

INCORPORATED VILLAGE OF FARMINGDALE

**LOCAL LAW 5 OF 2011 TO AMEND THE ZONING CODE OF
THE INCORPORATED VILLAGE OF FARMINGDALE TO ADD:
ARTICLE XIV
“DOWNTOWN MIXED-USE (D-MU) ZONING DISTRICT”**

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§ 105-91. Statement of intent and purpose. District Boundries.

The Board of Trustees of the Village of Farmingdale (“Board”) has determined that it is in furtherance of the health, safety and general welfare of the Village and its residents to enhance and revitalize the Village Downtown and that various changes are necessary to create a revitalized Downtown. In connection with its study of revitalizing the Downtown, the Village has developed a proposed downtown master plan: “Downtown Farmingdale 2035: A Downtown Master Plan” (“Downtown Plan”). The Downtown Plan identifies various existing conditions which stand in the way of a revitalization of the Downtown and calls for the implementation of various actions to encourage and facilitate the creation of such a Downtown. The Board finds that the creation of a Downtown Mixed-Use (“D-MU”) Zoning District is necessary to create and sustain a vibrant, attractive and economically flourishing Downtown. The Board finds that Transit-Oriented Development (“TOD”) at the Long Island Railroad (“LIRR”) train station with a strong and intentional connection to Main Street, as well as an active, pedestrian-friendly Main Street, encouraging walking, bicycling and transit use, are necessary to revitalize the Downtown. The Board finds that an environment which includes a mixture of commercial and residential uses, building on the proximity to the train station, and on the demand for local businesses in Downtown Farmingdale to be conducive to the proper development of the Downtown. It is the intent of the Board to allow for graduated densities of

development in three sub-areas within the zoning district boundaries, with the greatest intensity of development permitted for areas closest to the train station. It is the Board's intention to have no more than two full stories of habitable space above the ground level. The Board finds that a pedestrian-friendly commercial area, with off-street parking located to the rear of downtown buildings and ground-floor uses on Main Street which foster pedestrian activity with restaurants, shops, and personal service establishments, providing a lively streetscape are necessary to revitalize the Downtown. The Board finds that uses that do not foster pedestrian traffic such as office and multi-family apartments should be limited to upper floors. The Board also finds that it is important to regulate the design and architectural characteristics of potential development so as to encourage a neighborhood identity which promotes pedestrian activity, human interactions, safety and livability. A revitalized Downtown which encourages a mix of moderate and high density development within walking distance of transit stations will increase transit ridership; provide an alternative to traditional development by emphasizing mixed use, pedestrian oriented development; encourage building reuse and infill to create higher densities; reduce auto dependency and roadway congestion by locating multiple destinations and trip purposes within walking distance of one another; provide a range of housing options for people of different income levels and at different stages of life; and allow the Village to take advantage of the Village's location and the new industries relocating in area of Route 110, supporting new uses, ancillary uses and housing for advancing science and technology. The Board also finds it necessary for the revitalization of the Downtown the improvement, and creation, of additional open spaces for recreational activities. In order to effectuate the intent and purpose of this local law it is necessary for the Board to have the authority to waive or alter the provisions of this local law, in a manner consistent with this local law.

The boundaries of the D-MU Zoning District shall be as shown on the D-MU Zoning District Map which accompanies this local law. The D-MU District Map and the legends thereon are hereby declared to be part of this local law.

§ 105-92. Definitions.

ACCESSORY USE, BUILDING OR STRUCTURE

A use, building or structure on the same plot with, and of a nature customarily incidental and subordinate to, the principal use, building or structure.

ALTERED or ALTERATION

Any change, addition or modification in construction or arrangement of a building or structure; or any change in use; or removal of a building or structure from one location to another.

BUILDING

Any structure, or any part thereof, used or intended for supporting or sheltering any use or occupancy.

BUILDING AREA COVERAGE

The aggregate of the entire horizontal cross-sectional area, including projections, of the main building and accessory buildings on a plot.

