Article XLII. Baldwin Mixed-Use Zoning Overlay District (B-MX)

§ 422. Statement of intent and purpose.

A. Background.
   (1) Downtown Baldwin, centered along Grand Avenue and the Baldwin LIRR station, is the commercial backbone of the Baldwin community. However, the economic health and resiliency of this commercial corridor has been affected by its lack of private sector investment, discontinuity of uses, and history of vacancies. Development patterns along this corridor have been varied and inconsistent.
   (2) The Baldwin community has long recognized the importance of the Grand Avenue corridor. The community envisions a downtown that is vibrant and pedestrian-friendly, with an active, compact, multi-modal LIRR station area at the center of the hamlet. This vision also incorporates a mix of land uses and innovative green infrastructure components to create a place where residents, commuters and visitors can shop, dine, and recreate.
   (3) In May 2017, the Baldwin Downtown and Commercial Corridor Resiliency (DCCR) Study was published. This report was the culmination of a comprehensive planning effort that reviewed existing economic and physical conditions along the corridor and outlined a series of strategies and projects that would address critical issues and contribute to a more resilient, safe, and sustainable future for the Baldwin community. A key recommendation of the DCCR Study is the creation of a new overlay district along the corridor that would encourage the development of a walkable, compact and transit-oriented downtown with a mix of residential, retail and commercial uses supported by enhanced transportation and infrastructure improvements.

B. Purpose and legislative intent.
   (1) In response to the needs of the Baldwin community, and following the recommendations put forth in the DCCR Study, the Town of Hempstead hereby enacts a new Article of the Town of Hempstead Building Zone Ordinance, which will create a new overlay district to be known as the “Baldwin Mixed-Use Overlay District (B-MX).”
   (2) The primary goal of the B-MX District is to facilitate private investment, public benefits and economic development within downtown Baldwin. The new overlay district seeks to leverage the area’s proximity to public transportation by promoting mixed-use transit-oriented development around the Baldwin LIRR station to meet increasing demands for housing and retail uses, drive foot traffic, implement transportation and infrastructure improvements necessary to accommodate future growth and enhance the visual quality and pedestrian amenities through the implementation of design guidelines, which are contained as an appendix to the Building Zone Ordinance (see “Baldwin Mixed-Use Zoning Overlay District (B-MX) Design Guidelines”).
   (3) The B-MX District regulations, as an overlay district, have been designed to minimize the creation of non-conformities with underlying zoning.
   (4) With the stated goals in view, this article is enacted with the intention of promoting the health, safety and general welfare of the Town of Hempstead and its residents.

§ 423. Title.

This article shall be known and cited as the “Baldwin Mixed-Use Overlay District (B-MX) Article” of the Town of Hempstead.
§ 424. Definitions.

In addition to the definitions of this Building Zone Ordinance, the following definitions are applicable to this article. In the event of conflict, the following definition shall be controlling:

**Assisted Living**

An establishment for the long-term residential care of the aged and infirm, such as congregate-care and assisted living facilities, but not including nursing homes, convalescent homes or substance abuse treatment centers.

**Incentive Bonuses**

Adjustments to the floor area ratios and parking requirements of the provisions of the Town of Hempstead zoning and land use laws for a specific purpose, that is beneficial to the community, when authorized by the Town Board.

**Incentive Zoning**

The system by which specific incentives or bonuses are granted to applicants pursuant to this subsection on condition that specific physical, social, or cultural benefits or amenities would inure to the benefit of the community.

**Mixed-Use Building**

A building with more than one type of land use (e.g. residential and commercial).


A. Interpretation; conflicts with other provisions.

   (1) In interpreting and applying the provisions of this article, the rules of interpretation applicable to remedial legislation shall be used so that the spirit and intent of this article shall be observed.
(2) In the event of a conflict between the provisions of this article and other provisions of this Building Zone Ordinance, the provisions of this article shall control.

B. Severability. If any clause, sentence, section, paragraph or provisions of this article shall be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of this article but shall be confined in its operation to the clause, sentence, section, paragraph or provision directly involved in the controversy in which such judgment shall have been rendered.

