

**INCORPORATED VILLAGE OF OLD WESTBURY
BOARD OF TRUSTEES**

INTRODUCTORY LOCAL LAW NO. 1 OF 2019

**AMENDING CHAPTER 216, "ZONING", SECTION 216-140.1, "ERECTION OF
FENCES" OF THE CODE OF THE VILLAGE OF OLD WESTBURY, and**

**AMENDING CHAPTER 216, "ZONING", SECTION 216-4, "DEFINITIONS" OF THE
CODE OF THE VILLAGE OF OLD WESTBURY**

- Section 1.** Chapter 216, "Zoning", Section 216-140.1, "Erection of fences" of the Village Code of the Village of Old Westbury be and is hereby amended to read as follows:
- A. No fence or wall shall be erected unless a building permit therefor is applied for and issued by the Building Inspector.
 - B. Any fence hereafter erected in any district shall have the finished side facing the street or neighboring property. All poles and supports for such fences, whenever possible, shall be located on the property owner's side of the fence and shall not be visible from the neighboring property or street.
 - C. **Requirements and Standards Relating to the Design, Construction, Maintenance, and Repair of Retaining Walls.**
 - 1. A separate retaining wall permit is required for all new retaining walls 24 inches in height or greater.
 - 2. All walls between 24 inches to 60 inches in height shall be subject to the review of the Planning Board Sub-Committee before a permit is issued in accordance with Chapter 174 of the Code. All walls greater than 60 inches in height are subject to review and approval by the Planning Board in accordance with Chapter 174 of the Code before a permit is issued.
 - 3. Repairs to retaining walls 24 inches or greater in height, and retaining walls lower than 24 inches in height that are part of a tier retaining wall system shall be inspected by the Superintendent of Buildings to review the extent of the

repair. No retaining wall permit is required for minor repairs, as determined by the Superintendent of Buildings.

- 4. Repairs to retaining walls greater than 60 inches in height are subject to review and approval by the Planning Board in accordance with Chapter 174 of the Code before a permit is issued.**

D. Zoning Requirements Relating to the Design, Construction, Maintenance, and Repair of Retaining Walls.

- 1. The minimum setback from a front lot line for a retaining wall below grade of the public right-of-way shall be 10 feet.**
- 2. A minimum setback from a front lot line for new retaining walls that rise above the grade of the public right-of-way shall be one foot of distance for each one foot of height.**
- 3. For retaining walls over 24 inches in height visible from the road or any adjacent property, the use of a smooth concrete wall shall not be permitted. The exterior of all such walls shall be stone, brick or masonry materials, decorative wall blocks, or textured concrete, so as to minimize the negative visual impact of the wall. The treatment of these walls shall be indicated on the site plan and construction drawings. Any such material shall be approved by the Planning Board Sub Committee.**
- 4. Retaining walls over 30 inches in height that create a walking surface or area intended to be accessed by people adjacent to the top of the retaining wall shall have a guard as defined by the International Building Code.**
- 5. Retaining walls of any height are not permitted in any utility easement or conservation areas.**
- 6. Building permit applications for new retaining walls must include, in addition to all other requirements:**

- a. **Construction drawings designed, signed and sealed by a professional engineer or registered architect duly licensed by the State of New York, indicating the type of wall and construction details.**
 - b. **Signed and sealed calculations showing that the wall is designed to prevent overturning, sliding, excessive foundation pressure, and water uplift. Retaining walls must be designed for minimum safety factors as required by the International Residential Code as adopted by the Village of Old Westbury.**
 - c. **A site plan indicating:**
 - i. **The location of the wall on the property.**
 - ii. **Property lines and easements.**
 - iii. **The dimensions of the proposed wall.**
 - iv. **All drainage components.**
 - v. **The location of all utilities, existing or proposed.**
 - vi. **The direction for all surface water flow.**
 - vii. **Location and details of erosion control components.**
 - viii. **All existing trees in or near the area of construction and including all trees to be removed and methods of protection for trees to remain.**
- 7. No structure shall be allowed to be constructed in front of any wall that would preclude access to the maintenance area or inspection of the wall.**

