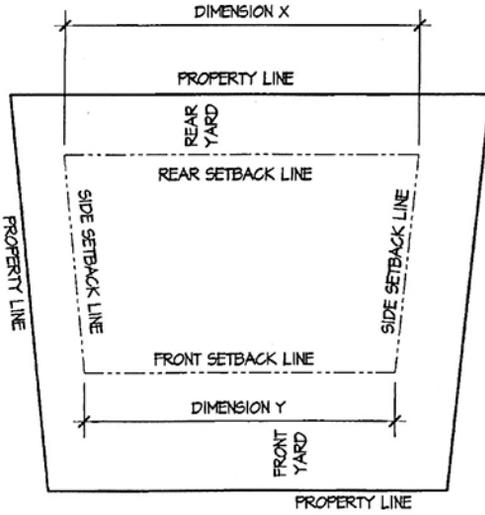


ZONING

151 Attachment 2

Village of Kensington

Diagram 2  
Irregular Lot Width Determination



EXAMPLE SCENARIO

LOT AVERAGE WIDTH =

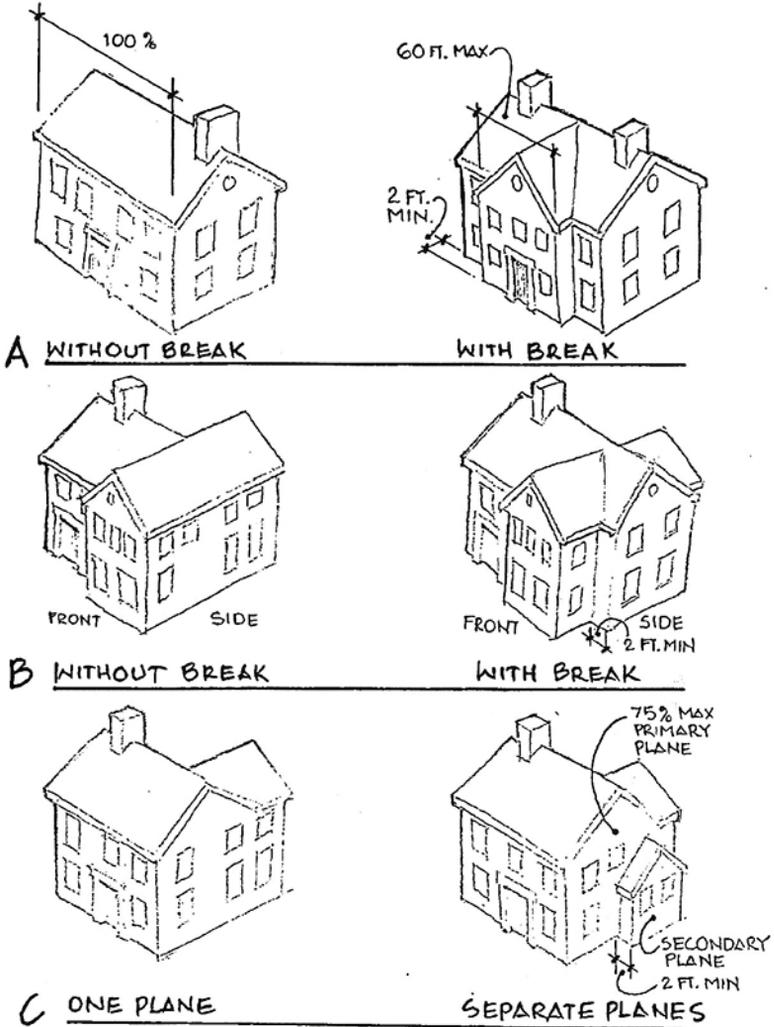
$$\frac{\text{DIMENSION X} + \text{DIMENSION Y}}{2}$$