§ 426. Applicability; Design Review; Subdistricts.

In the B-MX District, the following regulations shall apply:

A. The area within Baldwin designated B-MX is largely developed. As a result, the B-MX District has been designed as an overlay district, with the zoning regulations and Design Guidelines described herein, applicable to new development, redevelopment, and building expansions which result in a 10% or greater increase in the building’s floor area. For existing uses and rehabilitations and expansions less than 10% of the gross floor area, existing zoning regulations shall still apply, and the Design Guidelines shall not apply.

B. Design Guidelines have been established for the B-MX Overlay District in order to create a high-quality, pedestrian friendly environment. The principles described in the Baldwin Mixed-Use Design Guidelines are not mandatory development standards. However, all projects shall incorporate and demonstrate how these design principles meet the purpose and intent of the guidelines. In reviewing applications, the Design Review Board, which is hereby established, shall follow the criteria of the Baldwin Mixed-Use Design Guidelines and B-MX Overlay District Design Guidelines Checklist contained as an appendix to the Building Zone Ordinance.\(^{[1]}\) The ultimate approval of projects will be judged in accordance with these design guidelines.

\(^{[1]}\) Editor’s Note: Said guidelines are an appendix to the BZO.

C. For purposes of this article, the B-MX District shall be divided into three subdistricts as indicated on the Zoning Map described in § 431 of this article. These subdistricts include:

(1) Baldwin – Mixed-Use, Transit-Oriented Development (B-MX, TOD).
(2) Baldwin – Mixed-Use, Merrick Road Gateway (B-MX, MRG).
(3) Baldwin – Mixed-Use, Commercial Transition (B-MX, CT).

§ 427. Permitted uses.

A. In the B-MX Zoning District, the following uses shall be permitted uses:

(1) Professional office, bank or financial institution
(2) Pharmacy/drugstore
(3) Retail trade and personal services, including supermarkets
(4) Restaurants, including outdoor dining as an accessory thereto, but excluding lunch wagons, drive-in restaurants, drive-in luncheonettes, drive-thrus, drive-in counter or drive-in refreshment stands.
(5) Health and fitness establishments
(6) Multiple-family dwelling
(7) Assisted living
(8) Mixed-use, as defined in this article
(9) Parking field, either public or private, for the parking of passenger vehicles only, but not for display or sale of automobiles.

B. Special permit uses. The following special uses, when approved by the Town Board, are permitted:
1. Hotels.
2. Dormitory/Graduate Student style housing.
3. Cabarets.

C. Accessory uses. The following uses customarily incidental to permitted, and special permit uses if approved, shall be permitted in the B-MX Overlay District:
1. Off-street parking and loading, including parking structures.
2. Open space or plaza areas.

D. Religious and educational uses shall be governed by Article XXXIX of this Ordinance.

§ 428. Prohibited uses.

A. In the B-MX Zoning District, the following uses shall be prohibited:
1. Any use prohibited by Article XXXVII of this Ordinance.
2. Car wash
3. Check-cashing establishment
4. Drive-in theater
5. Dry cleaning or laundromat services done on-site (drop-off/pick-up permitted).
6. Gambling or games of chance establishment
7. Gasoline station, motor vehicles repair or auto body shop
8. Kennel or pet-boarding facility
9. Motel
10. New or used automotive showroom or car lot
11. Outdoor storage use
12. Pawnshop, including auction house
13. Tattoo Parlors
14. Residential dwelling units on the ground floor of any building.
15. Any use not permitted in section §427 Permitted Uses.

§ 429. Lot and bulk controls.

A. Consistent with primary goals of the B-MX District, the following lot and bulk controls allow for greater intensities of development for properties fronting Grand Avenue and Sunrise Highway closest to the Baldwin LIRR station (B-MX, TOD). The lot and bulk controls for the B-MX, MRG subdistrict facilitate private investment, public benefits and economic development within the area around the intersection of Merrick Road and Grand Avenue. The B-MX, CT subdistrict facilitates appropriately scaled mixed-use commercial development in transition areas along the Grand Avenue corridor.