E. Retaining Wall Design

- 1. A minimum horizontal distance of four feet is required between walls installed in a tiered installation. The area between the tiers shall be graded with no more slope than needed to facilitate the shedding of surface waters and prevent storm water runoff to adjoining properties, and must be landscaped with natural material and be properly maintained.**
- 2. A retaining wall cannot exceed the height of the adjoining grade that it supports or retains unless approved by the Superintendent of Buildings.**
- 3. Provisions must be made to contain stormwater and prevent erosion on the subject property and to protect all adjoining properties from the same during and after construction.**
- 4. Permission to enter upon or disturb any adjoining property must be obtained from the property owner prior to the issuance of a building permit. Any adjoining property disturbed by the installation of a retaining wall must be restored to its previous condition.**
- 5. Retaining walls will not be permitted when the installation will destabilize or cause the removal of trees on an adjoining property, regardless of property line location, unless prior written permission is granted by the adjoining property owner, and subject to the issuance of a tree removal permit.**
- 6. Non-decorative concrete block and untreated landscape ties are not permitted.**

F. Repairs and replacement of existing retaining walls.

- 1. All repairs that are not minor in nature, as determined by the Superintendent of Buildings, and all repairs of an existing retaining wall of any full-height section of the wall over two feet in height, shall require a permit. For all repairs or replacements to retaining walls over 60 inches in height, plans must be submitted, signed, sealed, and stamped by a**

duly licensed construction design professional who may be an architect or professional engineer licensed by the State of New York.

2. If retaining walls show signs of tipping, clogged drains, or soil subsidence, then the owner shall notify the Building Department for an inspection. The Superintendent of Buildings shall have the authority to require any necessary repairs to a retaining wall that jeopardizes public health, safety, and property.
3. No vegetation may be removed from, or adjacent to, an existing retaining wall that may destabilize the structural or mechanical integrity of any part of the retaining wall.
4. The provisions of Section 216-140.1(D)(7) of this Chapter apply to the maintenance, repair or replacement of existing retaining walls.
5. The provisions of Section 216-140.1(E) of this Chapter apply to the maintenance, repair or replacement of existing retaining walls.
6. The provisions of Section 216.140.1 of this Chapter shall apply to the replacement of a retaining wall.

G. Penalties for Offenses.

1. Violations may be issued daily by the Superintendent of Buildings. Each and every violation of any provision of this Chapter or of any of the rules and regulations promulgated hereunder shall be punishable by a fine of not less than \$1,500 and no more than \$10,000.

Section 2. Chapter 216, "Zoning", Section 216-4, "Definitions" of the Village Code of the Village of Old Westbury be and is hereby amended to read as follows:

ACCESSORY BUILDING

A building subordinate to the main building on a lot and used for purposes customarily incidental to those of the main building.

AGRICULTURAL PRODUCTS

Products planted in and springing directly from the soil.

ALTERATION

As applied to a building or structure, any change or rearrangement of the structural parts of a building or structure which shall include changes or rearrangement of the interior and exterior of such building or structure; extension on any side or increase in height of any such building or structure; and moving from one location to another. It does not include ordinary repairs.

BUILDING AREA

The aggregate of the maximum horizontal cross-sectional area of the buildings on a lot, excluding cornices, eaves, gutters or chimneys, projecting not more than 18 inches, steps, one-story open porches, bay windows, not extending through more than one story and not projecting more than five feet, balconies and terraces.

BUILDING VOLUME

Computed by combining the visible exterior dimensions of length, width and height from the mean grade of all dwellings and other buildings located on a lot, including roofed-over areas, whether enclosed or unenclosed, and all dormers, except that only 50% of the volume that is under the roof and above the bottom of the roof soffit shall be included, but in no case shall the fifty-percent reduction in volume apply to that portion of a structure between mean grade and 10 feet zero inches above grade. In addition, any unenclosed area under a roof overhang which extends no more than four feet beyond the face of an exterior wall shall not be included in computing building volume. Mean grade shall be determined at various sections of each building in the discretion of the Building Inspector, based upon exterior visibility.