ZONING

151 Attachment 3

Village of Kensington

Diagram 3  
Facades

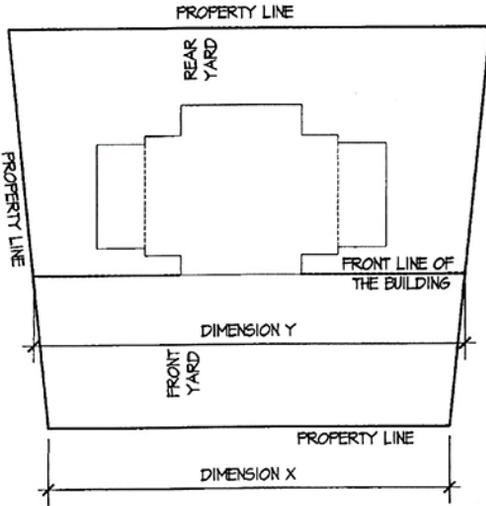


ZONING

151 Attachment 4

Village of Kensington

Diagram 4  
Irregular Lot Driveway Exhibit



EXAMPLE SCENARIO

AVERAGE WIDTH=

$$\frac{\text{DIMENSION X} + \text{DIMENSION Y}}{2}$$

- D. No person other than the owner in fee of the land shall make any such construction or alteration without having first filed with the Board of Trustees a statement in writing accompanying the application to build or alter, which statement shall give the full name and residence of the owner of the land, building or proposed building, structure or proposed structure and shall recite that he is duly authorized to perform said work.

**§ 151-25. Permit fee. [Amended 3-21-1990 by L.L. No. 3-1990]**

Upon filing an application for a building permit, the applicant shall pay to the Village the fees provided in a schedule of fees adopted by resolution of the Board of Trustees and on file in the office of the Village Clerk, which shall cover the issuance of a building permit and the issuance of a certificate of occupancy and which shall in no event be returned in whole or in part.

**§ 151-26. Examination and approval of application.**

- A. All applications for a building permit shall be examined by the Building Inspector. He shall endorse thereon or state in an accompanying memorandum whether or not the application complies with the requirements of this chapter, the Building Code<sup>11</sup> and other applicable ordinances or statutes.
- B. The Building Inspector may also require the submission of such additional plans, information, soil or foundation tests and data as he may deem necessary in enabling him to act upon the application. All of such material shall be filed with and deemed part of the application.
- C. In the case of an apartment house, a church or place of worship, a school, a place of public assembly or other construction involving special problems or special

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11. Editor's Note: See Ch. 64, Building Construction.

consideration, the Board of Trustees may retain a special architect or engineer to examine the application and confer with the applicant's architect and submit the report thereon. The Building Inspector may act on the basis of such report and, meanwhile, may suspend action on the application.

- D. If the Building Inspector determines that the application does not comply with the applicable requirements, he shall enumerate his objection and send a copy to the applicant.
- E. When the Building Inspector has determined that the application complies with all of the applicable requirements, he shall approve the application and note his approval in the file. Such approval shall cover the entire building or structure. **[Amended 5-19-2004 by L.L. No. 4-2004]**
- F. Every such approval shall, before a building permit is issued, be subject to review by the Board of Trustees, if the Board so desires, and if the Board's determination differs from that of the Building Inspector, the approval of the Building Inspector shall be vacated and the matter remitted to the Building Inspector for such action as the Board may direct.
- G. Prior to the issuance of a building permit to erect an accessory structure, the property owner must request the Great Neck Water Pollution Control District to determine the actual location of the sewer line within the Village's reserve strip. Notwithstanding anything in this chapter to the contrary, the accessory structure shall be set back no less than six feet from the actual sewer line. **[Added 5-19-2004 by L.L. No. 4-2004.]**

#### **§ 151-27. Issuance of building permit.**

- A. When the application has been approved by the Building Inspector, or, in case of a review by the Board of Trustees, when the application has been reviewed by the Board of

Trustees, a building permit shall be issued for the construction or work so approved.

- B. Every building permit shall be issued by the Board of Trustees. The Board may, however, in particular cases or in particular classes of cases, or generally, empower the Building Inspector or such other officer as the Board may designate to issue building permits in its name and on its behalf.<sup>19</sup>

**§ 151-28. Expiration of permit; renewal or extension.  
[Amended 4-30-2003 by L.L. No. 9-2003; 9-21-2011 by L.L. No. 5-2011]**

- A. Any building or other permit issued under the provisions of this chapter under which no work is commenced within three months from the date of its issuance shall expire by limitation. The permit may be reinstated upon application to the Board of Trustees upon good cause shown and subject to conditions that the Board of Trustees deems appropriate.
- B. Any such permit shall expire one year from the commencement of work, and all exterior construction, site restoration and landscaping shall be completed within that one-year period, unless the permit is renewed.
- C. The permit may be renewed upon application to the Building Department and payment of a renewal fee as follows:
- (1) In the event that construction is not completed as set forth in Subsection B, and a certificate of occupancy issued within one year of the date of the permit, a fee of \$250 shall be paid to extend the permit for an additional six months.