<table>
<thead>
<tr>
<th></th>
<th>B-MX, TOD</th>
<th>B-MX, MRG</th>
<th>B-MX, CT</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Maximum floor area ratio (FAR)[1]</td>
<td>1.5</td>
<td>1.0</td>
<td>.5</td>
</tr>
<tr>
<td>2. Maximum building area coverage</td>
<td>90% for commercial buildings</td>
<td>90% for commercial buildings</td>
<td>75% for commercial buildings</td>
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</table>
3. Maximum residential density for multifamily and mixed-use buildings

<table>
<thead>
<tr>
<th></th>
<th>80% for mixed-use or multiple-family buildings</th>
<th>60% for mixed-use or multiple-family buildings</th>
<th>40% for mixed-use or multiple-family buildings</th>
</tr>
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<tbody>
<tr>
<td></td>
<td>60 units per acre(^1)</td>
<td>45 units per acre(^2)</td>
<td>30 units per acre(^3)</td>
</tr>
<tr>
<td>4. Maximum building height</td>
<td>75 feet</td>
<td>60 feet</td>
<td>45 feet</td>
</tr>
<tr>
<td>5. Maximum building setback from front lot line (build to line), except for pedestrian plaza areas</td>
<td>0 feet</td>
<td>0 feet</td>
<td>10 feet</td>
</tr>
<tr>
<td>6. Minimum building setback from 45 feet height and above</td>
<td>5 feet from streetside, ground level building line.</td>
<td>5 feet from streetside, ground level building line.</td>
<td>5 feet from streetside, ground level building line.</td>
</tr>
<tr>
<td>7. Minimum side yards</td>
<td>None required</td>
<td>None required</td>
<td>None required</td>
</tr>
<tr>
<td>8. Minimum rear yard</td>
<td>10 feet(^2)</td>
<td>10 feet(^3)</td>
<td>10 feet(^3)</td>
</tr>
<tr>
<td>9. Minimum landscaped buffer area when adjacent to residential uses</td>
<td>Minimum 10 feet from the curb; Maximum 10 feet from the property boundary.</td>
<td>Minimum 10 feet from the curb; Maximum 10 feet from the property boundary.</td>
<td>Minimum 10 feet from the curb; Maximum 10 feet from the property boundary.</td>
</tr>
<tr>
<td>10. Minimum front yard</td>
<td>Minimum 10 feet from the curb; Maximum 10 feet from the property boundary.</td>
<td>Minimum 10 feet from the curb; Maximum 10 feet from the property boundary.</td>
<td>Minimum 10 feet from the curb; Maximum 10 feet from the property boundary.</td>
</tr>
</tbody>
</table>

\(^1\) For purposes of this Article, the floor area ratio (FAR) shall exclude any structure, or portion of a structure, exclusively dedicated for off-street parking.

\(^2\) The depth of the rear yard shall be increased five feet for each 12 feet or portion thereof by which the building exceeds forty (40) feet in height.

\(^3\) The depth of the landscaped buffer area shall be increased five feet for each 12 feet or portion thereof by which the building exceeds forty (40) feet in height.

B. Yard setbacks.

(1) Front yards. Notwithstanding the foregoing, a roof, mansard, awning, or similar projection not exceeding 24 inches beyond the front property line shall be a permitted encroachment.

C. Screening. Any storage area or parking area shall be screened from all abutting uses, including public rights-of-way. Such screening shall consist of a hedge, fence or wall, with a minimum

\(^1\) Amended 2/25/20.
\(^2\) Amended 2/25/20.
\(^3\) Amended 2/25/20.
height of four feet and a maximum height of six feet, except that within a radius of 20 feet of
the point formed by any intersecting property lines adjacent to roads or highways, the
maximum height shall be 30 inches, such screening to be sufficient to obscure such area in an
effective manner and during all seasons of the year.
D. Fences. No fence or wall more than six feet in height may be erected without a permit and
authorization by the Board of Appeals pursuant to Article XXVII hereof. No fence shall be
permitted in the front yard or the side yard if located on a corner lot.
E. Signs. Signs, which are authorized under the provisions of Article XXIV, are permitted, subject to
consistency with the Baldwin Mixed-Use Design Guidelines.