[Added 12-15-1980 by L.L. No. 13-1980; amended 3-19-2001 by L.L. No. 3-2001; 2-20-2007 by L.L. No. 1-2007; 2-22-2011 by L.L. No. 1-2011]

CORNER LOT

A parcel of land at the junction of and fronting on two or more intersecting streets.

COURT

An open, unoccupied space other than a yard on the same lot as a building. A court or offset, shallower than the width of its open side, shall be considered to be a part of the open space on which it abuts.

DEPTH OF AN OUTER COURT

The distance which it projects into the building from the outer wall thereof. The width of an outer court is its other horizontal dimension.

DEPTH OF LOT

The mean distance from the line from which the front yard depth is measured to the rear lot line, measured in the general direction of the side lines of the lot.

[Amended 11-27-1987 by L.L. No. 13-1987]

EXTERIOR TREATMENT OF A DWELLING

The distinct variety of treatment, such as fenestration and materials of fenestration, roof lines and materials of weather roofing, treatment of entrance, entries to garage, orientation of buildings to plot, exterior colors and materials, cornice treatment, style of architecture, dormers and their roof treatment, the varied uses of trellises, pergolas, sun screens and terraces, the use of cupolas, dovecotes, blinds, pitch of roof line and multiple stories.

FAMILY

[Amended 7-21-1997 by L.L. No. 5-1997]:

- A.** Any number of individuals related by blood, marriage, legal adoption or guardianship, along with nonpaying guests and servants living together and sharing meals in a domestic relationship as a single housekeeping unit; or a group of persons occupying a dwelling unit and living together and sharing meals in a domestic relationship as a traditional family or the functional and factual equivalent of a traditional family.

- B.** It shall be presumptive evidence that four or more persons living in a single dwelling unit who are not related by blood, marriage or legal adoption do not constitute the functional and factual equivalent of a traditional family.

- C.** In determining whether individuals who are living together are the functional and factual equivalent of a traditional family, the following criteria must be present:
 - (1) The group is one which in theory, size, appearance, structure and function resembles a traditional family unit.

 - (2) The group shares the entire dwelling unit and live and cook together as a bona fide single housekeeping unit. A unit in which the various occupants act as separate roomers shall not be deemed to be occupied by the functional and factual equivalent of a traditional family.

 - (3) The group shares expenses for food, rent or ownership costs, utilities and other household expenses.

 - (4) The group is permanent and stable. Evidence of such permanency and stability may include:
 - (a) The presence of minor dependent children regularly residing in the household who are enrolled in local schools.

- (b) Members of the household have the same address for the purposes of voter's registration, driver's license, motor vehicle registration and taxes.
 - (c) Members of the household are employed in the area.
 - (d) The group has been living together as a unit for a year or more whether in the current dwelling unit or other dwelling units.
 - (e) Common ownership of furniture and appliances among the members of the household.
 - (f) The group is not transient or temporary in nature.
- (5) Any other factor reasonably related to whether or not the group is the functional and factual equivalent of a family.

FARM

Any parcel of land containing 10 acres or more which is used for gain in the raising of agricultural products and/or purebred cattle, with incidental livestock and poultry. It includes necessary farm structures within the prescribed limits and the storage of equipment used. It excludes, among other things, the raising of fur-bearing animals, riding academies, boarding stables and the principal use of dog kennels, poultry raising and dairying.

FRONT LINE OF LOT

The street line, except where the length of the street line is less than the minimum required lot width, in which case the "front line" shall be a line approximately parallel to the street line, equal in length to at least the minimum required lot width and completely contained within the lot.

[Added 11-27-1987 by L.L. No. 13-1987; amended 12-21-1987 by L.L. No. 14-1987]

FRONT YARD

A yard across the full width of the lot extending from the front wall of the main building to the front line of the lot. The minimum depth of a front yard, as required for the district in which the lot is located, shall be met from all street lines of the lot.