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19. Editor's Note: Former Subsection C, regarding permits covering part of a building or structure, which immediately followed, was repealed 5-19-2004 by L.L. No. 4-2004.

- (2) In the event that construction is not completed as set forth in Subsection B, and a certificate of occupancy issued within the six-month period, a fee of \$250 shall be paid to extend the permit for an additional three-month period.
- (3) If construction is not completed as set forth in Subsection B, and a certificate of occupancy issued within the three-month period, the permit shall be deemed to have expired. The fee to issue a new permit shall be calculated by the Building Inspector based upon the percentage of work that remains to be completed in the same manner as the calculation of the original permit fee; the construction shall be completed and a certificate of occupancy issued within one year of the date of such permit.

**§ 151-29. Location survey; further information.**

The Building Inspector may, and ordinarily will, require a location survey after the foundation has been installed, and, in such case, may require that the work be suspended until such location survey has been furnished. The Building Inspector may also require such additional surveys or additional plans, information, soil or foundation tests and data during the progress of the work as he may deem necessary or helpful in order to determine compliance with the applicable requirements.

**§ 151-30. Stopping work.**

If the Building Inspector shall at any time during the progress of the work find and determine that the work does not comply with the requirements of this chapter or any other applicable ordinances or of the building permit issued, the Building Inspector may require that the work be stopped and may also require the applicant to remove and replace and correct any work which does not so conform. If the work is stopped, no

further work shall be performed unless and until the Building Inspector or the Board of Trustees shall so direct.

**§ 151-31. Review by Board of Trustees.**

In the case of work stopped by the Building Inspector, the Building Inspector shall report the facts to the Board of Trustees at the next meeting of the Board and shall inform the applicant that he has the right to appear before the Board. At such meeting or at any meeting thereafter, the Board of Trustees may, in its discretion, confirm the action of the Building Inspector or permit the work to continue or take such other action as the Board may deem just and proper in the circumstances.

**§ 151-32. Revocation of permit.**

The Board of Trustees may also revoke any permit or approval issued under the provisions of this chapter in case the permit or approval is based on any false statement or any misrepresentation as to a material fact in the application.

**§ 151-33. Restoration of premises.**

In case of the expiration or revocation of a permit, the owner shall forthwith on demand restore the premises to their condition prior to the application for the permit, including the demolition of any construction and the filling in of the excavation to grade. In case of the failure of the owner so to do, the Village may do the work for the account of the owner by contract or with Village workmen and assess the cost thereof, including supervision, against the property.

**§ 151-34. Certificate of occupancy.**

- A. It shall be the duty of the Clerk of the Village or such other person as may be designated by the Board of Trustees to issue a certificate of occupancy within 10 days after a request for the same shall be filed at his office by any owner of a building or premises, provided that the Building Inspector shall be satisfied that said building or premises or part thereof conforms to, the approved plans and all the requirements herein contained, and provided that the architect, engineer or superintendent of construction in charge of the work shall certify that said building or premises or part thereof has been so completed and the proposed uses thereof are in conformity with the approved plans and with the provision of this chapter and of the Building Code.<sup>13</sup> In the case of a new construction and in any other case where the Building Inspector requires it, a location survey shall be furnished before a certificate of occupancy is issued.<sup>14</sup>

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13. Editor's Note: See Ch. 64, Building Construction.

14. Editor's Note: Former Subsection B, which immediately followed, regarding temporary certificates of occupancy, was repealed 5-19-2004 by L.L. No. 4-2004.

ARTICLE VII  
**Board of Appeals**

**§ 151-35. Organisation. [Amended 8-15-1984 by L. L. No. 6-1984]**

- A. The Board of Appeals heretofore established is continued, except that the Board shall consist of five members, including the members in office on the effective date of this section, and two additional members appointed by the Board of Trustees. The two additional members so appointed shall be appointed for terms ending at the end of the official year in 1988 and 1989, respectively. Upon the expiration of any term, the successor member shall be appointed for a term of five years so that the term of one Board member shall expire each year.
- B. The members of the Board of Appeals shall serve without compensation.
- C. Except as otherwise provided in this chapter, the provisions of Village Law § 7-712 shall govern with respect to the organization, powers and duties of the Board of Appeals.

**§ 151-36. Procedure. [Amended 8-15-1984 by L.L. No. 6-1984; 11-15-2000 by L.L. No. 1-2000]**

The Board of Trustees may, from time to time, adopt, amend or repeal rules and procedures for the manner of filing appeals and applications for variances or permits and for acting upon the same. The existing rules and procedures shall be continued until amended or repealed.