§ 430. Off-street parking.

Accessory parking. Accessory off-street automobile parking spaces shall be provided on the same lot or
premises or off the premises within 300 feet of such premises. The minimum number of accessory
parking spaces required shall be determined by the type of each included use and shall be calculated as
follows.

<table>
<thead>
<tr>
<th>Use</th>
<th>B-MX, TOD</th>
<th>B-MX, MRG and B-MX, CT</th>
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</thead>
<tbody>
<tr>
<td>Retail/Commercial</td>
<td>1 space per 300 square feet</td>
<td>1 space per 300 square feet</td>
</tr>
<tr>
<td>Multifamily Apartment: Studios</td>
<td>1 space per unit</td>
<td>1 space per unit</td>
</tr>
<tr>
<td>Multifamily Apartments: One-bedroom units</td>
<td>1 space per unit</td>
<td>1.3 space per unit</td>
</tr>
<tr>
<td>Multifamily Apartments: Two-bedroom units</td>
<td>1.5 spaces per unit</td>
<td>1.75 spaces per unit</td>
</tr>
<tr>
<td>Multifamily Apartments: Three or more bedroom units</td>
<td>1.75 spaces per unit</td>
<td>2 spaces per unit</td>
</tr>
<tr>
<td>Assisted Living</td>
<td>1 space per bed</td>
<td>1 space per bed</td>
</tr>
<tr>
<td>Graduate student housing</td>
<td>1 space per bed</td>
<td>1 space per bed</td>
</tr>
<tr>
<td>Other permitted uses</td>
<td>In compliance with §319 of this ordinance; each parking space shall comply with all requirements of §319D of this ordinance</td>
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§ 431. Amendment of the Zoning Map

In furtherance of the implementation of this article, and to specifically identify the particular
areas within Baldwin placed into the overlay B-MX District and three subdistricts established herein, a
particular zoning map dated January 21, 2020, prepared by VHB Engineering, Surveying, Landscape
Architecture and Geology, P.C., and entitled "Baldwin – Mixed-Use Rezoning Map," has been filed in the
office of the Town Clerk, and in all other places required by law or otherwise for the filing of zoning
maps of the Town. This map is incorporated herein by reference. It identifies the areas in the overlay B-
MX District and subdistricts, and upon the effective date of this Article, it shall apply in those areas to
the extent provided in this article or otherwise at law.
§ 431.1 Development bonus provisions.

A. Intent. The Town Board, including but not limited to a recommendation by the Design Review Board, is empowered to provide for a system of zoning incentives, as described, but not limited to, below, as it deems necessary and appropriate for the benefit of the community, consistent with the purposes and conditions set forth in this Article.

B. Eligible Community Benefits or Amenities.

(1) Provision, Renovation or Rehabilitation of a community benefit or amenity. Open space, parks, or other specific physical, social or cultural amenities, or cash or payment in lieu thereof, as authorized by the Town Board, which provide a benefit to the residents of the community.

(2) Brownfield or Derelict Property Remediation and Restoration. Applicants may apply for a development bonus in exchange for providing Brownfield or derelict property remediation and restoration on lots proposed for development within the B-MX Overlay district, to prepare the property(ies) for either dedication for public use for redevelopment by a public or private owner. The Building Department shall provide a list of preferred properties for rehabilitation or restoration.

(3) Contribution to Community Benefit Non-Site Related Infrastructure Improvements. Non-site related improvements are considered significant improvements that are not directly needed, required or related to the subject site development or mitigation of impacts therefrom, but will be able to be utilized by the proposed project’s residents or will indirectly improve the project or its site. Infrastructure improvements may include, but are not limited to, significant provisions, renovations, creation, installation and/or rehabilitation of public solid waste and recycling receptacles, traffic calming measures, bicycle accommodations, public seating, wider than required sidewalks, specialty pavers or utility covers as part of district “branding”, repaving of a street(s), intersection upgrades (including street lights and crosswalks), public plazas, bus shelters and/or LIRR Baldwin station area enhancements, storm or sanitary sewer improvements, or cash or payment in-lieu thereof. The Design Review Board and/or the Town Building Department may provide recommendations to the Town Board.