DWELLING

Any building or portion thereof which is used exclusively for non-transient, residential purposes and accessory uses permitted herein.

DWELLING, MULTIFAMILY

A building containing two or more dwelling units.

DWELLING UNIT

A building or portion thereof designed for occupancy by, and containing housekeeping facilities for, one family only.

FLOOR AREA

The sum in square feet of the areas of all floors of a building or buildings, measured from the exterior faces of exterior walls or from the center line of a party wall separating two buildings, and including cellar, basement, interior balconies and mezzanines, enclosed porches and the floor area of accessory buildings; provided that the term shall exclude the floor area of cellar, basement and penthouse areas or portions thereof provided such areas are used exclusively for dead storage, off-street parking facilities or utility or other equipment installed for the normal operation and maintenance of such building or buildings.

FLOOR AREA RATIO or FAR

The total floor area, in square feet, of a building or buildings divided by the total area, in square feet, of the plot on which the building or buildings are situated.

GROUND LEVEL

The average level before excavation of that portion of a plot enclosed or intended to be enclosed by the foundation of a building.

HEIGHT OF BUILDING

The vertical distance measured from the level of the finished adjoining ground or grade to the highest point of the roof deck in the case of flat roofs and to the mean level between the eaves and the highest point of the roof in the case of other than flat roofs. Each side of the building shall meet this requirement separately.

HOTEL

A building, part of a building or a group of buildings in which sleeping accommodations are provided and used primarily for transient occupancy with adequate public dining facilities on the premises, in which there are also provided on a twenty-four-hour basis desk service, maid, telephone and bellboy service and the furnishing of linens.

NONCONFORMING BUILDING

Any building or structure which does not conform to the area, bulk, height, location or yard regulations prescribed for the district in which such building is situated.

NONCONFORMING USE

Any use of land or of a building or structure, which use does not conform to the use regulations prescribed for the district in which such land, building or structure is situated.

OPEN SPACE

Land area open to the air not occupied by any structures and landscaped or left in its natural state. Open space shall not include walkways, driveways, parking lots or parking structures except the landscaped top of a below-grade parking structure.

STORY

That part of any building comprised between the level of one finished floor and the level of the next higher finished floor, or if there is no higher finished floor, then that part of the building comprised between the level of the highest finished floor and the top of the roof beams.

STORY, HALF

A story under a gable, hip or gambrel roof, the wall plates of which on at least two opposite exterior walls are not more than two feet above the floor of such story.

STRUCTURE

Any combination of materials forming any construction . The word "structure" shall be construed as though followed by the words "or part thereof."

TOWNHOUSE

A single-family dwelling unit, constructed in a group of two or more attached units in which each unit extends from foundation to roof and with open space on at least two sides.

USE

The purpose for which land, building or structure is used, or for which either is or may be occupied or maintained.

YARD

An open, unoccupied space on the same lot with the building, open and unobstructed from the ground to the sky, except as otherwise provided in this Article.

YARD, FRONT

A yard extending between the side lines of the lot and lying between the front line of the lot and the nearest point of the building.

YARD, REAR

A yard extending between the side lines of the lot and lying between the rear line of the lot and the nearest point of the building.

YARD, SIDE

A yard between the side line of the lot and the nearest point of the building and extending from the front yard to the rear yard or, in the absence of either of such yards, to the front or rear line, as the case may be, of the lot.

§ 105-93. Permitted uses.

A. Principal uses.

(1) In the D-MU Zoning District the following uses shall be permitted on the ground level and no other:

Art or Craft supply store, studio or Gallery

Antique shop

Bakeries, health food stores, ice Cream parlors, specialty food stores, grocery stores, supermarkets, candy stores, delicatessens or any retail stores, which prepare or sell food or drink or eating or drinking establishments, provided such use does not have a dining area of more than three hundred (300) square feet and no more than twelve (12) seats and provided that hours of operation of such use is between the hours of 7 a.m. to 11 p.m. (except bakeries which may be operated from 4 a.m. to 11 p.m.)