**§ 151-37. Fee for appeals and applications. [Amended 3-21-1990 by L.L. No. 3-1990]**

Upon filing the application, the applicant shall pay the fee established by resolution of the Board of Trustees and included in a schedule on file in the office of the Village Clerk.

**§ 151-38. Powers of Board.**

Where there are practical difficulties or unnecessary hardship in the way of carrying out the strict letter of this chapter, the Board of Appeals shall have the power, in passing upon applications, to vary or modify the application of any of the provisions or regulations of this chapter relating to the use, construction or alteration of buildings or structures or the use of land so that the spirit of the chapter shall be observed, public safety and welfare secured and substantial justice done.

**§ 151-39. Additional powers.**

In addition to the powers prescribed in § 151-38 and the powers granted to the Board of Appeals by the Village Law, the Board shall have the following discretionary powers:

- A. To establish appropriate requirements, in conformity with the general purposes and intent of this chapter, for irregular lots or lots of less than the required area or depth in any district existing at the effective date of this chapter.
- B. To grant temporary and conditional permits of limited duration for nonconforming uses and buildings in undeveloped regions.
- C. To determine and establish the true location of district boundaries in any disputed case.
- D. Where a district boundary line divides a lot in single ownership at the date of the adoption of this chapter, to permit a use authorized on the less highly restricted portion of said lot to be extended into the more highly restricted portion of such lot.
- E. To permit the extension or enlargement of a nonconforming use or building existing at the date of the enactment of this chapter.

- F. To permit any public utility in a restricted district if the Board is satisfied that public convenience and necessity requires it.
- G. Where the street layout actually on the ground varies from the street layout as shown on the Building Zone Map, to apply the use and other regulations to the ground in such a way as to carry out the intent and purpose of the map for such particular area.
- H. To determine, in the case of an irregular lot or in a disputed case, the identity of the front, rear or side of a building and the location of the front yard, the rear yard or the side yards thereof.
- I. To grant a permit wherever it is provided in this chapter that the approval of the Board of Appeals is required.
- J. To exercise the powers conferred upon it, directly or by implication, by this or any other chapter.

**§ 151-40. Conditions, limitations and standards.**

In granting permits, approvals and special exceptions and in exercising the powers conferred upon the Board of Appeals by §§ 151-38 and 151-39, the Board of Appeals shall be governed by the following conditions, limitations and standards:

- A. No person shall be entitled as a matter of right to a variance, permit, approval or other favorable action by the Board of Appeals.
- B. The Board of Appeals is not required to exercise in favor of the applicant the discretionary powers conferred upon it by this chapter, and if the Board of Appeals should refuse to exercise such powers, the applicant shall comply with the provisions of this chapter that control in the absence of such variance, special exception, permit or approval by the Board of Appeals.

- C. The Board of Appeals is not required to grant relief unless practical difficulties or unnecessary hardships are present.
- D. For the purpose of this section §§ 151-38 and 151-39, the objective of the zoning regulations is:
- (1) To confine multiple dwellings in the portion of the Village that adjoins Middle Neck Road to the depth provided for the Residence D-1 Subdistrict;
  - (2) To permit the area in the Residence D-2 Subdistrict to be used for specified purposes related to multiple dwellings in the Residence D-1 Subdistrict in such a way as not to adversely affect the part of the Village zoned for one-family use; and
  - (3) To preserve and permit the development of the rest of the Village as an area of one-family homes for year-round occupancy on well-planted and landscaped sites.
- E. No action shall be taken by the Board of Appeals, the effect of which, in the judgment of the Board, would impair or tend to impair the value or character or desirability of properties in the Village for the purposes stated in Subsection D, or which would permit or tend to permit the introduction into the Village of a type of development not established in the Village at the date of the adoption of this chapter.
- F. In granting relief, the Board of Appeals may impose conditions which in its judgment will tend to carry out the purpose of this section, including, but not limited to, determining the location of the proposed structure or the landscaping thereof and requiring a larger size of lot or smaller building area or larger front, rear or side yards than required by this chapter for the district in which the lot is situated.
- G. In case conditions are imposed, the Board may require the applicant to furnish the bond of a surety company

satisfactory to the Board in an amount fixed by the Board to assure the performance of such conditions.