C. FAR Development Bonus. This provision allows for the awarding of zoning incentives in the form of floor area ratio (FAR) development bonuses of up to 0.5 in each of the B-MX subdistricts to those applicants who, in exchange, provide one or more of the following (but not limited to): to eligible community benefits or amenities outlined in §431.1B, parking for the public (not including that parking specifically required to support the proposed development), community amenities or development actions above and beyond those that are directly or indirectly necessitated by the project itself, or cash or payment in lieu of, provided that the Town Board finds that the amenity is proportional to such development bonus. Applicants would be required to prepare a Traffic Study in accordance with the Conditions and Criteria set forth in the Findings Statement adopted by the Town Board in order to seek FAR development incentives.

D. Adjustments to Parking Requirements. This provision allows for the awarding of zoning incentives in the form of adjustments to parking requirements. The Town Board is empowered to provide the following adjustments to the parking requirements within the B-MX District to those applicants who, in exchange, provide one or more of the following (but not limited to): to eligible community benefits or amenities outlined in §431.1B, parking for the public (not including that parking specifically required to support the proposed development), community amenities or development actions above and beyond those that are directly or indirectly necessitated by the project itself, or cash or payment in lieu of, provided that the Town Board
finds that the amenity is proportional to such development bonus. Applicants seeking off-street parking requirement incentives would be required to prepare a Parking Study in accordance with the Conditions and Criteria set forth in the Findings Statement adopted by the Town Board.

<table>
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<td>0.70 Spaces Per Unit</td>
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<tr>
<td>Multifamily Apartment: 1-bedroom</td>
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</tr>
<tr>
<td>Multifamily Apartment: 2-bedroom</td>
<td>1.25 Spaces Per Unit</td>
<td>1.5 Spaces Per Unit</td>
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<tr>
<td>Multifamily Apartment: 3-bedroom</td>
<td>1.75 Spaces Per Unit</td>
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</tr>
<tr>
<td>Assisted Living</td>
<td>0.5 Spaces Per Bed</td>
<td>0.5 Spaces Per Bed</td>
</tr>
<tr>
<td>Graduate Student Housing</td>
<td>0.70 Spaces Per Bed</td>
<td>0.70 Spaces Per Bed</td>
</tr>
<tr>
<td>All other permitted uses</td>
<td>Shall comply with the</td>
<td>parking requirements</td>
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<td></td>
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<td>outlined in §319D of</td>
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<td></td>
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<td>the Town's zoning code.</td>
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E. Criteria for approval, methods required for determining the adequacy of community amenities. To evaluate the adequacy of the proposed benefits to be accepted in exchange for the requested incentives, the following information shall be provided by the applicant with its application for development incentive bonus approval:

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 Town as compared with the economic value of the proposed incentives to the applicant;
3. Demonstration that there are adequate sewer, water, energy, transportation and parking, fire-protection facilities serving or proximate to the proposed development to handle the additional demands the incentive and amenity may place on such facilities beyond the demand that would otherwise occur with as-of-right development; and
4. An explanation as to the way in which the amenity will implement physical, social or cultural goals as set forth in this Article.

§ 431.2. Administration and Procedure.

The review and approval process for new development, redevelopment, and building expansions which result in a ten percent or greater increase in the building’s floor area in the B-MX District, shall be as follows:

A. A building permit application shall be submitted to the Buildings Department. In addition to all otherwise required documentation, an applicant shall also submit all materials necessary for review by the Design Review Board, including a consistency analysis with the SEQRA Conditions and Criteria set forth in the Findings Statement adopted by the Town Board. The
Design Review Board will determine the level of State Environmental Quality Review Act ("SEQRA") review required, if any, in accordance with 6 NYCRR §617.10(d). The Plans Examiner shall, upon the submission of a complete application, conduct a zoning compliance review and review for compliance with SEQRA.

B. The Design Review Board. Upon complete review of zoning and SEQRA compliance, the application shall be referred to the Design Review Board for purposes of applying the Baldwin Mixed Use Zoning Overly District (B-MX) Design Guidelines.