Retail stores or eating or drinking establishments which provide live entertainment are to be permitted as special use permits only.

Banks and credit unions

Barber shop or beauty parlor

Bicycle store

Book store

Butcher shop

Pharmacy

Florist

Camera store

Clothing store

Computer sales, supplies and repair store

Collectible/memorabilia store

Dry cleaner, provided no cleaning is performed on premises.

Gift Shop

Health club

Jewelry store

Mobile telephone, electric appliances and other electronics store

Municipal parks, buildings and other municipal uses, including municipal parking lots and municipal parking structures.

Nail salon

Optician and eyeglass store

Other convenience retail establishments, such as cosmetic stores, drugstores, hardware stores and music/video sale and/or rental stores.

Real estate office

Shoe store or repair shop

Travel agency

Vitamin store

(2) In the D-MU Zoning District the following uses shall be permitted on the upper levels and no other:

(a) All uses set forth in §105-93(A)(1).

(b) Administrative, professional, medical and other business offices; and

(c) Professional school, learning center and test preparation center.

B. Accessory uses.

(1) Off-street parking and loading, including parking structures.

(2) Open space or plaza areas available to the general public.

§ 105-94. Special Use Permit Required.

A. For all applications to the Village Board of Trustees for Special Use Permits under this section, the procedural guidelines set forth in §§105-90, 105-167, 105-168, and 105-169 shall be applicable. In the event of conflict between this Article and these sections, the more restrictive provisions shall govern. The following uses, and no others, may be permitted by special permit issued by the Village Board of Trustees after a public hearing in accordance with §105-103:

(1) In the D-MU Zoning District the following uses may be permitted on the ground floor by special permit and no others:

Bakeries, health food stores, ice Cream parlors, specialty food stores, grocery stores, supermarkets, candy stores, delicatessens or any retail stores, which prepare or sell food or drink or eating or drinking establishments, where such use has a dining area of more than three hundred (300) square feet and more than twelve (12) seats or where the hours of operation are before 7 a.m. or after 11 p.m. (except bakeries which may be operated from 4 a.m. to 11 p.m.)

Bar and grill establishment

Cinema, movie theatre, theatres and performing arts theatre

Coffee shop

Community center

Dry cleaner which performs cleaning on site

Fish market

Funeral Parlor

Museum

On the ground floor the office of a doctor, dentist, or other medical care provider except that, on Main Street, between Route 109 and Melville Road, any use which requires a State or Federal license including but not limited to a doctor, dentist, or other medical care provider, day care centers, nurseries, health care professionals, and adult care facilities shall be prohibited in accordance with §105-95.

Recreational facility

Restaurant

Recreational facility

Place of worship

(2) In the D-MU Zoning District on the ground floor any use determined by the Board to be of the same general character as the uses identified in §105-93(A)(1) and §105-94(A)(1) may be permitted by special permit.

(3) The following uses may be permitted on the upper levels by special permit and no others:

a. Dwelling Units:

- i. Multi-family dwellings provided that the ground floor of the dwelling contains only those permitted uses identified in §105-93(A)(1) and §105-94(A)(1) and all entrances to the dwelling units are in the rear of the building. No multi-family dwelling shall be permitted unless the entire building conforms to the rules and regulations of the D-MU Zoning District. For purposes of this subsection, §105-161 of this Chapter which prohibits residential buildings in business and industrial districts, shall not apply.
- ii. Dwelling units along Main Street, provided they are located only in the upper levels, above any of the permitted uses identified in §105-93(A)(1) and §105-94(A)(1) and that suitable ingress and egress to the dwelling units are provided from the exterior and rear of the of the building. For purposes of this subsection, §105-161 of this Chapter shall not apply. All owners or occupants of these dwelling units shall be required to obtain a rental permit. In order to obtain a rental permit all owners or occupants shall submit a yearly residential rental permit application, a yearly rental permit fee and allow for the inspection of such dwelling unit by the Village. The fee shall be set from time to time by resolution of the Board of Trustees. No rental permit shall be issued or renewed unless the applicant has submitted the permit application, fee and an inspection of the dwelling unit has been completed by the Village.
- iii. All dwelling units shall be subject to the additional, following conditions:
 1. No dwelling unit shall be permitted in a building on any floor below or adjacent to a commercial or business use in the same building;