- H. Every variance and conditional or special exception use permit granted by the Board of Appeals pursuant to the provisions of this chapter shall become null, void and of no further force and effect unless, within one year after the decision granting said variance or use permit is filed in the office of the Village Clerk, a building permit is issued. The Board of Trustees, in its sole discretion, may grant extensions of the time in which to obtain a permit. [Amended 5-19-2004 by L.L. No. 4-2004; 3-17-2010 by L.L. No. 2-2010]

#### ARTICLE VIII Violations and Penalties

##### § 151-41. Construction without building permit.

It shall be unlawful to construct or alter any building or structure or part thereof until the application and plans required by this chapter shall have been submitted to and shall have been approved by the Board of Trustees or by the person designated for such purpose by the Board of Trustees and a written permit therefor shall have been issued.

##### § 151-42. Certificate of occupancy required; revocation of certificate of occupancy. [Amended 5-19-2004 by L.L. No. 4-2004]

- A. It shall be unlawful to use or permit the use of any building or premises or part thereof hereafter constructed or erected, changed or enlarged wholly or partly in its use or structure until a certificate of occupancy shall have been issued by the Village Clerk or by the person designated by the Board of Trustees for such purpose; provided, however, that prior to the issuance of a permit authorizing a change or enlargement of an existing building, the owner of such

building may occupy and use the same as formerly until the change or enlargement has been completed.

- B. If the Building Inspector determines that any building or premises is uninhabitable, the Building Inspector shall revoke the certificate of occupancy and the occupants shall immediately vacate such building or premises. The premises or building shall not thereafter be reoccupied until the Building Inspector determines that it is habitable and has issued a new certificate of occupancy.

**§ 151-43. Use of premises contrary to regulations.**

It shall be unlawful to use any building or premises or part thereof contrary to the regulations established by this chapter for the district in which it is situated.

**§ 151-44. Penalties for offenses. [Amended 5-17-1989 by L.L. No. 1-1989]**

With respect to any violation of any provision of this chapter adopted prior to September 1, 1974, any owner, general agent or contractor of a building or premises where such violation has been committed or shall exist, and the lessee or tenant of an entire building or entire premises where such violation has been committed or shall exist, and the owner, general agent, contractor, lessees or tenant of any part of a building or premises in which part such violation has been committed or shall exist, and the general agent, architect, building contractor or say other person who commits, takes part or assists in such violation or who maintains any building or premises in which such violation shall exist, shall be punishable by a fine of not more the \$350 or imprisonment for a period not to exceed six months, or both such fine and imprisonment, for conviction of a first offense. For conviction of a second offense, both of which were committed within a period of five years, such person shall be punishable by a fine of not less than \$350 nor more than \$700 or imprisonment for a period not to exceed six months, or both such fine and imprisonment. For conviction of a third or subsequent offense, all of which were committed within a period of five years, such person shall be punishable by a fine of not less than \$700 nor more than \$1,000 or imprisonment for a

period not to exceed six months, or both such fine and imprisonment. Each week's continued violation shall constitute a separate, additional violation.

**ARTICLE IX**  
**Miscellaneous**

**§ 151-45. Ordinances affected. [Amended 3-21-1990 by L.L. No. 3-1990]**

The Building Zone Ordinance of the Village of Kensington adopted February 9, 1926, as amended, shall be deemed further amended so as to read as herein provided. The provisions of this chapter shall be deemed in addition to and not in substitution for the provisions of the Building Code and the Plumbing Code.<sup>15</sup>

**§ 151-46. Effective date. [Amended 3-21-1990 by L.L. No. 3-1990]**

This chapter shall be deemed effective as of its adoption on February 9, 1926, and as readopted on December 14, 1981 by L.L. No. 6-1981, except as to amendments thereafter made, which amendments shall be deemed effective as of their respective dates of adoption.

**§ 151-47. Amendments.**

The Board of Trustees may, from time to time, on its own motion and in accordance with the provisions of the Village Law, amend, supplement, change, modify or repeal the regulations, restrictions and district boundaries herein established, or any part thereof or any other provisions of this chapter.

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15. Editor's Note: See Ch. 64, Building Construction, and Ch. 117, Plumbing and Sewers.

**ARTICLE X**  
**Development Incentive Bonuses**  
**[Added 3-25-2009 by L.L. No. 2-2009]**

**§ 151-48. Incentive bonuses for vacant property.**

- A. Purpose. The Board of Trustees is authorized to exercise all powers set forth in Village Law § 7-703 in order 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 or land use techniques.
- B. Definitions. As used in this article, the following terms shall have the meanings indicated:

**COMMUNITY BENEFITS OR AMENITIES** — Open space, parks, amenities, or other specific physical, social or cultural amenities, or cash in lieu thereof, as determined by the Board of Trustees which provide a benefit to the residents of the Village.