[Amended 11-27-1987 by L.L. No. 13-1987; 12-21-1987 by L.L. No. 14-1987]

HEIGHT OF BUILDING

The vertical distance, measured, in the case of flat roofs, from the curb level, where it has been established in business districts, to the highest point of the roof at the street wall or, in other cases, the vertical distance from the mean level of the ground surrounding the building to the highest point of the roof at the street wall. In the case of pitched roofs, it is measured to the top of the highest ridge.

[Amended 7-18-2000 by L.L. No. 4-2000]

ILLUMINATED SIGN

Any sign which gives forth artificial light by electricity, gas or phosphorescent light from a source of light connected to the sign or part of the sign structure.

[Added 5-17-1993 by L.L. No. 3-1993]

INNER COURT

An open, unoccupied space on the same lot with the building, not extending to either the street or the rear yard.

INTERIOR LOT

A lot other than a corner lot.

LOT

A portion or parcel of land considered as a unit devoted or to be devoted to a certain use or occupied or to be occupied by one main or principal building and accessory buildings and uses customarily incident to it, including such open spaces as are required by this chapter and such open spaces as are used or to be used in connection with such buildings.

LOT AREA; BUSINESS DISTRICTS

The area of the lot shall be measured only to the street line or lines on which the lot abuts.

LOT AREA; RESIDENCE DISTRICTS

The area of the lot shall be measured only to the street line or lines on which the lot abuts or to the line of a right-of-way, as defined in this section, on which the lot abuts; it shall not include:

- A. Any area lying within or on the opposite side of any such street or right-of-way.
- B. In BB Residence Districts, any area where the width of the lot is less than 100 feet.
- C. In B Residence Districts, any area where the width of the lot is less than 75 feet.
- D. In A Residence Districts, any area where the width of the lot is less than 30 feet.
- E. In B-4 Residence Districts, any area where the width of the lot is less than 150 feet.

[Added 11-27-1987 by L.L. No. 13-1987;¹¹ amended 12-21-1987 by L.L. No. 14-1987]

- F. In all residence districts, any area on which a pond is situated to the extent that the portion underwater, measured at the high-water mark, exceeds 10% of the minimum area for the district in which the lot lies.

[Added 10-21-1985 by L.L. No. 9-1985]

MULTIPLE-FAMILY DWELLING

A building designed for occupancy by two or more families, living independently of each other.

NONCONFORMING BUILDING OR USE

One that does not conform with the regulations of the use district in which it is situated.

NONRESIDENCE BUILDING

Any building or structure other than a residence building.

NOT-FOR-PROFIT SCHOOL

A building or property whose principal purpose and use is as a not-for-profit place of education providing regular instruction for at least five days each week and for at least seven months of each year, and having a curriculum approved by the Board of Regents or the New York State Education Department (but not including a school or college giving special or limited instruction, e.g., a business, art, music, dancing, automobile or riding school).

[Added 3-19-2001 by L.L. No. 4-2001]

NURSERY (HORTICULTURAL)

The cultivation of fruit trees, young trees and shrubs.

OUTER COURT

An open, unoccupied space on the same lot with a building, extending to either the street or the rear yard.

PEAKED ROOF

A type of roof, or portion thereof, where the sides of the roof meet at a ridgeline.

[Added 8-15-2016 by L.L. No. 6-2016]

PLACE OF WORSHIP

A building or property whose principal purpose and use is as a place of prayer, together with such other uses of a minor nature which are clearly and customarily incidental and accessory to the prayer use and are specifically permitted by the Village Board of Trustees in connection with the issuance of the special exception.

[Added 3-19-2001 by L.L. No. 4-2001]

PRIVATE GARAGE

A building used for the storage of one or more automobiles or trucks 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 and for the storage of not exceeding two additional automobiles (not trucks) owned or used by others for a similar purpose if they are stored in the same room in which the automobile or automobiles of the owner or tenant are stored.

PUBLIC GARAGE

A building, other than a private garage, one or more stories in height, used for the storage or repair of automobiles.

REAR YARD

A yard across the full width of the lot from the rear wall of the main building to the rear line of the lot.