2. Any applicant for mixed-use dwelling units shall be required to demonstrate that there is suitable and adequate means of garbage pickup, security services, fire egress, emergency access, light, maintenance services, superintendent availability and other similar matters affecting the safety and quality of life of the occupants of the dwelling units. The applicant shall also demonstrate the proper protection of existing fire egress, light, window views and accessibility of emergency services of neighboring structures. The Board shall establish and impose such conditions as it deems necessary in connection herewith; and
 3. The building containing the dwelling unit must comply with the affordable housing requirements of the Long Island Workforce Housing Act of the New York General Municipal Law.
- (4) Hotels shall be permitted by special permit, provided they are located within five hundred (500) feet of the LIRR train station; do not include ground level retail, restaurant, personal service, or similar uses other than a small shop for items of personal hygiene and provision is made for outdoor open space or plaza areas available to the general public.
- (5) In the D-MU Zoning District on the upper floors any use determined by the Board to be of the same general character as the uses identified in §105-93(A)(2) may be permitted by special permit.

§ 105-95. Prohibited uses.

In the D-MU Zoning District any use not permitted in §105-93 and §105-94 shall be prohibited. In addition, the following shall be specifically prohibited:

- All ground floor offices with the exception of a real estate office
- Automotive showrooms
- Bowling alleys, skating rinks and other large scale recreation buildings and uses
- Car washes
- Drive-up or through windows
- Drive-in theatres
- Gasoline stations and repair shops.
- Laundromats
- Motels, and Hotels except those permitted in §105-94(A)(4).
- On the ground floor, on Main Street, between Route 109 and Melville Road, any use which requires a State or Federal license including but not limited to day care centers, nurseries, health care professionals, and adult care facilities.
- Outdoor storage uses

Planned shopping centers
 Private Parking lots or structures; and
 Residential townhouse developments
 Used car lots

The Board of Trustees shall also be authorized to prohibit any other use deemed to be inconsistent with the purpose and intent of this Article.

§ 105-96. Lot and bulk controls.

Consistent with the Downtown Plan, the D-MU Zoning District is divided into three sub-areas as indicated on the D-MU Zoning District Map. The following lot and bulk controls allow greater intensities of development for areas closest to the LIRR station, as part of a TOD revitalization program.

	Sub-Area A	Sub-Area B	Sub-Area C
1. Maximum Floor Area Ratio	2.0	1.5	1.5
2. Maximum Building Area Coverage	90%	90%	75%
3. Maximum Residential Density for Multi-Family Buildings	40 units/acre	40 units/acre	30 units/acre
4. Maximum Building Height	3 ½ Stories or 36 ft.	3 ½ Stories or 36 ft.	2 ½ Stories or 30ft.
5. Maximum Building Setback from Front Lot Line (build to line), except for pedestrian plaza areas	0 ft.	0 ft.	10 ft.
6. Minimum Side Yards	none required	none required	none required
7. Minimum Rear Yard	none required	none required	15 ft.
8. Minimum Landscaped Buffer Area when Adjacent to Residential Uses	25 ft.	25 ft.	25 ft.
9. Minimum Dwelling Unit Size	750 s.f.	750 s.f.	850 s.f.

§ 105-97. Off-street parking and loading in the D-MU District.

A. Off-street parking.

1. Dwelling units and multi-family dwelling units: one (1) space for each studio; one and one-half (1.5) spaces for 1 bedroom; two (2) spaces for two (2) bedrooms and one-half (0.5) additional spaces for each additional bedroom in the dwelling unit.
2. Retail and personal service establishments: one (1) space for each two hundred (200) square feet of gross floor area.
2. Restaurant, bar and grill, and similar uses: one (1) space for every three (3) seats or one (1) space for each two hundred (200) square feet of gross floor area, whichever is greater plus one (1) additional space for every three (3) feet of bar.
3. Offices, financial institutions, and studios: one (1) space for each two hundred fifty (250) square feet of gross floor area.