(1) The Design Review Board shall consist of three employees of the Department of Buildings with site plan review backgrounds, appointed by the Town Board. Approval by the Design Review Board shall be necessary prior to the issuance of a sign permit or a building permit for new development, redevelopment, and building expansions which result in a ten-percent or greater increase in the building's floor area.

(2) Prior to the Public Hearing of the Design Review Board, a public notice, prepared by the Design Review Board, shall be published at least 10 days prior to the date fixed for such public hearing in a newspaper of general circulation in the Town of Hempstead and shall be noticed on the Town’s website at least 10 days prior to the public hearing. The notice shall state the general nature of the application, the applicant, and the location of the property. Said notice shall be mailed by the applicant no more than 28 days and no less than 21 days prior to the Design Review Board’s hearing by certified mail to all property owners within a 300 foot radius of the subject application’s property boundaries, and the applicant shall file an affidavit of mailing, with the certified mail receipts, with the Design Review Board prior to the public hearing.

(3) A sign noticing said public hearing shall be posted at said location at least 21 days prior to the date fixed for such public hearing. Said sign(s) shall be located in each front yard setback of the subject premises; shall be at least 24 square feet in area; shall provide the words “NOTICE OF PUBLIC HEARING” and the date, place and time of the public hearing, and the general nature of the application in black letters at least six inches high with a background color of the face of the sign either bright orange or bright yellow.

(4) In reviewing applications, the Design Review Board shall substantially follow the criteria of the Baldwin Mixed Use Zoning Overly District (B-MX) Design Guidelines and B-MX Overlay District Design Guidelines Checklist contained as an appendix to the Building Zone Ordinance. The ultimate approval of projects will be judged in accordance with these design guidelines.

(5) If the application is compliant with zoning and in accordance with 6 NYCRR §617.10(d)(1), as determined by the Design Review Board, no further SEQRA review is required. If the application is not compliant, based on 6 NYCRR §617.10(d) (2) – (4), additional SEQRA will be required.
(6) The Design Review Board shall have the powers granted by the Town Law and the power to approve, disapprove, or grant with conditions applications for Design Review Board approval for properties within the B-MX District. The Design Review Board shall render a written determination within 30 days of the completion of the public hearing, and may issue findings of fact.

(7) If the Design Review Board does not vote for changes to the plan, or votes for changes to the plan and the applicant consents to the changes, and the project is compliant with zoning and SEQRA, then the application can be circulated to State, County, and Town departments for approvals. Once all State, County, and Town approvals are obtained, the Building Department will issue a Building Permit. Site plan approval under § 305 will not be required. The project will not require a Town Board hearing.

(8) The Town Board, including but not limited to the Design Review Board’s recommendation, following a public hearing, may provide incentive bonuses in exchange for the applicant providing one or more community benefits or amenities or cash or payment in lieu thereof, as authorized by the Town Board and in accordance with § 431.1B of this Article.

(9) Anyone aggrieved by the decision of the Design Review Board may appeal same to the Board of Appeals, unless the underlying application must be reviewed or approved by the Town Board, in which case an appeal shall be within the jurisdiction of the Town Board.

C. If an application is not zoning compliant, or if additional SEQRA review is required under Section B(5), above, upon completion of review and decision by the Design Review Board, the application shall be referred to the Town Board for a public hearing to determine the approval or disapproval of the application. In the event that the Town Board approves said application, it may attach certain conditions to said approval, which conditions shall become an integral part thereof. The Town Board may, by resolution, dispense in part with conformity with the provisions applicable to the B-MX District and may impose safeguards and conditions as it may deem appropriate, necessary or desirable to promote the spirit and objectives of this section, including but not limited to restrictive covenants pertaining to any area within the district that is the subject of an application, including the site plan submitted on behalf of the application, together with other agreements, if any, in recordable form and running with the land. If the Town Board approves an application, the application shall then be circulated to State, County, and Town departments for approvals. Once all State, County, and Town approvals are obtained, the Building Department will issue a Building Permit. Site plan approval under § 305 will not be required. The project will not require a second Town Board hearing.