RELIGIOUS USE

A use of building or property whose principal purpose is prayer or worship.
[Added 3-19-2001 by L.L. No. 4-2001]

RESIDENCE BUILDING

Any house or building or portion thereof which is occupied in whole or in part as a home, residence or sleeping place for one or more persons.

RETAINING WALL

All walls and other structures of any construction which are intended to, or which in fact, retain or support adjoining earth or rock.

RIGHT-OF-WAY

Includes a lane or alley and means an area of an owner's land over which another person or another owner or owners of land, their vehicles, their animals, their guests, tradesmen and servicemen and their vehicles, any of the foregoing singly or in any combination thereof, has the right to pass or repass. It shall not include water, gas, electrical and telephone line easements for service to the owner's land.

SIDE YARD

A yard extending from the front yard to the rear yard between the main building and the adjacent side line of the lot.

SINGLE-FAMILY DWELLING

A dwelling designed for and to be occupied exclusively as a home or residence for not more than one family.

STREET LINE

The dividing line between the street and the lot.

STRUCTURE

Any combination of materials forming any construction and including, but not limited to, among other things, satellite antennas, solar heating devices, tennis courts, stadiums, tents, trailers (whether movable or stationary), reviewing stands, platforms, porches, staging, observation towers, radio and television towers and antennas, gasoline pumps, wells, standpipes, outside bins, pools, man-made ponds, man-made waterfalls, walls, fences, trellises, pergolas, gates and gateposts, signs, transmission lines, towers and poles. The word "structure" shall be construed as though followed by the words "or part thereof."

[Amended 1-21-1980 by L.L. No. 1-1980; 11-15-1982 by L.L. No. 8-1982; 10-18-2004 by L.L. No. 2-2004]

TWO-FAMILY DWELLING

A building designed for and to be occupied exclusively as a home or residence for not more than two families.

USABLE FLOOR AREA

The interior portion of a building designed for living, including closet space; it shall not include the outside walls, attic space, unfinished and used for storage only, or, if accessible only by a ladder or pulldown stairs, attached or built-in garage space, open or enclosed unheated porches and terraces. In the basement it shall be construed to mean all finished floor area, complying with § **216-117**, not more than four feet below the average adjoining finished grade of the ground adjoining the building, having clear headroom of 7 1/2 feet or over; on the first floor it shall be construed to mean all finished floor area having clear headroom of 7 1/2 feet or over, including partitions and stairwells; on the second floor, all finished floor area having clear headroom of 7 1/2 feet or over for a minimum horizontal measurement of six feet with the side wall not less than 5 1/2 feet in height, including partitions and stairwells.

WIDTH OF LOT

The mean distance between the side lines of the lot, measured perpendicular to the lot depth, between the lot line from which the front yard depth is measured and the rear line of the lot.

[Added 11-27-1987 by L.L. No. 13-1987]

YARD

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

Section 3. Chapter 216, "Zoning" of the Village Code of the Village of Old Westbury shall otherwise remain in full force and effect.

Section 4. Severability. If a court determines that any clause, sentence, paragraph subdivision, or part of this local law or the application thereof to any person, firm or corporation or circumstance is invalid or unconstitutional, the Court's order or judgment shall not affect, impair or invalidate the remainder of this local law, but shall be confined in its operation to the clause, sentence, paragraph, subdivision or part of this local law or in its application to the person, individual, firm or corporation or circumstance, directly involved in the controversy in which such judgment or order shall be rendered.

Section 5. Effective Date. This local law shall take effect immediately upon filing with the Secretary of State.

On motion made by Trustee Chimerine, seconded by Trustee Baker, the foregoing Local Law was introduced upon the following vote:

Fred J. Carillo, Mayor	-	Aye
Marina Chimerine, Deputy Mayor	-	Aye
Cory Baker, Trustee	-	Aye
Leslie Fastenberg, Trustee	-	No
Edward Novick, Trustee	-	Absent

Dated: January 22, 2019
Old Westbury, New York

Filed: January 23, 2019
Old Westbury, New York