B. Reduction of required parking for uses near municipal parking fields.

The provisions set forth in §105-112 of this Chapter shall apply to D-MU uses that are located with five hundred (500) feet of a municipal parking field, including the potential payment of a fee as a substitute value for parking spaces waived by the Board of Trustees.

C. Loading requirements.

Off-street loading and unloading requirements may be waived by the Board of Trustees as part of the site plan approval process, where such loading is infeasible given existing parking lots that otherwise serve the subject site.

§ 105-98. Workforce or affordable housing requirement.

In exchange for density bonuses, the Village shall require not less than 10 percent of all multi-family or mixed-use units in any D-MU development to be designed as workforce or affordable housing, targeted to households with incomes less than 100 percent of the area median income (AMI) for Nassau County, as defined by the United States Department of Housing and Urban Development (HUD), and with unit sales prices or rents not to exceed 30 percent of the household's annual income. In the alternative, the Board of Trustees may permit the developer to make provision of other land and the construction of the required affordable workforce housing units that are not part of the applicant's current subdivision plat or site plan but are to be provided on another site within the same local government; or make the payment of a fee in accordance with §699 of the General Municipal Law. For buildings with less than four units, the workforce or affordable housing requirement shall not apply. Workforce or affordable housing units shall comply with all requirements set forth by the Village Board of Trustees at the time of

Site Plan approval in relation to unit occupancy, location, design, and continued affordability over time.

§ 105-99. Development Incentive Bonuses

- A. The Board of Trustees shall have all those powers set forth in New York State Village Law §7-703. The Board of Trustees, following a public hearing §105-103, may, at its discretion, award incentive bonuses to applicants who provide or make provision for amenities and facilities such as open space, parks and recreational facilities, streetscape amenities, landscaping, energy efficient building techniques, a greater number of workforce or affordable housing units, road improvements, water and sewer system improvements or other specific physical, social or cultural amenities, or cash in lieu thereof, of benefit to the residents of the Village. In exchange therefore the Board of Trustees may, at its discretion, vary the required density, coverage and floor area ratios, parking requirements, building heights, required setbacks, topographical changes, open space, and permissible uses in the District provided such variance is consistent with the intent and purpose of this local law.
- B. To evaluate the adequacy of the proposed benefits to be accepted in exchange for the requested development incentives, the applicant shall submit an application to the Village Building Department along with the payment of any applicable fees which shall be set from time to time by resolution of the Board of Trustees. The application for development incentive bonus shall include the following:
 - 1. A description of the proposed amenities outlining the benefits that will accrue to the community;
 - 2. The economic value of the proposed amenities to the Village as compared with the economic value of the proposed incentives to the applicant;
 - 3. A preliminary 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 the increased density, incentive or amenity may place on such facilities or the Village beyond the demand that would otherwise occur with as-of-right development; and
 - 4. An explanation of the physical, social and/or cultural impact of the amenity upon the D-MU Zoning District.
- C. Authorization for development incentive bonuses shall be subject to approval by the Board of Trustees after a public hearing in accordance with §105-103. Upon completion of the public hearing to consider the application for development incentive bonuses, the Board of Trustees shall grant or deny the application. The Board of Trustees shall determine whether the proposed amenities provide sufficient public benefit to provide the requested incentives. In the event that the Board of

Trustees grants the application, it may impose such terms and conditions as it deems necessary. 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, or in addition thereto, a payment to the Village of a sum to be determined by the Board of Trustees. If cash is accepted in lieu of other community benefit or amenity, or in addition to a benefit deemed to be insufficient, provisions shall be made for such sum to be deposited in a trust fund to be used by the Board of Trustees for specific community benefits authorized by the Board of Trustees.