**INCENTIVE BONUSES** — Adjustments to the use or dimensional regulations in this chapter to the extent required to permit an applicant to develop its property with a single-family dwelling.

**INCENTIVE ZONING** — The system by which specific incentives or bonuses are granted to an applicant pursuant to this article on condition that specific physical, social, or cultural benefits or amenities would inure to the benefit of the Village.

- C. Applicability. This system of incentive zoning shall be applicable to properties within the Village that are vacant as of the effective date of this article.
- D. Environmental review. Pursuant to Village Law § 7-703(3)(c), an applicant for incentive bonuses shall pay a proportionate share of the Village's cost for the environmental review necessary for the enactment of this article. Such charge shall be added to any site-specific

charge made pursuant to the provisions of Environmental Conservation Law § 8-0109.

- E. Power of the Board of Trustees to grant incentive bonuses. The Board of Trustees, in its sole discretion, may provide incentive bonuses in exchange for the applicant providing community benefits or amenities.
- F. Procedure for obtaining incentive bonuses.
  - (1) Application. Applications for incentive bonuses shall be completed by each applicant and filed with the Village Clerk along with the payment of any applicable fees. To evaluate the adequacy of the proposed community benefits or amenities to be accepted in exchange for the requested incentive bonuses, the applicant shall provide with its application for incentive bonuses the following information:
    - (a) A description of the proposed community benefits or amenities;
    - (b) The economic value of the proposed community benefits or amenities to the Village compared with the economic value of the proposed incentive bonuses requested by the applicant;
    - (c) A demonstration that there are adequate sewer, water, transportation, waste disposal and fire protection facilities serving or proximate to the proposed development to handle the additional demands that may be placed on such facilities beyond the demand that would otherwise occur with development without such incentive bonuses; and
    - (d) An explanation of how the community benefits or amenities will implement land use, planning, physical, social or cultural policies of

the Village's Comprehensive Plan and this chapter.

- (e) Any additional information requested by the Board of Trustees.
- (2) Public hearing. Authorization for incentive bonuses shall be subject to approval by the Board of Trustees after a public hearing.
- (3) Public notice. The Board of Trustees shall hold a public hearing to review all applications submitted pursuant to this article. Public notice shall be given by publication in the official Village newspaper of such hearing at least 10 days prior to the date thereof. The applicant shall send, by certified mail, no less than 10 days nor more than 20 days before the date set for a hearing, a notice addressed to all owners of lands within a four-hundred-foot radius of the property as they appear on the latest completed Nassau County assessment roll. Such notice shall also be sent to any municipality within 500 feet of the property.
- (4) Decision. Upon completion of the public hearing to consider the application for development incentive bonuses, the Board of Trustees shall grant or deny the application.
- (5) Findings. No application for incentive bonuses shall be granted, in whole or in part, except upon the Board of Trustees' findings that the approval will:
  - (a) Be in the best interests of the Village and its residents.
  - (b) Be compatible with the surrounding uses of properties.
  - (c) Cause no significant adverse environmental impacts.

- (d) Cause no loss of potential affordable housing.
  - (e) Provide the Village with community benefits or amenities that have an economic value appropriate for the requested incentive bonuses.
- (6) Imposition of terms and conditions.
- (a) In the event that the Board of Trustees grants such application, it may, in its sole discretion, impose such terms and conditions as it deems necessary to mitigate any adverse environmental impacts or advance the Village's physical, cultural, social, land use or planning policies in accordance with the Village's Comprehensive Plan.
  - (b) If the Board of Trustees determines that a suitable community benefit or amenity is not immediately feasible, or otherwise not practical, the Board of Trustees may require, in lieu thereof, a payment to the Village of a sum to be determined by the Board of Trustees. If cash is accepted in lieu of other community benefits or amenities, provisions shall be made for such sum to be deposited in a trust fund to be used by the Board of Trustees for specific Village projects.
- G. Discretion to grant application. Nothing contained herein shall be construed to confer any right or presumption of right to an incentive bonus permit to any applicant. An incentive bonus application shall not be considered a special use permit, nor a conditional use permit, for the purposes of determining the standards to be applied in judicial review of any determination to deny or grant such application, and shall instead be solely within the discretion of the Board of Trustees.