D. The Board of Trustees may not grant incentive bonuses to permit:

1. Buildings with heights in excess of forty (40) feet or three and one-half (3 ½) stories except that the Board may grant incentive bonuses in excess to forty (40) feet provided such height in excess of the forty (40) is limited to architectural or design relief or for: the storage of mechanicals such as HVAC equipment; mechanical rooms; architectural or design elements; penthouses for elevators, stairways, skylights, chimneys, flues, or renewable energy equipment. Additionally, no more than thirty percent (30%) of the running plate length of each wall in a pitched roof may be dormered or used as habitable space. The maximum roof pitch shall be a 12 on 12 pitch. The total maximum vertical height for any building when having permitted encroachments or a pitched roof shall be 49 feet to the highest point of the permitted encroachment of the pitched roof.
2. Densities in Sub-Areas A and B in excess of sixty (60) units/per acre; Densities in Sub-Area C in excess of forty-five (45) units/per acre.
3. Maximum building area coverage greater than 90%; or
4. Minimum dwelling unit size less 500 square feet.

§ 105-100. Site plan and related approval.

All developments in the D-MU Zoning District shall be subject to site plan review in accordance with Article XXVII of this Chapter.

§ 105-101. Non-conforming buildings and uses.

Any building, structure or use existing on the effective date of this local law may be continued on the same lot although such building, structure or use does not thereafter conform to the regulations of the D-MU Zoning District. A nonconforming building, structure or use is deemed abandoned and may not be reestablished where such nonconforming building, structure or use has been discontinued for a period of six (6) months. A lawfully preexisting nonconforming building, structure or use may not be enlarged or reconstructed. If less than fifty percent (50%)

of the total square feet of a building or structure is destroyed or otherwise requires repairs and alterations due to any accidental or unintentional cause, then in that event the building may be restored and enjoy its nonconforming status, provided that such restoration or repair is completed within six (6) months and such restoration does not enlarge the nonconformity. In the event that more than fifty percent (50%) of the total square feet of a building or structure is destroyed or otherwise requires repairs then in that event the building or structure shall be restored in conformity with this the D-MU Zoning District. Notwithstanding anything herein to the contrary, a nonconforming use which is replaced by, or converted to, a conforming use is extinguished and shall not be reestablished.

§ 105-102. Costs fees and expenses.

All applicants under this Article shall be required to pay the cost associated with engineering, environmental, architectural, legal and other consulting professionals retained by or on behalf of the Village which are deemed necessary by the Village. No building permit shall be issued until all expenses incurred by the Village for engineering, environmental, architectural, legal and other consulting professionals' consultation fees or other expenses incurred by the Village in connection with this Article are reimbursed to the Village by the applicant. The Village may require, at the time of the application pursuant to this Article, that the applicant deposit with the Village Clerk such amount to cover consultation fees and other expenses as shall be established from time to time by resolution of the Board of Trustees.

§ 105-103. Public Hearing. Public Notice.

A public hearing shall be required for all applications for special permits and incentive bonuses. Public notice shall be given by publication in the official Village newspaper of such hearing at least ten (10) days prior to the date thereof. Before any such application may be heard by the Board of Trustees, a complete and accurate list of the names and addresses of the owners of all the lands within a radius of two hundred (200) feet of the property affected by such application as appears on the latest completed assessment roll of the Incorporated Village of Farmingdale shall be submitted simultaneously with the application. The applicant shall send, by certified mail, to each owner shown on the applicable list, no less than ten (10) days nor more than twenty (20) days before the date set for a hearing upon this application, a notice addressed to such owners signed by the applicant, generally identifying the property affected thereby and setting forth the nature of the application and/or the development incentive bonuses requested and the date, hour and place fixed by the Board of Trustees for a hearing thereon. Before such cases may be heard by the Board of Trustees, the applicant must file with the Village Clerk, not later than five (5) days prior to the hearing date, an affidavit of the mailing of such notice as herein provided, said affidavit to be made on forms to be provided by the Board of Trustees.